

04/05/21  
04/19/21

ORDINANCE NO. M-4334

AN ORDINANCE relating to the Shoreline Master Program periodic review as required by Revised Code of Washington (“RCW”) Chapter 90.58, the Shoreline Management Act; amending the City of Vancouver Shoreline Master Program (SMP) Chapter 2 Applicability, Shoreline Permits and Exemptions, Section 2.1 Applicability; Section 2.3 Exemptions from a Shoreline Substantial Development Permit; Chapter 3, Shoreline Master Program Goals and Policies, Section 3.6 Flood Prevention and Flood Damage Minimization; Chapter 4 Shoreline Designations, Section 4.3 Shoreline Designations; Chapter 5 General Shoreline Use and Development Regulations, Section 5.1 General Shoreline Use and Development Regulations; Section 5.3 Critical Areas Protection; Section 5.4 Public Access; Section 5.6 Site Planning and Development; Section 5.7 Vegetation Conservation; Section 5.9 Water Quality and Quantity; Chapter 5A VMC 20.740, Critical Areas Protection; Chapter 6 Specific Shoreline Use Regulations, Section 6.2 Shoreline Use, Modification, and Standards Table 6-1; Section 6.3 Use-specific Development Regulations; Section 6.4 Shoreline Modification Regulations; Chapter 7 Administration and Enforcement, Section 7.1 General Provisions; Section 7.2 Administrative Authority and Responsibility; Section 7.3 Master Program Amendments; Section 7.4 Permitting Procedures; Section 7.5 Enforcement; Section 7.8 Rescission of Permits; Chapter 8, Definitions; and Appendix A Unofficial Shoreline Designation maps; subject to approval by the Washington State Department of Ecology (Ecology); providing for severability; and providing for an effective date.

WHEREAS, the Shoreline Management Act (SMA) requires City of Vancouver to develop and administer a Shoreline Master Program (SMP); and

WHEREAS, the City of Vancouver adopted a comprehensive SMP update as required by RCW 90.58.080(2), which was effective as of September 24, 2012; and WHEREAS, RCW 90.58.080(4) requires City of Vancouver to periodically review and, if necessary, revise the master program on or before June 30, 2021; and WHEREAS, the review process is intended to bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the last SMP amendment, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data; and

WHEREAS, the City of Vancouver developed a public participation program for this periodic review in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines; and

WHEREAS, the City of Vancouver has followed its adopted public participation program, including a project website, public review and comment period, and public open house held virtually due to COVID-19 limitations; and

WHEREAS, city staff submitted memorandums in lieu of work sessions to the City of Vancouver City Council and Planning Commission on January 30, 2020 and April 1, 2020, respectively; and

WHEREAS, the City of Vancouver used Ecology's checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have

occurred since the master program was last amended, and determine if local amendments are needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i); and

WHEREAS, the City of Vancouver reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii); and

WHEREAS, the City of Vancouver considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii); and

WHEREAS, the City of Vancouver Planning Commission and City Council reviewed staff recommendations and prepared initial amendments at work sessions on July 14, 2020 and August 3, 2020, respectively; and

WHEREAS, the City of Vancouver consulted with the Department of Ecology early and often during the drafting of the amendments. The City worked collaboratively with the Department of Ecology to address local interests while ensuring proposed amendments are consistent with the policy of RCW 90.58.020 and applicable guidelines in accordance with WAC 173-26-104; and

WHEREAS, the City of Vancouver Planning Commission and City Council held work sessions on the proposed amendments on December 8, 2020 and January 4, 2021, respectively; and

WHEREAS, the City of Vancouver conducted a duly-noticed formal public comment period from January 8 through February 8, 2021 in compliance with requirements of WAC 173-26-104; and

WHEREAS, the City of Vancouver published a legal notice in the Columbian on January 8, 2021 for a public hearing on the proposed Planning Commission recommendation(s), including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii); and

WHEREAS, a State Environmental Policy Act (SEPA) environmental checklist was prepared based upon Planning Commission Public Hearing Draft, and the City of Vancouver SEPA responsible official issued and circulated a copy of the checklist and a Determination of Non- Significance (DNS) on January 8, 2021; and

WHEREAS, the City provided Notice of Intent to Adopt to the Washington State Department of Commerce in accordance with WAC 173-26-100(5); and

WHEREAS, the Planning Commission and Ecology took public testimony on the proposed amendments to the SMP at a duly-noticed public hearing, consistent with WAC 173-26-090(3)(c)(iii), on February 9, 2021; and

WHEREAS, the Planning Commission reviewed the public testimony and written comments on the proposed SMP revisions; and

WHEREAS, the Planning Commission recommended approval of the proposed amendments and forwarded it to the City Council for review and adoption; and

WHEREAS, the City of Vancouver submitted to Ecology on February 19 and February 25, 2021 the Planning Commission's recommended amendments to the SMP for review and an Initial Determination of Consistency in accordance with WAC 173-26-104(3)(a); and

WHEREAS, Ecology sent an Initial Determination of Consistency on March 5, 2021 which included four recommended changes to the proposed SMP amendments; and

WHEREAS, Ecology's recommended changes were incorporated into the proposed amendments for City Council consideration; and

WHEREAS, on April 19, 2021 the City Council held a duly-advertised public hearing, consistent with WAC 173-26-090(3)(c)(iii), at which testimony was received and considered; and

WHEREAS, after considering all public comments and evidence, the City Council determined that the proposed amendments comply with all applicable laws and rules; and

WHEREAS, this completes the City's required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26); and

WHEREAS, the City council adopts this Ordinance as set forth below.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF VANCOUVER:

**Section 1. Findings.** The recitals set forth above are adopted as the legislative findings of the City Council of the City of Vancouver in support of adoption of this ordinance to amend the Vancouver Shoreline Master Program.

**Section 2.** The City of Vancouver Shoreline Master Program, Chapter 2 Applicability, Shoreline Permits and Exemptions, Section 2.1 Applicability; Section 2.1.1 Developments Not Subject to the Shoreline Management Act; Section 2.3.1 General Requirements; Section 2.3.2 List of Exemptions; Section 2.3.3 Statements of Exemption, adopted by Ordinance M-3995 and as amended, are hereby amended to read as follows:

## **2.1 Applicability**

1. This Program shall apply to all of the shorelands and waters within the City limits that fall under the jurisdiction of RCW 90.58 as follows:

- a. ~~On the Columbia River from the eastern boundary of Wintler Park downstream to the eastern boundary of Parcel #153105000 (also referred to as “Port Parcel 3”)~~ Shorelands shall include those lands extending two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark (OHWM); floodways and contiguous floodplain areas landward two hundred (200) feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters that are subject to the provisions of this Program, as may be amended; the same to be designated as to location by Ecology, as defined by RCW 90.58 only:-

- i. On all lands along the Columbia River from the eastern boundary of Wintler Park downstream to the Vancouver Lake Flushing Channel, and;
- ii. On shorelines designated Medium or High Intensity.

~~On all other shorelines regulated by this Program, shoreline jurisdiction includes those areas described in 2.1.1(a) and the full extent of the 100-year floodplain. shorelands shall include those lands extending two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark (OHWM); floodways; the full extent of the floodplain; and all wetlands and river deltas associated with the streams, lakes and tidal waters that are subject to the provisions of this Program, as may be amended; the same to be designated as to location by Ecology, as defined by RCW 90.58.~~

- b. In addition to lands identified in Section 2.1(1)(a) and (b), shorelands shall include land necessary for buffers for critical areas that occur within shorelines of the state.
- c. In accordance with RCW 35.21.160, where the City is bounded by a river, lake, or other navigable water, the City’s shoreline jurisdiction extends to the middle of that river, lake, or navigable water.
- d. The City is pre-designating shorelines within its adopted Urban Growth Area (UGA). Until annexation, development in these areas will continue to be regulated by the Clark County Shoreline Master Program (SMP). The City’s SMP will apply upon annexation and no additional procedures will be required by Ecology at the time of annexation (WAC 173-26-150) unless a re-designation is occurring per Section 4.4.5 and Table 4-1.
- e. An unofficial copy (see Section 4.4.2) of the Shoreline Map for the City and its UGA is shown in Appendix A.
- f. Shorelines of Statewide Significance:
  - i. Columbia River
  - ii. Vancouver Lake

g. Shorelines of the State:

- i. Burnt Bridge Creek
- ii. Fifth Plain Creek
- iii. Lacamas Creek
- iv. Salmon Creek
- v. Mill Creek
- vi. Curtin (Glenwood) Creek
- vii. Lake River
- viii. Unnamed Lake 02

2. 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.
3. This Program shall apply to every person, individual, firm, partnership, association, organization, corporation, local or state governmental agency, public or municipal corporation, or other non-federal entity that develops, owns, leases, or administers lands, wetlands, or waters that fall under the jurisdiction of the Act; and within the external boundaries of federally owned lands (including but not limited to, private in-holdings in national wildlife refuges).
4. Non-federal agency actions undertaken on federal lands must comply with this Program and the Act.
5. Shoreline development occurring in or over navigable waters may require a shoreline permit in addition to other approvals required from state and federal agencies.
6. This Program shall apply whether the proposed development or activity is exempt from a shoreline permit or not.
7. Native American Tribes' actions on tribal lands and federal agencies' actions on federal lands are not required, but are encouraged, to comply with the provisions of this Program and the Act. Nothing in this Program shall affect any rights established by treaty to which the United States is a party.

### **2.1.1 Developments Not Subject to the Shoreline Management Act Required to Obtain Shoreline Permits or Local Reviews**

- ~~1. Native American Tribes' actions on tribal lands and federal agencies' actions on federal lands are not required, but are encouraged, to comply with the provisions of this Program and the Act. Nothing in this Program shall affect any rights established by treaty to which the United States is a party.~~
- ~~2. Environmental excellence program agreements entered into under RCW 43.21K (RCW 90.58.045).~~

Requirements to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other review conducted by a local government to implement this Program do not apply to the following:

1. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issues pursuant to chapter 70.105D RCW, or to Ecology when it conducts a remedial action under chapter 70.105D RCW.
2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.
3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other local review.
4. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
5. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

### **2.3.1 General Requirements**

1. Except as specifically ~~exempted~~ excepted by statute (Section 2.1.1), all proposed uses and development occurring within shoreline jurisdiction must conform to the Act and this Program.
2. Uses and developments that are not considered substantial developments pursuant to RCW 90.58.030(3)(e), WAC 173-27-040, and Section 2.3.2 of this Program shall not require a substantial development permit but shall conform to the policies and regulations

of this Program and the Act and shall obtain a Statement of Exemption (Sections 2.3.3 and ~~7.2.7~~4.2).

3. A use or development that is listed as a conditional use pursuant to this Program or is an unclassified use or development must obtain a conditional use permit (Section 2.7 and ~~7.2.94.4~~) even if the development or use does not require a substantial development permit.
4. When a development or use is proposed that does not meet the bulk, dimensional, and/or performance standards of this Program, such development or use shall only be authorized by approval of a shoreline variance (Section 2.6 and ~~7.2.104.5~~) even if the development or use does not require a substantial development permit.
5. If a shoreline substantial development permit is required for any part of a proposed development, then a shoreline substantial development permit is required for the entire proposed development project.
6. Exemptions from the requirement to obtain a shoreline substantial development permit shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
7. The burden of proof that a development or use is exempt from the requirement to obtain a shoreline substantial development permit is on the applicant for the development action.

### **2.3.2 List of Exemptions**

The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit but shall obtain a statement of exemption, as provided for in Section 2.3.3.

1. Any development of which the total cost or fair market value does not exceed ~~seven~~ five thousand, seven hundred, eighteen dollars ~~forty-seven~~ (~~\$5,7187,047.00~~) 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 (~~32~~~~(ee)~~). 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. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location, and

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

3. Construction of 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 cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the State Department of Fish and Wildlife.
4. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment 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 chapter 90.58 RCW, these regulations, or this Program, shall be obtained. All emergency construction shall be consistent with the policies and requirements of this chapter 90.58 RCW 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 such as channel markers and anchor buoys.
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 chapter 90.58 RCW. Construction authorized under this exemption shall be located landward of the ordinary high water mark.
8. Construction of a dock, including a community dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee, or contract purchaser of a single-family or multiple-family residence. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies in fresh waters when the fair market value of the dock does not exceed:
  - a. Twenty-two thousand five hundred ten thousand dollars (\$22,500 10,000.00); or as adjusted by the State Office of Financial Management for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or
  - b. Eleven thousand two hundred dollars (\$11,200) or as adjusted by the State Office of Financial Management for all other docks constructed in fresh waters.

~~but~~ However, if subsequent construction ~~having a fair market value exceeding two thousand five hundred dollars (\$2,500.00)~~ occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.
9. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands.
10. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.
11. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, that were created, developed or utilized primarily as a part of an agricultural drainage or diking system.

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 pre-existing 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. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.
- ~~15. A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark (RCW 90.58.580(3)).~~
- ~~16. 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)).~~
- ~~17. The holder of a certification from the governor pursuant to chapter 80.50 RCW (certification from the State Energy Facility Site Evaluation Council) shall not be required to obtain a permit under this Program (90.58.140(9)).~~
15. 18. 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 by WDFW;

- b. The project has received hydraulic project approval (HPA) by WDFW pursuant to RCW 77.55; and
- c. The City has determined that the project is substantially consistent with the local shoreline master program. The City shall make such determination in a timely manner and provide it by letter to the project applicant.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with this Program.

~~19. Hazardous substance remedial actions pursuant to a consent decree, order, or agreed order issued under RCW 70.105(D) and 90.58.355 are exempt from the requirement to obtain a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance under this Program.~~

16. The external or internal retrofitting of an existing structure for the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities (RCW 90.58.030).

### **2.3.3 Statements of Exemption**

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. A written statement of exemption is required for emergency development after the emergency has been abated. The property owner, person, or agency undertaking the emergency action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to shoreline ecological functions resulting from the emergency action. Restoration and/or mitigation activities must be initiated within three months of the date of ~~the~~ the emergency or as otherwise determined by the Shoreline Administrator, and completed in a timely manner.
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 2.3.2. 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.~~
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 Act.
4. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial.

5. The letter shall be sent per section 7.4.2.
6. ~~5.~~ The Shoreline Administrator's decision on a statement of exemption may be appealed in accordance with the procedures in Section 7.4.8.
7. ~~6.~~ Exempt activities shall not be conducted until a statement of exemption has been obtained from the Shoreline Administrator.

**Section 3.** The City of Vancouver Shoreline Master Program, Chapter 3, Shoreline Master Program Goals and Policies, Section 3.6.2 Policies, adopted by Ordinance M-3995 and as amended, is hereby amended to read as follows:

### **3.6.2 Policies**

1. All shoreline development should be located, designed, and constructed to prevent flood damage and to the extent possible be located outside of shoreline jurisdiction.
2. ~~1.~~ Flood management works should be located, designed, constructed and maintained to protect:
  - a. The physical integrity and other properties of the shoreline and other properties that may be damaged by alterations of the geo-hydraulic system;
  - b. Water quality and natural ground water movement;
  - c. Fish, vegetation, and other life forms and their habitat vital to the aquatic food chain; and
  - d. Recreation resources and aesthetic values such as point and channel bars, islands, and other shore features and scenery.
3. ~~2.~~ Non-structural flood hazard reduction measures are preferred to structural measures. Flood hazard reduction measures should be accomplished in a manner that ensures no net loss of shoreline ecological functions and ecosystem-wide processes.
4. ~~3.~~ Flood protection measures that result in channelization and/or reduction in shoreline ecological function should be avoided.
5. ~~4.~~ Proposals for shoreline protection should clearly demonstrate that life, property, and natural resource values within the stream system will not be endangered.
6. ~~5.~~ When evaluating alternate flood control measures, consider the removal or relocation of structures in flood-prone areas.

7. ~~6.~~ New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway.

**Section 4.** The City of Vancouver Shoreline Master Program, Chapter 4 Shoreline Designations, Section 4.3.4.4 Management Policies; Section 4.3.5.4 Management Policies, adopted by Ordinance M-3995 and as amended, are hereby amended to read as follows:

#### **4.3.4.4 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 use (rather than individual) 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. Non-water-oriented commercial uses should only be allowed as part of mixed use developments where the primary use is residential and where there is a substantial public benefit with respect to the goals and policies of this Program such as providing public access or restoring degraded shorelines.~~ Commercial development should be limited to water-oriented uses. Non-water-oriented commercial uses should only be allowed:

- a. As part of mixed-use developments where the primary use is residential and where there is a substantial public benefit with respect to the goals and policies of this Program such as providing public access or restoring degraded shorelines;
- b. Where navigability is severely limited at the proposed site and the commercial use provides a significant public benefit with respect to the Act's objectives such as providing public access and ecological restoration; or
- c. If the site is physically separated from the shoreline by another property or public right-of-way.

#### **4.3.5.4 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.
2. Promote infill and redevelopment in developed shoreline areas and encourage environmental remediation and restoration of the shoreline, where applicable with the goal of achieving full utilization of designated high-intensity shorelines.
3. Encourage the transition of uses from non-water-oriented to water-oriented uses.
4. Water-oriented uses are encouraged, however new non-water oriented uses may be allowed if that use has limited access to the shoreline or ~~and~~ when included in a master plan or part of a mixed-use development.

**Section 5.** The City of Vancouver Shoreline Master Program, Chapter 5 General Shoreline Use and Development Regulations, Section 5.1 General Shoreline Use and Development Regulations; Section 5.3 Critical Areas Protection; Section 5.4 Public Access; Section 5.6.1 General; Section 5.6.2 Clearing, Grading, Fill and Excavation; Section 5.7 Vegetation Conservation; Section 5.9 Water Quality and Quantity, adopted by Ordinance M-3995 and as amended, are hereby amended to read as follows:

## **5.1 General Shoreline Use and Development Regulations**

### **5.1.1 Shoreline Use**

1. Shoreline uses and developments that are wWater-dependent uses shall be given priority.
2. Non-water-oriented uses shall not adversely impact or displace water-oriented shoreline uses.
3. Single family residential uses shall be allowed on all shorelands not subject to a preference for commercial or industrial water-dependent uses, and shall be located, designed and used in accordance with applicable policies and regulations of this Program. However, single family residences are prohibited in the Natural shoreline designation, and new floating homes and floating on-water residences are prohibited in the Aquatic shoreline designation.
4. Shoreline uses and developments shall not cause impacts that require remedial action or loss of shoreline ecological functions on other properties.
5. Shoreline uses and developments shall be located and designed in a manner such that shoreline stabilization is not necessary at the time of development and will not be necessary in the future for the subject property or other nearby shoreline properties unless it can be demonstrated that stabilization is the only alternative that allows a reasonable and appropriate water-dependent use to become established or expand or protects public safety and existing primary structures.
6. Land shall not be cleared, graded, filled, excavated or otherwise altered prior to issuance of the necessary permits and approvals including a statement of exemption for a proposed shoreline use or development to determine if environmental impacts have been avoided, minimized and mitigated to result in no net loss of ecological functions.
7. On navigable waters or their beds, all uses and developments should be located and designed to:
  1. Minimize interference with surface navigation;
  2. Consider impacts to public views; and
  3. Allow for the safe, unobstructed passage of fish and wildlife, particularly species dependent on migration.
8. Hazardous materials shall be disposed of and other steps be taken to protect the ecological integrity of the shoreline area in accordance with the other policies and regulations of this Program as amended and all other applicable federal, state, and local statutes, codes, and ordinances.
9. Previous approvals of master plans for projects in shoreline jurisdiction should be accepted. New phases of projects for which no master plan has yet been approved, or for which major changes are being proposed, or new projects for which master plans are being submitted shall be subject to the policies and regulations of this Program.

### **5.1.2 Adverse Impacts and Mitigation**

1. ~~2.~~ The applicant shall demonstrate all reasonable efforts have been taken to avoid and where unavoidable, minimize and mitigate impacts such that no net loss of critical area and shoreline ecological function is achieved. Mitigation shall occur in the following order of priority:
  - a. Avoiding the impact altogether by not taking a certain action or parts of an action. This may necessitate a redesign of the proposal.
  - b. Minimizing unavoidable impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts. The applicant shall seek to minimize fragmentation of the resource to the greatest extent possible.
  - c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
  - d. Reducing or eliminating the impact over time by preservation and maintenance operations;
  - e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments. The compensatory mitigation shall be designed to achieve the functions as soon as practicable.
  - f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
2. ~~3.~~ In addition to compensatory mitigation, unavoidable adverse impacts may be addressed through voluntary restoration efforts.
- ~~4. Shoreline uses and developments shall not cause impacts that require remedial action or loss of shoreline ecological functions on other properties.~~
- ~~5. Shoreline uses and developments shall be located and designed in a manner such that shoreline stabilization is not necessary at the time of development and will not be necessary in the future for the subject property or other nearby shoreline properties unless it can be demonstrated that stabilization is the only alternative that allows a reasonable and appropriate water dependent use to become established or expand or protects public safety and existing primary structures.~~
- ~~6. Land shall not be cleared, graded, filled, excavated or otherwise altered prior to issuance of the necessary permits and approvals including a statement of exemption for a proposed shoreline use or development to determine if environmental impacts have been avoided, minimized and mitigated to result in no net loss of ecological functions.~~

- ~~7. Non-water-oriented uses shall not adversely impact or displace water-oriented shoreline uses.~~
- ~~8. Single family residential uses shall be allowed on all shorelands not subject to a preference for commercial or industrial water dependent uses, and shall be located, designed and used in accordance with applicable policies and regulations of this Program. However, single family residences are prohibited in the Natural shoreline designation, and new floating homes are prohibited in the Aquatic shoreline designation.~~
- ~~9. 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; and~~
  - ~~c. Allow for the safe, unobstructed passage of fish and wildlife, particularly species dependent on migration.~~
- ~~10. Hazardous materials shall be disposed of and other steps be taken to protect the ecological integrity of the shoreline area in accordance with the other policies and regulations of this Program as amended and all other applicable federal, state, and local statutes, codes, and ordinances.~~
3. ~~11.~~ In-water work shall be scheduled to protect biological productivity (including but not limited to fish runs, spawning, and benthic productivity). In-water work shall not occur in areas used for commercial fishing during a fishing season unless specifically addressed and mitigated for in the permit.
4. ~~12.~~ The effect of proposed in-stream structures on bank margin habitat, channel migration, and floodplain processes should be evaluated during permit review.
- ~~13. Previous approvals of master plans for projects in shoreline jurisdiction should be accepted. New phases of projects for which no master plan has yet been approved, or for which major changes are being proposed, or new projects for which master plans are being submitted shall be subject to the policies and regulations of this Program.~~
5. ~~14.~~ Within urban growth areas (RCW 36.70A.110), the Department of Ecology may grant relief from use and development regulations of this program On land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark (RCW 90.58.580(3)), relief may be granted when:
- a. A shoreline restoration project causes or would cause a landward shift in the OHWM creating a hardship meeting specific criteria in RCW 90.58.580;

- b. The proposed relief meets specific criteria in RCW 90.58.580; and
- c. The application for relief is submitted to Ecology in writing requesting approval or disapproval as part of a normal review of a shoreline substantial development permit, conditional use permit, or variance. If the proposal is not connected to a shoreline permit review, the City may provide a copy of a complete application to Ecology along with the applicant's request for relief.

A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark (RCW 90.58.580(3)).

6. ~~15.~~ Developments permitted in the Aquatic Shoreline Designation along the Columbia River shall be sited waterward of -15 feet CRD unless adverse impacts to shallow water habitat will be created as is addressed through mitigation to ensure no net loss. Mitigation can include, enhancement, creation and/or payment of mitigation bank credits and ~~comply with Section 6.4.4.~~

### **5.3 Critical Areas Protection**

1. Applicable Critical Areas Regulations

Critical areas and the buffers necessary to protect critical areas shall be regulated in accordance with the provisions of Chapter 5A of this SMP.

Terms stated in Chapter 5A can be clarified by definitions provided in both the VMC or SMP.

2. Review Process

The City will not issue a 'Critical Areas Permit' within shoreline jurisdiction as is done outside shoreline jurisdiction under VMC Chapter 20.740. Instead, the City shall consolidate and integrate the review and processing of the critical areas aspects of the proposal within the shoreline permit decision or review required for the proposed activity as applicable or required by this SMP.

Any decision criteria and submittal requirements within Chapter 5A shall be considered supplemental to the shoreline permit or review required for the proposed activity. In cases where required by Chapter 5A, the applicant shall submit a critical areas report prepared by a qualified professional.

3. Critical Areas Exemptions

Critical Areas exemptions do not apply. Exemptions are limited to those listed in section 2.3.2 and must comply with the standards of the SMP, including Chapter 5A.

4. Conflicting Provisions

Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with the Chapter 5A and this Shoreline Master Program. Chapter 5A shall be liberally construed together with the all other chapters of the Shoreline Master Program to give full effect to the objectives and purposes of the provisions of the Shoreline Master Program and the Shoreline Management Act. If there is a conflict or inconsistency between any of the adopted provisions in Chapter 5A and the Shoreline Master Program, the most restrictive provisions shall prevail.

5. Appeals

All appeals shall be processed per Chapter 7 of the SMP.

**5.3.1 General Provisions**

1. ~~In addition to the provisions of this section, critical areas (fish and wildlife habitat conservation areas, frequently flooded areas, geologic hazard areas, and wetlands) located within shoreline jurisdiction and their buffers are regulated and protected by Chapter 5A, VMC 20.740, Critical Areas Protection as modified for consistency with the Act and this Program. All shoreline development shall comply with VMC 14.26, Water Resources Protection.~~
2. ~~Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered or land divided without full compliance with this Program whether or not a shoreline permit or written statement of exemption is required.~~
3. ~~Any allowed use, development, or activity affecting a critical area proposed on a parcel located in the shoreline jurisdiction, whether or not exempt from obtaining a shoreline substantial development permit, shoreline conditional use, or shoreline variance, shall be regulated under the provisions of this Program.~~
4. ~~Shoreline uses and developments and their associated structures and equipment shall be located, designed and operated using best management practices to protect critical areas.~~
5. ~~The applicant shall demonstrate all reasonable efforts have been taken to avoid and where unavoidable, minimize and mitigate impacts such that no net loss of critical area and shoreline ecological function is achieved. Mitigation shall occur in the following order of priority:
  - a. ~~Avoiding the impact altogether by not taking a certain action or parts of an action. This may necessitate a redesign of the proposal.~~
  - b. ~~Minimizing unavoidable impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps~~~~

~~to avoid or reduce impacts. The applicant shall seek to minimize fragmentation of the resource to the greatest extent possible.~~

- ~~c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;~~
  - ~~d. Reducing or eliminating the impact over time by preservation and maintenance operations;~~
  - ~~e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments. The compensatory mitigation shall be designed to achieve the functions as soon as practicable.~~
  - ~~f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.~~
6. ~~In addition to compensatory mitigation, unavoidable adverse impacts may be addressed through restoration efforts.~~

## **5.4 Public Access**

1. Provisions for adequate public access shall be incorporated into all shoreline development proposals that involve public funding unless the applicant demonstrates public access is not feasible due to one or more of the provisions of Section 5.4.2 (a-e). Where feasible, such projects shall incorporate ecological restoration.
2. Consistent with constitutional limitations, provisions for adequate public access shall be incorporated into all land divisions and other shoreline development proposals (except residential development of less than five (5) parcels), unless this requirement is clearly inappropriate to the total proposal. Public access will not be required where the applicant demonstrates one or more of the following:
  - a. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;
  - b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  - c. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access are unreasonably disproportionate to the total proposed development;
  - d. Significant environmental impacts that cannot be mitigated will result from the public access; or

- e. Significant undue and unavoidable conflict between public access requirements and the proposed use and/or adjacent uses would occur, provided that the applicant has first demonstrated and the City determines that all reasonable alternatives have been evaluated and found infeasible, including but not limited to:
  - i. Regulating access by such means as maintaining a gate and/or limiting hours of use;
  - ii. Designing separation of uses and activities (including but not limited to, fences, terracing, use of one-way glazings, hedges, landscaping); and
  - iii. Provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.
3. Public access sites shall be connected to barrier free route of travel and shall include facilities based on criteria ~~within the~~ within the Americans with Disabilities Act Accessibility guidelines.
4. Public access shall include provisions for protecting adjacent properties from trespass and other possible adverse impacts to neighboring properties.
5. Signs indicating the public's right of access to shoreline areas shall be installed and maintained in conspicuous locations.
6. Required public access shall be fully developed and available for public use at the time of occupancy of the use or activity.
7. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means of view and/or physical approach to public waters and may include interpretive centers and displays.
8. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, as a minimum. Said recording with the County Auditor's Office shall occur at the time of permit approval.
9. Future actions by the applicant, successors in interest, or other parties shall not diminish the usefulness or value of the public access provided.
10. Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement approved by the Shoreline Administrator and recorded with the County Auditor's Office.

### 5.6.1 General

- ~~1. Land disturbing activities such as grading and cut/fill shall be conducted in such a way as to minimize impacts to soils and native vegetation and shall comply with VMC 14.24, Erosion Prevention & Sediment Control and VMC 14.25, Stormwater Control.~~
1. ~~2.~~ Development shall be designed and land disturbing activities conducted to avoid impacts to healthy trees such that they are likely to become hazard trees.
2. ~~3.~~ Impervious surfaces shall be minimized to the extent feasible so as not to jeopardize public safety. Impervious surfacing for parking lot/space areas, trails, and pathways shall be minimized through the use of alternative surfaces where feasible.
3. ~~4.~~ When feasible, existing transportation corridors shall be utilized. Ingress/egress points shall be designed to minimize potential conflicts with and impacts upon vehicular and pedestrian traffic. Pedestrians shall be provided with safe and convenient circulation facilities.
4. ~~5.~~ Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading, alteration of topography and natural features, and designed to accommodate wildlife movement.
5. ~~6.~~ Parking, storage, and non-water dependent accessory and appurtenant structures and areas shall be located landward from the OHWM and landward of the water-oriented portions of the principal use.
6. ~~7.~~ Trails and uses near the shoreline shall be landscaped or screened to provide visual and noise buffering between adjacent dissimilar uses or scenic areas, without blocking visual access to the water.
7. ~~8.~~ Elevated walkways shall be utilized, as appropriate, to cross sensitive areas such as wetlands.
8. ~~9.~~ Fencing, walls, hedges, and similar features shall be designed in a manner that does not significantly interfere with wildlife movement.
9. ~~10.~~ Exterior lighting shall be designed, shielded and operated to:
  - a. Avoid illuminating nearby properties or public areas;
  - b. Prevent glare on adjacent properties, public areas or roadways;
  - c. Prevent land and water traffic hazards; and
  - d. Reduce night sky effects to avoid impacts to fish and wildlife.

10. ~~11.~~ Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.
11. ~~12.~~ A use locating near a legally established aquaculture enterprise, including an authorized experimental project, shall demonstrate that such use would not result in damage to or destruction of the aquaculture enterprise, or compromise its monitoring or data collection.

### **5.6.2 Clearing, Grading, Fill and Excavation**

1. Land disturbing activities such as clearing grading, fill and excavation shall be conducted in such a way as to minimize impacts to soils and native vegetation, and shall comply with VMC 14.24, Erosion Prevention & Sediment Control; 14.25, Stormwater Control; and VMC Chapter 17.12, International Building Code.
2. Clearing, grading, fill, and excavation activities shall be scheduled to minimize adverse impacts, including but not limited to, damage to water quality and aquatic life.
3. Clearing and grading shall not result in changes to surface water drainage patterns that adversely impact adjacent properties.
4. Developments shall comply with the VMC 14.24, Erosion Prevention & Sediment Control during construction and shall ensure preservation of native vegetation for bank stability. Disturbed areas shall be stabilized immediately and revegetated with native vegetation.
5. Habitat that cannot be replaced or restored within twenty (20) years shall be preserved. Peat bogs and stands of mature trees are examples of such habitat.
6. Fills shall be permitted only in conjunction with a permitted use, and shall be of the minimum size necessary to support that use. Speculative fills are prohibited.
7. Any fill activity shall comply with the fill provisions of VMC Chapter 17.12. Fill shall consist only of clean materials.
8. Soil, gravel or other substrate transported to the site for fill shall be screened and documented that it is uncontaminated. Use of any contaminated materials as fill is prohibited.
9. Fills shall be designed and placed to allow surface water penetration into groundwater supplies where such conditions existed prior to filling.
10. Fills must protect shoreline ecological functions, including channel migration processes.
11. Fill waterward of OHWM shall only be allowed as a conditional use, and then only when it is necessary:

- a. To support a water-dependent or public access use;
  - b. For habitat creation or restoration projects;
  - c. For remediation of contaminated sediments as part of an interagency environmental clean-up plan;
  - d. For disposal of dredged material considered suitable under, and conducted in accordance with the dredged material management program of the Washington Department of Natural Resources;
  - e. For expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible;
  - f. For a mitigation action;
  - g. For environmental restoration; or
  - h. For a beach nourishment or enhancement project.
12. In the Columbia River, fills shall be prohibited between the OHWM and minus fifteen (-15) feet CRD, unless adverse impacts to shallow water habitat are addressed through mitigation to ensure no net loss will be created as mitigation. Mitigation can include enhancement, creation and/or payment of mitigation bank credits.
13. Excavation below the OHWM is considered dredging and subject to provisions under that section in Chapter 6.
14. Upon completion of construction, remaining cleared areas shall be replanted with native species on the City's Native Plant List available from the Shoreline Administrator. Replanted areas shall be maintained such that within three (3) years' time the vegetation is fully re-established.

## **5.7 Vegetation Conservation**

1. Existing native vegetation within shoreline jurisdiction shall be retained and allowed to grow naturally in the riparian area.
2. Removal of native vegetation outside the riparian area shall be avoided. Where removal of native vegetation cannot be avoided, it shall be minimized and mitigated to result in no net loss of shoreline ecological functions. Lost functions may be replaced by enhancing other functions provided that no net loss in overall functions is demonstrated and habitat connectivity is maintained. Mitigation shall be provided consistent with an approved mitigation plan. See Chapter 5A, ~~20.740.030(B)(1)(f)~~ on maintaining fire-defensible space.

3. If non-native vegetation is removed, it shall be replaced with native vegetation within the shoreline jurisdiction.
4. Development shall be located to avoid clearing and grading impacts to more mature or multi-storied plant communities and to retain habitat connectivity.
5. Vegetation (such as a mature stand of trees) that cannot be replaced or restored within twenty (20) years shall be preserved.
6. Maintaining vegetated riparian areas to protect shoreline stability and shoreline ecological functions takes precedence over vegetation clearing to preserve or create views.
7. Topping trees is prohibited.
8. Pruning of trees which are not hazard trees is allowed in compliance with the National Arborist Association pruning standards, and is limited to:
  - a. Removal of no more than twenty-five (25) percent of the limbs of any single tree within a given five-year (5-year) period; and
  - b. No more than twenty-five (25) percent of canopy in a single stand of trees may be removed in a given five-year (5-year) period.
9. Hazard trees are regulated by VMC 20.770 and 17.14.
10. Natural features such as snags, stumps, logs or uprooted trees, which support fish and other aquatic systems, do not intrude on the navigational channel or threaten public safety, and existing structures and facilities, shall be left undisturbed.
11. Aquatic weed control shall only occur to protect native plant communities and associated habitats or where an existing water-dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards and shall be done by a qualified professional.
12. Unless otherwise stated, the vegetation conservation regulations of this Program do not apply to:
  - a. Commercial forest practices as defined by this Program when such activities are covered under the Washington State Forest Practices Act (RCW 76.09), except where such activities are associated with a conversion to other uses or other forest practice activities over which the City has authority; or
  - b. Flood control levees required to be kept free of vegetation that damages their structural integrity.

## 5.9 Water Quality and Quantity

1. The location, design, construction, and management of all shoreline uses and activities shall protect the quality and quantity of surface and ground water adjacent to the site.
2. All shoreline development shall comply with the applicable requirements of the VMC Chapter 14.24, Erosion Prevention & Sedimentation Control; 14.25, Stormwater Control; and 14.26, Water Resources Protection.
3. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all shoreline development.
4. 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 except in accordance with VMC 14.26. Potentially harmful materials shall be maintained in safe and leak-proof containers.
5. Herbicides, fungicides, fertilizers, and pesticides shall not be applied within twenty-five (25) feet of a waterbody, except by a qualified professional in accordance with state and federal laws. Further, pesticides subject to the final ruling in *Washington Toxics Coalition, et al., v. EPA* shall not be applied within sixty (60) feet for ground applications or within three hundred (300) feet for aerial applications of the subject water bodies and shall be applied by a qualified professional in accordance with state and federal law.
6. Any structure or feature in the Aquatic shoreline designation shall be constructed and/or maintained with materials 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.
7. Conveyance of any substance not composed entirely of surface and stormwater directly to water resources shall be in accordance with VMC 14.26.

## 5.10 Septic Systems

1. ~~8.~~ Septic systems should be located as far landward of the shoreline and floodway as possible. Where permitted, new on-site septic systems shall be located, designed, operated, and maintained to meet all applicable water quality, utility, and health standards.

**Section 6.** The City of Vancouver Shoreline Master Program, Chapter 5A VMC 20.740, Critical Areas Protection, adopted by Ordinance M-3995 and as amended, is hereby repealed and replaced with the City's updated Critical Areas Protection code (VMC 20.740) and hereby amended for applicability in shoreline jurisdiction to read as follows:

~~Chapter 20.740~~ Chapter 5A  
SHORELINE CRITICAL AREAS PROTECTION REGULATIONS

All uses and development activities in shoreline jurisdiction shall be subject to the following general regulations in addition to the applicable use-specific regulations in Chapter 6. All shoreline development shall comply with VMC 14.26, Water Resources Protection.

**Vancouver WA Zoning Ordinance**

**Chapter 20.740**

**CRITICAL AREAS PROTECTION**

*As Modified for Application in Shoreline Jurisdiction*

Sections:

- 20.740.010 Purpose.**
- 20.740.020 General Provisions.**
- 20.740.030 Applicability and Exemptions from Chapter 5A Requirement to Obtain Permit.**
- 20.740.040 Approval Process.**
- 20.740.050 Submittal Requirements.**
- 20.740.060 Approval Criteria.**
- 20.740.070 Minor Exceptions.**
- 20.740.080 Reasonable Use Exceptions.**
- 20.740.090 Unauthorized Critical Areas Alterations and Enforcement.**
- 20.740.100 Habitats of Local Importance.**
- 20.740.110 Fish and Wildlife Habitat Conservation Areas.**
- 20.740.120 Frequently Flooded Areas.**
- 20.740.130 Geologic Hazard Areas.**
- 20.740.140 Wetlands.**

**20.740.010 Purpose.**

A. ~~The purpose of this chapter is to designate and protect ecologically sensitive and hazardous areas (critical areas) and their functions and values, while also allowing for reasonable use of property.~~

B. ~~As mandated by the Growth Management Act (GMA) (RCW 36.70A), this chapter provides protection for the critical areas of wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas, and frequently flooded areas. Critical aquifer recharge areas area covered in VMC 14.26.~~

C. ~~This chapter implements the goals and policies of the Vancouver Comprehensive Plan, 2003-2023, under the Washington Growth Management Act and other related state and federal laws. (Ord. M 3692 § 2, 2005)~~

In addition to the purpose as set forth in Chapter 1, the regulations set forth in Chapter 5A designate and protect ecologically sensitive and hazardous areas (critical areas) and their functions and values. This chapter provides protection for wetlands, fish and wildlife habitat conservation areas and geologically hazardous areas.

VMC Chapter 20.740.120 Frequently Flooded Areas regulations apply within shoreline jurisdiction, but are not incorporated into this Shoreline Master Program.

Critical aquifer recharge areas are addressed in VMC Chapter 14.26 Water Resources Protection, but the regulations are not incorporated into this Shoreline Master Program.

## **20.740.020 General Provisions.**

A. *No Net Loss of Functions.* Activity shall result in no net loss of functions and values in the critical areas. Since values are difficult to measure no net loss of functions and values means no net loss of functions. The beneficial functions provided by critical areas include, but are not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage; conveyance and attenuation of flood waters; ground water recharge and discharge; erosion control; and wave attenuation. These beneficial functions are not listed in order of priority. This chapter is also intended to protect residents from hazards and minimize risk of injury or property damage.

B. *Relationship to Other Regulations.*

1. These critical areas regulations shall apply in addition to zoning and other regulations adopted by the city.
2. Any individual critical area that overlaps another type of critical area shall meet the requirements that provide the most protection to the critical areas involved.
3. When there is a conflict between any provisions of this chapter or any other regulations, that which provides the most protection to the subject critical area shall apply.
4. Conditions of approval of a project affecting critical areas may be supplemented by a review under the State Environmental Policy Act (SEPA), as locally adopted.
5. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements (for example, Shoreline Substantial Development Permits, Hydraulic Project Approval [HPA] permits, Section 106 of the National Historic Preservation Act, U.S. Army Corps of Engineers Section 404 permits, or National Pollution Discharge Elimination System permits). The applicant is responsible for complying with other state and federal requirements in addition to the requirements of this chapter. Obtaining all applicable state and federal permits shall be made a condition of any shoreline authorization ~~a Critical Areas Permit~~. Such authorizations ~~permits~~ shall

be obtained prior to issuance of permits for development, construction or site disturbance ~~except under the circumstances set forth in VMC 20.740.040(I).~~

C. *Jurisdiction.*

~~1. All areas within the city meeting the definition of one or more critical areas, whether mapped or not, are hereby designated critical areas and with their buffers are subject to the provisions of this chapter.~~

~~2. Watersheds (Chapter 20.150 VMC) are those most recently identified and mapped by Clark County Public Works. Watershed maps are available from the planning official. Burnt Bridge Creek, Columbia Slope, and Vancouver Lake/Lake River are the primary watersheds in Vancouver.~~

Chapter 5A shall apply to all critical areas and their buffers within shoreline jurisdiction as defined in Chapter 2 of the SMP.

D. *Warning and Disclaimer of Liability.* The standards established herein are minimum standards. The standards are established for regulatory purposes only. Minimum compliance with these standards may not be sufficient protection from identified or unidentified hazards. City establishment of these minimum standards is not a representation that these standards are sufficient protection from any hazard. Critical areas development should be based on sound scientific and engineering considerations that may be more stringent than this chapter. The city assumes no liability if these established standards prove to be insufficient protection.

E. *Interpretation of Critical Area Boundaries.* The Shoreline Administrator ~~planning official~~ shall be authorized to interpret the exact location of the critical area boundary. Final designations shall be based on site conditions and other available data or information. A person who disagrees with the interpretation may appeal the interpretation pursuant to ~~VMC 20.255.020(D).~~ Chapter 7 of the SMP. (~~Ord. M 4289 § 4, 2019; Ord. M 4017 § 4, 2012; Ord. M 3844 § 2, 2007; Ord. M 3692 § 2, 2005.~~)

## **20.740.030    Applicability and Exemptions from Requirement to Obtain Permit** **Chapter 5A**

A. *Applicability.*

1. ~~Unless listed in VMC 20.740.030(B)(2)†~~The provisions of Chapter 5A ~~this chapter~~ shall apply to all lands, all land uses, clearing and development activity, and all structures and facilities in the city located within a critical area or buffer or on a site containing a critical area or buffer including single-family residential lots platted prior to April 29, 2005, and developments such as play structures that require no other permits.

2. The provisions of this chapter shall apply whether or not a permit or authorization is required.

3. No person, company, agency, or applicant shall alter a critical area or buffer (including removal of downed woody vegetation or application of chemicals harmful to fish and wildlife within 25 feet of wetlands, ponds, lakes, streams or rivers) except as consistent with the requirements of this chapter.

4. If required by this SMP, a shoreline substantial development permit, shoreline permit statement of exemption, shoreline conditional use or shoreline variance ~~The Critical Areas Permit required pursuant to this chapter~~ shall be obtained prior to undertaking any activity or development regulated by this chapter, ~~unless exempted by this chapter.~~

B. *Statements of Exemption Process.* ~~For exempt activities listed in subsection (C)(1) of this section, a written Statement of Exemption from securing a Critical Areas Permit must be obtained prior to undertaking any development activity. Activities exempt from subsection (C)(2) of this section do not require a statement of exemption.~~

Exemptions from the shoreline permit process are only authorized through Chapter 2.3 Exemptions in this SMP. All exempt activities are still subject to the policies and regulations of the SMP including Chapter 5A ~~this chapter.~~ The Shoreline Administrator ~~planning official~~ shall attach Critical Areas Ordinance conditions to the building permits and other permits and approval as necessary to enforce the policies and regulations of this chapter.

~~The request for the Statement of Exemption shall be in writing, on forms required by the planning official, and include the information required by the planning official.~~

~~The planning official shall issue a decision on a request for a Statement of Exemption in writing within 21 calendar days of receiving the request.~~

The following actions may be authorized, pursuant to the following provisions, provided the applicant demonstrates mitigation sequencing and there is no net loss of shoreline ecological function.

*C. Exemptions from Requirement to Obtain a Critical Areas Permit.*

1. Category I Exemptions ~~Activities for which a Statement of Exemption is required.~~ The following activities shall obtain a Statement of Exemption under subsection B of this section:

a. ~~Existing Structure Remodel—Impervious Surface Increase Less than 500 Square Feet.~~ Development or clearing, outside areas of special flood hazards and other than tree removal, as minimally necessary to remodel an existing structure, provided:

i. ~~The activity will increase the footprint of structures including impervious surfaces by less than 500 square feet from the footprint size at the time of the adoption of this chapter; and~~

~~ii. If the structure or impervious surface is within a critical area or buffer, the distance from the nearest structure or impervious surface to lakes, streams, rivers, wetlands or geological hazards is not decreased; and~~

~~iii. All vegetation disturbed as a result of the development shall be replaced one-to-one, except trees shall be replaced using tree units derived from Chapter 20.770 VMC, Tree, Vegetation, and Soil Conservation. Native vegetation shall be used where feasible.~~

~~iv. Impacts to critical areas and buffers shall be minimized and mitigated.~~

~~b. *No Impervious Surface Increase in the Riparian Management Area or Riparian Buffer.*~~

~~Development activity on the portions of sites with existing structures or impervious surfaces which does not increase the impervious surface area within the Riparian Management Area or Riparian Buffer and which is not otherwise exempt under subsection B of this section shall be exempt from the provisions of VMC Section 20.740.110 (Fish and Wildlife Habitat Conservation Areas). The applicant is encouraged to provide enhancement to the extent feasible. Such enhancement activities may include, but are not limited to, landscaping using native plants, additional treatment of stormwater as appropriate, and implementation of best management practices that would enhance habitat functions.~~

~~e. *Approved Subarea Plan with EIS.* Development activity covered by and in compliance with all the conditions of an approved subarea plan that contains:~~

~~i. Baseline information on existing critical areas and their functions at the level of detail required for an Environmental Impact Statement (EIS) under the State Environmental Policy Act (SEPA);~~

~~ii. An analysis of the impacts of full development at the level of detail required for an EIS under SEPA and in keeping with the plan; and~~

~~iii. Mitigation for those impacts consistent with the requirements of this chapter.~~

~~d. a. *Fence.* A fence may be installed in a critical area buffer (not in a critical area) where:~~

~~i. The fence is necessary for safety and security;~~

~~ii. The property was developed prior to the effective date of Chapter 20.740 VMC (April 29, 2005);~~

~~iii. The fence is designed and installed in a manner that protects the critical area and buffer functions and blends with the critical area environment.~~

~~e. b. *On-site Critical Area will be Avoided.* Development may be permitted on a site containing a critical area or buffer not also subject to state or federal permits where the Shoreline Administrator~~

~~Planning Official~~ determines that the critical areas and buffers will be clearly avoided using the following procedures and criteria:

- i. The Shoreline Administrator ~~planning official~~ has visited the site;
- ii. The critical area(s) and buffer(s) has/have been identified in the field and clearly mapped by a qualified professional through an approved, limited-scope Critical Areas Report (for example, a wetland boundary delineation without categorization or functional assessment, but with the minimum documentation necessary to justify the boundary location); except that for a single-family or duplex residential development on a property with a stream not regulated under the state Shoreline Management Act, its Riparian Management Area or Riparian Buffer, the Shoreline Administrator ~~planning official~~ may accept an aerial photo overlain with two-foot contour lines from the Clark County Digital Atlas with the required information drawn to scale by someone other than a qualified professional;
- iii. The site plan and final plat show a development envelope within which all development activity will take place, and a note identifying the development envelope and its purpose is placed on the face of the site plan and the final plat;
- iv. The boundaries of the development envelope are clearly outside of all maximum critical areas and all maximum buffers. The maximum critical area and maximum buffer are the greatest that may be applied under any circumstances. (For example, under this chapter, the maximum wetland buffer that could be applied under any circumstance is 300 feet; the maximum Riparian Management Area is 100 feet, and the maximum Riparian Buffer is 75 feet from the outer boundary of the Riparian Management Area.)

~~f. c. *Fire-Defensible Space.* Maintaining fire-defensible space around a structure to reduce fire hazards, involving regular maintenance of existing trees at least six-inch diameter at breast height, grasses, and underbrush, not tree removal or other ground-disturbing or soil-destabilizing activities- or Creating or maintaining fire-defensible space as follows: (see VMC 20.740.040(H)) or undertaking other development requires a Critical Areas Permit under VMC 20.740.040(A)(2)(f) and could require other permits as well.~~

- i. Pruning trees, grasses, and brush within a critical area or buffer to maintain fire-defensible space around a structure may be permitted when one or more of the following criteria are met:
  - A. The structure nearest the property line is within 30 feet of a slope of at least 25 percent (also designated as a landslide hazard area under this chapter);
  - B. The nearest structure is within 30 feet of a forested area;
  - C. The vegetation within 30 feet of the structure is comprised of less than 50 percent native species;

- D. The vegetation within 30 feet of the structure is higher than 12 inches;
  - E. Trees are crowded within 30 feet of the structure or overhanging the structure's roof;
  - F. The structure is located in an area designated by the Fire Marshal as a "Wildfire Safety Area."
- ii. When maintenance of a fire-defensible space is permitted, the following standards shall apply:
- ~~A. Trees may be pruned or limbed up to mitigate a hazard, but trees may not be removed without a Critical Areas Permit and any other necessary permit(s). (See VMC 20.740.040(A)(2)(f) and 20.740.040(H) on creating fire-defensible space.)~~
  - ~~B. A.~~ Grasses and underbrush shall be maintained between eight inches and 12 inches in height.
  - ~~C. B.~~ Trees may be pruned, limbed-up, or removed. Topping trees is prohibited.
  - ~~C.~~ Removal of vegetation in a landslide hazard area is prohibited during the wet season (November 1st to May 1st). The area must be immediately replanted to ensure soil stability. The property owner shall maintain the newly planted vegetation to ensure its survival.
  - ~~D.~~ Any debris from pruning shall be disposed of promptly and properly.
  - ~~E.~~ Required replantings shall be of native, fire-resistant species. A list of native, fire-resistant species is available from the Shoreline Administrator.

2. Category II Exemptions ~~Activities for which a Statement of Exemption is not required. Reasonable methods shall be used to avoid potential impacts to critical areas. Any damage to, or alteration of, a critical area that is not a necessary outcome of the exempt activity shall be corrected at the property owner's expense.~~

The following activities may be exempt from the need for a shoreline Substantial Development Permit when consistent with the provisions of Chapter 2.3 Exemptions or are determined to not meet the definition of development found in Chapter 8 are exempt from needing a Critical Areas Permit and do not require a statement of exemption:

- a. *Emergencies.* See Chapter 2.3 (Exemptions) of the SMP. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of property damage and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter, so long as all of the following apply:
  - i. The emergency action uses reasonable methods to address the emergency.
  - ii. The emergency action must have the minimum possible impact to the critical area or its buffer.

- iii. The property owner, person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity.
- iv. Within 14 days the Shoreline Administrator ~~planning official~~ shall determine if the action taken was within the scope of the emergency actions allowed in this section. If the Shoreline Administrator ~~planning official~~ 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 VMC 20.740.090 shall apply.
- v. After the emergency, the property owner, person or agency undertaking the action shall fully fund and conduct necessary restoration and/or mitigation for any impacts to the critical area and buffers resulting from the emergency action in accordance with an approved Critical Areas Report and mitigation plan. The property owner, person or agency undertaking the action shall apply for review. The alteration, Critical Areas Report, and mitigation plan shall be reviewed by the city in accordance with the review procedures contained in this chapter.
- vi. Restoration and/or mitigation activities must be initiated within three months of the date of the emergency or as otherwise determined by the Shoreline Administrator ~~planning official~~, and completed in a timely manner.
- b. ~~(Repealed) *Valid Critical Areas Permit*. Any development proposed on property pursuant to a currently valid Critical Areas Permit, provided all conditions and requirements of the Critical Areas Permit are met and the proposed activity is within the scope of the original permit.~~
- c. *Hazard Tree*. Emergency or hazard tree removal (as defined in Chapter 20.770 VMC) conducted so that critical area impacts are minimized.
- d. *Landscape Maintenance*. See Chapter 2.3 (Exemptions) of the SMP. Landscape maintenance (other than tree removal or use of pesticides, herbicides, fungicides or fertilizers applied into or within 25 feet of water bodies) consistent with accepted horticultural practices, such as those recommended by the Washington State University Extension Service, within the boundaries of an existing lawn, garden or landscaped area and not associated with development.
- e. *Noxious or Invasive Plants*. Clearing of noxious or invasive plants using hand-held equipment such as a weed-whacker, provided (1) fueling and maintenance take place outside the critical area and buffer; (2) all cleared vegetation is taken away and disposed of properly; and (3) denuded soils are stabilized with native vegetation. The city of Vancouver's Noxious or Invasive Plants List and Native Plant Species List are available from the Shoreline Administrator ~~planning official~~.
- f. *Pesticides, Herbicides, Fungicides or Fertilizers 25 feet from Critical Area*. Application of pesticides, herbicides, fungicides or fertilizers farther than 25 feet from any wetland, pond, lake, stream or river or in a manner specified in a valid permit.

g. *State or Federally Approved Conservation or Preservation.* State or federally approved conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife that does not entail changing the structure or functions of the existing critical area or buffer.

h. *Harvesting Wild Crops.* The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops or other native vegetation and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the critical area or buffer by changing existing topography, water conditions or water sources.

i. *Passive Activities.* Passive outdoor recreation, education, and scientific research activities such as fishing, hiking, and bird watching that do not degrade the critical area or buffer.

j. *Land surveys, soil sampling, percolation tests, and other related activities.* In every case, impacts to the critical area or buffer shall be minimized and disturbed areas shall be stabilized immediately.

k. *Navigational Aids and Boundary Markers.* See Chapter 2.3 Exemptions (6) and (10). Construction or modification of navigational aids and boundary markers. Impacts to the critical area or buffer shall be minimized and disturbed areas shall be restored within 72 hours.

l. *Agricultural Activities.* See Chapter 2.3.2(5) Exemptions. Existing and ongoing agricultural activities protected under the federal Food Security Act occurring in wetland areas.

Existing and ongoing agriculture within fish and wildlife habitat conservation areas so long as livestock and application of pesticides, herbicides, fungicides and fertilizers are kept 25 feet from any water body.

m. *State or Federally Approved Restoration or Enhancement Project.* See Chapter 2.3 Exemptions. Implementation of a state or federally approved restoration or enhancement project not related to any development project.

n. *Operation, Repair and Maintenance.* See Chapter 2.3 Exemptions. Operation, repair and maintenance of existing structures, infrastructure, roads, sidewalks, railroads, trails, dikes, or levees or water, sewer, stormwater, power, gas, telephone, cable, or fiber optic facilities if the activity does not further increase the impact to, or encroach farther within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, repair, or maintenance.

o. *Areas with only ground shaking or liquefaction hazards.* In areas with only ground shaking or liquefaction hazards, repair or construction of roads, sidewalks or trails (except where there are structures), or water, sewer, stormwater, gas, power, cable, or fiber optic facilities shall be exempt from the ground shaking and liquefaction permitting requirements.

p. Public improvement projects located within existing impervious surface areas.

~~q. City, State or Federally Approved Stand-alone “Critical Area” Creation Project.~~

~~Implementation of a city, state or federally approved stand-alone “critical area” creation project that is not mitigation. A “Critical Area” created under these circumstances that would not otherwise have met the definition of that type of critical area is exempt from the provisions of this chapter. Also see the definition of “Wetlands” at Chapter 20.150 VMC.~~

~~r. q. Clearing in Frequently Flooded Area and/or Seismic Hazard Area Only. Clearing vegetation within the floodplain but outside the Riparian Management Area or Riparian Buffer (see VMC 20.740.040(A)(2)(f)).~~

~~Clearing vegetation in critical areas that are only seismic hazard areas (see VMC 20.740.040(A)(2)(f)).~~

~~s. r. Fence Repair. See Chapter 2.3 Exemptions. Maintenance, repair, and in-kind replacement of existing fences.~~

~~t. s. Seismic Hazard Areas Only. Sites identified as located within only a Seismic Hazard Area (VMC Section 20.740.130 – Geologic Hazard Areas) shall be exempt from needing to provide a seismic hazard critical areas report prior to issuance of a shoreline substantial development permit, shoreline permit statement of exemptions, shoreline conditional use or shoreline variance ~~obtain a critical areas permit~~. All projects within the Seismic Hazard Area must comply with the Building Code at time of building permit review including providing a geotechnical report. (Ord. M-4289 § 4, 2019; Ord. M-4034 § 23, 2012; Ord. M-4017 § 5, 2012; Ord. M-3931 § 22, 2009; Ord. M-3922 § 36, 2009; Ord. M-3844 § 2, 2007; Ord. M-3692 § 2, 2005)~~

## **20.740.040 Approval Process.**

### **A. Critical Areas Approval Process Approval Process.**

The City shall consolidate and integrate the review and processing of the critical areas aspects of the proposal within the shoreline permit decision or review required for the proposed activity as applicable or required by this SMP.

Any additional decision criteria and submittal requirements within Chapter 5A shall be considered supplemental to the shoreline permit or review required for the proposed activity. In cases where required by this Chapter, the applicant shall submit a critical areas report prepared by a qualified professional.

~~1. Pre-application Conference Required. A pre-application meeting or waiver per Chapter 20.210 VMC is required prior to submitting a critical areas permit. Provided, pre-application conferences shall not be required for the following:~~

~~a. Proposed activities within only ground shaking and/or liquefaction areas.~~

~~b. Proposals involving only an addition to an existing single family home, including accessory structures.~~

~~e. Other minor improvements determined by the planning official to not warrant a pre-application meeting.~~

~~2. Critical Areas Permit. All Critical Areas Permits as determined to be necessary under Chapter 20.740 VMC and as stated below shall be processed as a Type I permit or, when submitted with another land use application, reviewed according to the procedures of the underlying land use application pursuant to Chapter 20.210 VMC.~~

~~a. New single family and duplex residences, alterations to existing single family and duplex residences, or new accessory structures located within a critical area or buffer, or on a property containing a critical area or buffer.~~

~~b. Application of pesticides, herbicides, fungicides or fertilizers within 25 feet of ponds, lakes, streams, rivers or wetlands.~~

~~c. Approval of agricultural activities within 25 feet of ponds, lakes, streams or rivers.~~

~~d. Critical Area restoration or enhancement projects not related to any development project; and establishment of mitigation banks.~~

~~e. Public improvement projects located entirely within the previously improved portion of the right-of-way, not otherwise exempted by this chapter.~~

~~f. Clearing vegetation within a critical area or buffer, including: (i) grading, uprooting or other activities that impair the soil stabilization function of vegetation in landslide hazard areas (VMC 20.740.130); (ii) removal of downed woody vegetation from wetlands, lakes, streams or rivers; and (iii) removal of trees, grasses, or brush to create fire defensible space (subsection H of this section). However, clearing vegetation within the area of special flood hazard outside of the Riparian Management Area and Buffer and in seismic hazard areas shall not require a permit (see VMC 20.740.030).~~

~~g. Approval of programmatic permits (subsection G of this section) for activities within critical areas or buffers.~~

~~3. Review Procedure. The planning official shall make a determination as to whether the proposed activity and mitigation, if any, are consistent with the provisions of VMC Title 20. The planning official's determination shall be based on the approval criteria of VMC 20.740.060. The Critical Areas Permit shall be valid for as long as the underlying land use permit or as otherwise specified by the planning official.~~

B. *Notice on Title – Covenant and Tracts.*

1. *Covenants.* This section applies to all nonexempt projects that involve critical areas and buffers.
  - a. In order to inform subsequent purchasers of real property of the existence of critical areas, the owner of any property containing a critical area or buffer on which a development proposal is approved shall file a covenant with the county records and elections division according to the direction of the city. The covenant shall state the presence of the critical area or buffer on the property, the application of this chapter to the property, and the fact that limitations on actions in or affecting the critical area or buffer may exist. The covenant shall “run with the land.”
  - b. The applicant shall submit proof that the covenant has been filed for public record before the city approves any site development or construction for the property or, in the case of subdivisions, short subdivisions, planned unit developments, binding site plans, and other developments that involve platting, at or before recording of the plat.
  
2. *Tracts.* This section applies in addition to subsection (B)(1) of this section to projects that involve platting on properties containing fish and wildlife habitat conservation areas, wetlands, and their buffers. The Shoreline Administrator ~~planning official~~ may also apply this section to developments that involve platting on properties containing geologic hazard areas and their buffers. The location of the tract, critical area(s), and buffer(s) shall be shown on the face of the plat. ~~See subsection (B)(2)(b) of this section for exceptions.~~
  - a. The property owner shall place the subject critical areas and buffers in one or more nondevelopable tracts except when:
    - i. Creation of a nonbuildable tract would result in violation of minimum lot depth standards; or
    - ii. The responsible official determines a tract is impractical.
  - b. When an exception in subsection (B)(2)(a) of this section applies, residential lots may extend into the critical area(s) or buffer(s) provided:
    - i. The location of the outer perimeter of the critical area(s) and buffer(s) is marked in the field and approved by the Shoreline Administrator ~~planning official~~ prior to the commencement of permitted activities and maintained throughout the duration of the permit.
    - ii. A permanent physical demarcation along the outer/upland boundary of the critical area buffer(s) is installed and thereafter maintained. Such demarcation may consist of fencing, hedging or other prominent physical marking that allows wildlife passage, blends with the critical area environment, and is approved by the Shoreline Administrator ~~planning official~~.
    - iii. Permanent signs are posted at an interval of one per lot for single-family residential uses or at a maximum interval of 200 feet, or as otherwise determined by the Shoreline Administrator ~~planning official~~, and must be perpetually maintained by the property owner. The sign shall be

worded as follows or with alternative language approved by the Shoreline Administrator ~~planning official~~: “The area beyond this sign is a critical area or critical area buffer. Alteration or disturbance is prohibited by law. Please call the City of Vancouver for more information.”

C. *Financial Assurances.*

1. When mitigation required pursuant to a development proposal is not completed prior to the city final permit approval, such as final plat approval or final building inspection, the city shall require the applicant to provide security in a form and amount deemed acceptable by the city. If the development proposal is subject to mitigation, the applicant shall provide security in a form and amount deemed acceptable by the city to ensure mitigation is fully functional (including but not limited to construction, maintenance, and monitoring).
2. The security shall be in the amount of 125 percent of the estimated cost of restoring the functions of the critical area that are at risk.
3. The security authorized by this section shall remain in effect until the city determines, in writing, that the standards for which the security is required have been met. Bonds or other security shall be held by the city for a minimum of five 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 bond 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 in the project budget or capital improvement budget for mitigation, maintenance, monitoring, or restoration.
6. Failure to satisfy any critical area requirements established by law or condition including, but not limited to, the failure to provide a monitoring report within 30 days after it is due or comply with other provisions of an approved 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. Excess funds shall be returned to the applicant.

D. *Critical Area Inspections.* Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period.

~~E. *Reconsideration of planning official's determination.* If, within five days following the date of mailing of a Critical Areas Permit, new information relevant to the decision is made available, any party may request that the decision be reconsidered. If the new information is found to be substantial and relevant to the critical area~~

~~review, the planning official may reopen the critical area review and make a new determination based on the revised report. The Critical Areas Permit shall not be considered final and subject to appeal until the decision on the request for reconsideration, if applied for, has been issued.~~

~~F. E. Appeals. Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this chapter may be appealed according to VMC 20.210.130. Appeals per Chapter 7 of the SMP.~~

~~G. F. Programmatic Authorization Permits. The purpose of a programmatic permit authorization is to provide for ongoing, routine maintenance, operation, or repair activities on sites containing critical areas or buffers (1) so as not to impair an agency's or business's ability to operate effectively and efficiently; and (2) at the same time protect critical areas and buffers in accordance with this chapter.~~

1. In addition to the submittal requirements in ~~VMC Section 20.740.050~~, applicants for a programmatic ~~permit authorization~~ shall submit a proposed management plan. The management plan shall contain:
  - a. A narrative explaining the need for the ~~authorization programmatic permit~~.
  - b. A list of the ongoing, routine, maintenance, operation, or repair activities that impact or potentially impact critical areas and buffers.
  - c. A description of the potentially impacted critical area and buffer functions.
  - d. Proposed measures and standards for avoiding impacts to critical area and buffer functions and, where unavoidable, minimizing and mitigating those impacts to achieve no net loss of functions.
  - e. A training program ensuring that all employees, contractors, and individuals under the supervision of the applicant who are involved in permitted activities understand and perform in accordance with the terms of the permit.
2. A programmatic ~~authorization permit~~ may be approved for up to seven years. The ~~permit~~ duration may be tied to other permits or processes.
3. Every two years within 30 days of the anniversary of ~~permit authorization~~ issuance ~~for the duration of the permit~~, the applicant shall submit a report to the ~~planning official~~ Shoreline Administrator summarizing activities undertaken under the ~~authorization programmatic permit~~ including any issues to be resolved. The report shall also document the training provided in accordance with this section ~~subsection (G)(1)(e) of this section~~.
4. The applicant or the city may initiate an amendment to the programmatic ~~authorization permit~~ to respond to ~~permit~~ performance issues. An amendment shall be considered through a Type 1 process following a pre-application conference and may require a new or amended shoreline permit or shoreline permit statement of exemption.

5. An application for reauthorization of a programmatic ~~permit~~ approval shall be submitted at least 90 days prior to the date the current ~~permit~~ approval expires. Programmatic approval ~~permits~~ may be reauthorized through a Type 1 process following a required pre-application conference. Permit standards and conditions may be modified to conform to the current codes, policies, and standards or based on past performance. Where the review of the reauthorization application will extend beyond the expiration date of the current programmatic approval ~~permit~~, the ~~planning official~~ Shoreline Administrator may extend the duration of the current approval ~~permit~~ for 30 days at a time, not to exceed 180 days.

~~H. Trees, grasses, and brush in a critical area or buffer may be pruned or removed to create fire defensible space around a structure (see subsection (A)(2)(f) of this section) when one or more of the criteria in VMC 20.740.030(C)(1)(f)(i)(A) through (C)(1)(f)(i)(F) are met. When creating fire defensible space is permitted, the following standards shall apply:~~

- ~~1. Grasses and underbrush shall be maintained between eight inches and 12 inches in height.~~
- ~~2. Trees may be pruned, limbed up, or removed. Topping trees is prohibited.~~
- ~~3. Removal of vegetation in a landslide hazard area is prohibited during the wet season (November 1st to May 1st). The area must be immediately replanted to ensure soil stability. The property owner shall maintain the newly planted vegetation to ensure its survival.~~
- ~~4. Any debris from vegetation removal shall be disposed of promptly and properly.~~
- ~~5. Required replantings shall be of native, fire resistant species. A list of native, fire resistant species is available from the planning official.~~

~~I. Development may be permitted on a site containing a critical area(s) or buffer(s) which may also be subject to state or federal permits prior to all necessary state or federal permits being obtained when all of the following criteria are met:~~

- ~~1. A phased master plan is submitted under Chapter 20.260 or 20.268 VMC as appropriate, demonstrating:
  - ~~a. How the maximum critical area(s) and maximum buffer(s) will be clearly avoided until all local, state, or federal permits are obtained;~~
  - ~~b. How each phase could be permitted as an individual project not relying on development of any other phases in any way;~~
  - ~~c. How each phase could be developed regardless of whether any or all of the pending state or federal permits are ever obtained;~~
  - ~~d. No net loss of critical area functions for each phase and for the project as a whole, regardless of whether any or all of the pending state or federal permits are ever obtained.~~~~

~~2. Development is permitted only in the area that clearly avoids (VMC 20.740.030(B)(2)(f)(i)(A)) the maximum critical area(s) and buffer(s). (Ord. M 4289 § 4, 2019; Ord. M 4105 § 3, 2014; Ord. M 4017 § 6, 2012; Ord. M 3959 § 37, 2010; Ord. M 3931 § 23, 2009; Ord. M 3844 § 2, 2007; Ord. M 3692 § 2, 2005)~~

## **20.740.050 Submittal Requirements.**

A. *Preparation by Qualified Professional.* Any required Critical Areas Report shall be prepared by a qualified professional as defined herein.

B. *General Critical Areas Report Contents.* At a minimum, the Critical Areas Report shall contain the following:

1. The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
2. A copy of the site plan for the development proposal including:
  - a. A map to scale depicting critical areas, buffers, ordinary high water mark, shoreline jurisdiction extent, the development proposal, and any areas to be cleared; and
  - b. Proposed stormwater management and sediment control plan for the development including a description of any impacts to drainage alterations; and
  - c. A digital map of the geographic information required pursuant to the applicable provisions of this chapter for each critical area and buffer on site. The digital map(s) must be based on the same coordinate system as the Clark County GIS database: state plane coordinates using the NAD 1983 datum and the Washington South zone (also referred to as the FIPS Zone 4602). The digital map(s) must also conform to other Clark County GIS digital mapping standards and specifications available from the Shoreline Administrator ~~Planning Official~~ or directly from Clark County's Department of Assessment and GIS.
3. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site;
4. *Identification and scientific characterization of all critical areas and buffers.* The scientific characterization shall include a detailed assessment of the functional characteristics of the critical areas;
5. An assessment of the probable impacts to critical areas and buffers and risk of injury or property damage including permanent, temporary, temporal, and indirect impacts resulting from development of the site and the operations of the proposed development;
6. A written response to each of the approval criteria in ~~VMC~~ Section 20.740.060;

7. Plans for adequate mitigation, as needed, to offset any impacts, in accordance with Section VMC 20.740.050(F) Mitigation Plan Requirements.

C. *Additional Information.* Any additional information required for the specific critical areas and buffers as specified in ~~VMC Section~~ Section 20.740.110 Fish and Wildlife Habitat Conservation Area, ~~VMC Section~~ Section 20.740.120 Frequently Flooded Areas, ~~VMC Section~~ Section 20.740.130 Geologic Hazard Areas, and ~~VMC Section~~ Section 20.740.140 Wetlands.

D. *Other Reports or Studies.* Unless otherwise provided, a Critical Areas Report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the Shoreline Administrator ~~planning official~~. Provided, the site conditions shall not have changed since the earlier report or study was completed.

E. *Critical Areas Report – Modifications to Requirements.* Modifications to Required Contents. The applicant may consult with the Shoreline Administrator ~~planning official~~ prior to or during preparation of the Critical Areas Report to obtain city approval of modifications to the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately address the potential impacts to any critical areas or buffers and the required mitigation. The Shoreline Administrator ~~planning official~~ may also initiate a modification to the required report contents by requiring either additional or less information, when determined to be necessary to the review of the proposed activity in accordance with this chapter.

F. *Mitigation Plan Requirements.* When mitigation is required, the applicant shall submit a mitigation plan as part of the Critical Areas Report. The mitigation plan shall include:

1. *Detailed Construction Plans.* The mitigation plan shall include descriptions of the mitigation proposed, such as:

- a. The proposed construction sequence, timing, and duration;
- b. Grading and excavation details;
- c. Erosion and sediment control features;
- d. A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
- e. Measures to protect and maintain plants until established.

These written descriptions shall be accompanied by detailed site diagrams, scaled cross sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

2. *Monitoring Program.* The mitigation plan shall include a program for monitoring construction of the mitigation project and for assessing a completed project. A protocol shall be included outlining the schedule for site monitoring, 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 mitigation project. The mitigation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five (5) years. For example, ten (10) years or more of monitoring are typically needed for forested wetlands or scrub-shrub communities.

When the applicant believes that the conditions of the monitoring plan are met, the applicant shall contact the City and request that the City verify and certify so in writing. The City shall conduct an on-site assessment as part of the verification process. The applicant shall provide reasonable access to the property as necessary for verification and certification.

When the City has verified and certified that the conditions of the monitoring plan have been met, the critical area shall no longer be considered as mitigation, but as a naturally-occurring critical area when processing a future development permit application(s).

3. *Adaptive Management.* 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. (Ord. M-3931 § 24, 2009; Ord. M-3844 § 2, 2007; Ord. M-3692 § 2, 2005)

## **20.740.060 Approval Criteria.**

Any activity or development subject to this chapter, unless otherwise provided for in this chapter, shall be reviewed and approved, approved with conditions, or denied based on the proposal's ability to comply with all of the following criteria. The city may condition the proposed activity as necessary to mitigate impacts to critical areas and their buffers and to conform to the standards required by this chapter. Activities shall protect the functions of the critical areas and buffers on the site.

~~A. *Avoid Impacts.* The Applicant shall first seek to avoid all impacts that degrade the functions and values of (a) critical area(s). This may necessitate a redesign of the proposal.~~

~~B. *Minimize Impacts.* Where avoidance is not feasible, the applicant shall minimize the impact of the activity and mitigate to the extent necessary to achieve the activity's purpose and the purpose of this ordinance. The applicant shall seek to minimize the fragmentation of the resource to the greatest extent possible.~~

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

1. Avoid the impact altogether by not taking a certain action or parts of an action.

2. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts.

3. Rectify the impact by repairing, rehabilitating, or restoring the affected environment.

4. Reduce or eliminate the impact over time by preservation and maintenance operations.

5. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments.

6. Monitor the required compensation and take remedial or corrective measures when necessary.

BE. Compensatory Mitigation. The applicant shall compensate for the unavoidable impacts by replacing each of the affected functions to the extent feasible. The compensatory mitigation shall be designed to achieve the functions as soon as practicable. Compensatory mitigation shall be in-kind and on-site, when feasible, and sufficient to maintain the functions of the critical area, and to prevent risk from a hazard posed by a critical area to a development or by a development to a critical area.

CD. No Net Loss. The proposal protects the critical area functions and values and results in no net loss of critical area functions and values.

DE. Consistency with General Purposes. The proposal is consistent with the general purposes of this chapter and does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;

EF. Performance Standards. The proposal meets the specific performance standards of Fish and Wildlife Habitat Conservation Areas ~~VMC Section~~ 20.740.110, Frequently Flooded Areas ~~VMC Section~~ 20.740.120, Geologic Hazard Areas ~~VMC Section~~ 20.740.130, and Wetlands ~~VMC Section~~ 20.740.140, as applicable. (~~Ord. M 4017 § 7, 2012; Ord. M 3692 § 2, 2005~~)

## **20.740.070 Minor Exceptions.**

Minor exceptions do not apply in shoreline jurisdiction. Deviations are allowed through a Shoreline Variance.

~~A. *Minor Exceptions Authorized.* Minor exceptions of no greater than 10% from the standards of this chapter may be authorized by the city in accordance with the procedures set forth in VMC 20.210.050, Type II Applications. Minor exceptions shall not be combined with buffer averaging [(20.740.140(C)(1)(b)(ii)] or buffer reduction (20.740.140(C)(1)(b)(iii)]. Minor exceptions from the NFIP development standards of VMC 20.740.120, Frequently Flooded Areas are prohibited (VMC 20.740.120(D)).~~

~~B. *Minor Exception Criteria.* A minor exception from the standards of this chapter may be granted only if the applicant demonstrates that the requested action conforms to all of the following criteria.~~

- ~~1. Unusual conditions or circumstances exist that are peculiar to the intended use, the land, the lot, or something inherent in the land, and that are not applicable to all other lands in the same vicinity or district;~~
- ~~2. The unusual conditions or circumstances do not result from the actions of the applicant;~~
- ~~3. Granting the minor exception requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings under similar circumstances;~~
- ~~4. The minor exception is necessary for the preservation and enjoyment of a substantial property right of the applicant such as is possessed by the owners of other properties in the same vicinity or district;~~
- ~~5. The minor exception requested is the least necessary and no greater than 10% of the subject standard to relieve the unusual circumstances or conditions identified in Subsection VMC 20.740.070(B)(1) above;~~
- ~~6. The granting of the minor exception or the cumulative effect of granting more than one minor exception is consistent with the general purpose and intent of the City of Vancouver Comprehensive Plan, this Title, this chapter, and the underlying zoning district;~~
- ~~7. Degradation of the functions (including public health and safety) of the subject critical areas and any other adverse impacts resulting from granting the minor exception will be minimized and mitigated to the extent feasible in accordance with the provision of this chapter;~~
- ~~8. Granting the minor exception will not otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;~~
- ~~9. The proposed development complies with all other applicable standards.~~

~~C. *Conditions May Be Required.* In granting any minor exception, the city may attach such conditions and safeguards as are necessary to secure adequate protection of critical areas and developments from adverse impacts, and to ensure conformity with this chapter.~~

~~D. *Time Limit.* The city shall prescribe a time limit within which the action for which the minor exception is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the minor exception.~~

~~E. *Burden of Proof.* The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application. (Ord. M 4017 § 8, 2012; Ord. M 3844 § 2, 2007; Ord. M 3692 § 2, 2005)~~

## **20.740.080 Reasonable Use Exceptions.**

Reasonable Use Exceptions do not apply in shoreline jurisdiction. The applicant must apply for a Shoreline Variance.

~~A. *Exception Request and Review Process.* If the application of this chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section. Exceptions from the standards of this chapter may be authorized by the city in accordance with the procedures set forth in VMC 20.210.060, Type III Applications.~~

~~An application for a reasonable use exception shall be made to the city and shall include a Critical Areas Report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act (RCW 43.21C). The planning official shall prepare a recommendation to the Hearings Examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in VMC 20.740.080(B).~~

~~B. *Reasonable Use Review Criteria.* The city shall approve applications for reasonable use exceptions when all of the following criteria are met:~~

- ~~1. The application of this chapter would deny all reasonable economic use of the property;~~
- ~~2. No other reasonable economic use of the property has less impact on the critical area;~~
- ~~3. The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property;~~
- ~~4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this chapter, or its predecessor;~~
- ~~5. The proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site;~~
- ~~6. The proposal mitigates for the loss of critical area functions to the greatest extent feasible and contributes to the Critical Areas Restoration Fund for any impacts that cannot be mitigated.~~
- ~~7. The proposal is consistent with other applicable regulations and standards.~~

~~C. *Burden of Proof.* The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. M 3692 § 2, 2005)~~

## 20.740.090 Unauthorized Critical Areas Alterations and Enforcement.

### A. *Enforcement.*

~~1. It shall be unlawful to violate the provisions of VMC Chapter 5A 20.740. Any violation of this chapter shall constitute a public nuisance. Violations of this Chapter are subject to enforcement under Chapter 7 of this SMP.~~

~~2. VMC Title 22 shall provide the enforcement provisions for VMC Chapter 20.740. VMC Title 22 may impose any of the remedies, requirements or corrective actions contained in this chapter. In lieu of or in addition to the enforcement provisions contained in VMC Title 22, the city may also seek injunctive or other relief from any court of competent jurisdiction.~~

~~3. The city shall deposit all monetary penalties collected pursuant to VMC Title 22 into the Critical Areas Restoration Fund. Accrued monies in the Critical Areas Restoration Fund shall be used to protect and restore critical areas within the City of Vancouver.~~

B. *Requirement for Restoration Plan.* In the event the city initiates enforcement action under ~~VMC Title 22 Chapter 7~~ or files a complaint in court, the city may require a restoration plan consistent with the requirements of this chapter. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in ~~VMC Section 20.740.090(C)~~. The ~~planning official~~ Shoreline Administrator shall, at the violator's expense, seek expert advice in determining whether the plan restores the affected area to its pre-existing condition or, where that is not possible, restores the functions of the affected area. Inadequate plans shall be returned to the applicant or violator for revision and re-submittal.

### C. *Minimum Performance Standards for Restoration.*

1. For alterations to frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:

- a. The structure and functions of the critical area or buffer prior to violation shall be restored, including water quality and habitat functions;
- b. The soil types and configuration prior to violation shall be replicated;
- c. The critical area and buffers shall be replanted with native vegetation (a list of native species is available from the Planning Official Shoreline Administrator). ~~If the critical area or buffer is on a site that meets the criteria of VMC 20.740.030(C)(1)(f)(i), the vegetation for replanting must be not only native but also fire resistant. A list of native, fire resistant species is available from the Planning Official; and~~

d. Information demonstrating compliance with the requirements in ~~VMC Section~~ 20.740.050(F) Mitigation Plan Requirements shall be submitted to the Shoreline Administrator ~~planning official~~.

2. For alterations to frequently flooded and geologic hazard areas, the following minimum performance standards shall be met for the restoration of a critical area or buffer, provided that, if the violator can demonstrate that greater safety can be obtained, these standards may be modified:

- a. The hazard shall be reduced to a level equal to, or less than, the pre-violation hazard;
- b. The risk of personal injury resulting from the alteration shall be eliminated or minimized;
- c. Drainage patterns shall be restored to those existing before the alteration; and
- d. The hazard area and buffers shall be replanted consistent with pre-violation conditions with native vegetation sufficient to minimize the hazard. ~~If the critical area or buffer is on a site that meets the criteria of VMC 20.740.030(C)(1)(f)(i), the vegetation for replanting must be not only native but also fire resistant. A list of native, fire resistant species is available from the Planning Official.~~

D. *Site Investigations.* ~~The planning official~~ Shoreline Administrator is authorized to make site inspections and take such actions as are necessary to enforce this chapter. As a condition of the restoration plan, the applicant shall grant reasonable access to the property. (Ord. M-3844 § 2, 2007; Ord. M-3692 § 2, 2005)

## **20.740.100 Habitats of Local Importance.**

A. *Eligibility and Approval Criteria.* Habitats of Local Importance are Fish and Wildlife Habitat Conservation Areas which are not designated as Priority Habitats and Species by the state but are designated as locally significant by the city. Criteria for designation include all of the following:

1. A need for protection exists due to a high diversity of fish or wildlife species, declining populations, scarcity of the habitat type, sensitivity to disturbance from human activity or development, or other unique local habitat functions.
2. The area is sufficient in size to support the species or habitat functions for which it is designated.
3. The designation will not compromise the ability of the city to achieve the goals of the Comprehensive Plan.
4. There is a proposed management strategy describing how the functions of the habitat will be protected after designation.

B. *Designation Process.* Habitats of Local Importance may be proposed by the property owner or the city and shall be designated according to a Type IV legislative procedure (VMC [20.210.070](#)). (Ord. M-3692 § 2, 2005)

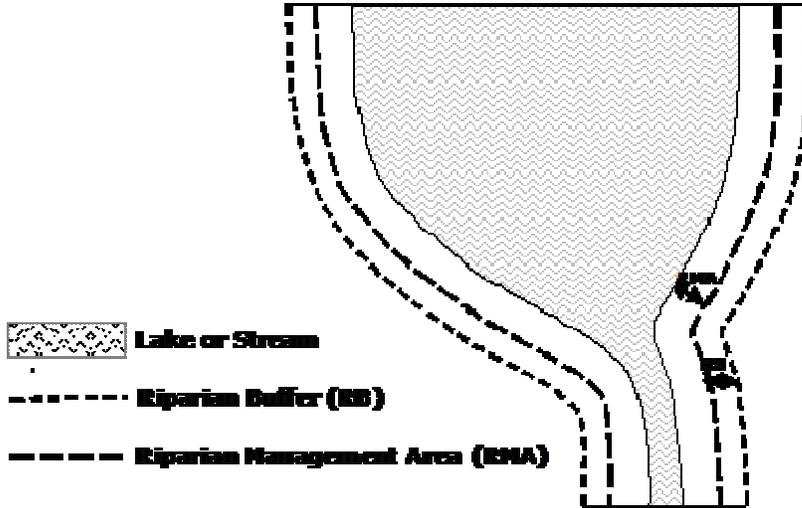
## **20.740.110 Fish and Wildlife Habitat Conservation Areas.**

### *A. Designation.*

1. Final designations shall be based on site conditions and other available data or information (~~See VMC 20.740.020(C)(1)~~). There are established in the city the following identified Fish and Wildlife Habitat Conservation Areas:

- a. Habitat used by any life stage of state or federally designated endangered, threatened, and sensitive fish or wildlife species. A current list of federally and state identified species is available from the Shoreline Administrator ~~planning official~~.
- b. *Priority Habitats and areas associated with Priority Species.* Current lists of Priority Habitats and Species and applicable Management Recommendations promulgated by the Washington Department of Fish and Wildlife are available from the Shoreline Administrator ~~planning official~~.
- c. Water bodies including lakes, streams, rivers, and naturally occurring ponds.
- d. *Habitats of Local Importance.* Fish and Wildlife Habitat Conservation Areas which are not designated as Priority Habitats and Species by the state but are designated as locally significant by the city in accordance with ~~VMC~~ Section 20.740.100.
- e. *Riparian Management Areas and Riparian Buffers.* The regulated areas include the land from the ordinary high water mark to a specified distance as measured horizontally in each direction. The Riparian Management Area is adjacent to the lake, stream or river, and the Riparian Buffer is adjacent to the Riparian Management Area.

**Figure 20.740.110-1  
Riparian Management Area and Riparian Buffer**



(1) The Riparian Management Areas and Riparian Buffers are as follows:

**Table TABLE 20.740.110-1. RIPARIAN MANAGEMENT AREAS & BUFFERS**

DNR/Vancouver Stream Type	Description	Land Use Intensity <sup>1</sup>	RMA	RB <sup>2</sup>
S	Shorelines-of-the-State	High/Moderate/Low	100'	75'
F	Lakes, streams, and rivers that contain fish habitat	High/Moderate/Low	100'	75'
Np or Ns, large	Streams and rivers that: (1) are not shorelines-of-the-state; (2) do not contain fish habitat; (3) are wider than 5' between the ordinary high water marks on the banks.	High/Moderate/Low	100'	75'
Np, small, connected	Streams and rivers that: (1) are not shorelines-of-the-state; (2) do not contain fish habitat; (3) are not more than 5' wide; (4) do connect via surface water to another stream or river (whether perennial or seasonal) even if the connection traverses a culvert, wetland, or other feature; and	High/Moderate Low	100' 100'	50' 25'

DNR/Vancouver Stream Type	Description	Land Use Intensity <sup>1</sup>	RMA	RB <sup>2</sup>
	(5) are perennial			
Ns, small, connected	Streams and rivers that: (1) are not shorelines-of-the-state; (2) do not contain fish habitat; (3) are not more than 5' wide; (4) do connect via surface water to another stream or river (whether perennial or seasonal) even if the connection traverses a culvert, wetland, or other feature; and (5) are seasonal	High/Moderate  Low	100'  100'	25'  0'
Np or Ns, small, not connected	Streams and rivers that: (1) are not shorelines-of-the-state; (2) do not contain fish habitat; (3) are not more than 5' wide; (4) do not connect via surface water to another stream or river; and (5) are either perennial or seasonal	High/Moderate/Low	25'	0'

<sup>1</sup> Refer to Table 20.740.140-1.

<sup>2</sup> The RB is the distance shown or the full extent of the 100-year floodplain, whichever is farther landward.

(A) When impervious surfaces from previous development completely functionally isolate the Riparian Management Area or the Riparian Buffer from the waterbody, the regulated riparian area shall extend from the ordinary high water mark to the impervious surfaces. If the waterbody is not completely physically isolated, but is completely functionally isolated, the Shoreline Administrator ~~planning official~~ may adjust the regulated riparian area to reflect site conditions and sound science.

2. *Habitat Location Information.* Information on the approximate location and extent of Habitat Conservation Areas is available from the Shoreline Administrator ~~planning official~~.

The habitat location information is based on:

- a. Washington Department of Fish and Wildlife Priority Habitat and Species Maps;
- b. Washington Department of Fish and Wildlife Anadromous and Resident Salmonid Distribution Maps in the Salmon and Steelhead Habitat Inventory Assessment Program (SSHIAP);
- c. Washington Department of Natural Resources Official Water Type Reference Maps;

- d. City-designated Habitats of Local Importance;
- e. Other information acquired by the city.

*B. Additional Critical Areas Report Requirements.*

1. A Critical Areas Report for a Riparian Management Area or Riparian Buffer shall include evaluation of the habitat functions using the Clark County Habitat Conservation Ordinance Riparian Habitat Field Rating Form or another habitat evaluation tool approved by the Washington Department of Fish and Wildlife.

a. In addition to the standards of (~~VMC~~ Section 20.740.050(F)), where a mitigation plan is required as part of the Critical Areas Report for a fish and wildlife habitat conservation area that involves a water body, Riparian Management Area or Riparian Buffer, the monitoring program protocol shall include where relevant to the impacted functions:

- 1. Observations and measurements of riparian integrity and quality (buffer width, riparian corridor continuity or fragmentation, species diversity, stand age, plant survival rates)
- 2. Large woody debris surveys
- 3. Streamflow monitoring
- 4. Water quality monitoring to detect pollution impacts
- 5. Biological monitoring (including fish surveys and benthic macroinvertebrate sampling)

2. If the clearing or development activity is in the Riparian Management Area, the Critical Areas Report shall contain the following information, if applicable, in addition to the general Critical Areas Report requirements of ~~VMC~~ Section 20.740.050:

- a. How the clearing or development activity constitutes a water-dependent, water-related or water-enjoyment use; or
- b. How the clearing or development activity cannot feasibly be located on the site outside of the Riparian Management Area; and
- c. How the proposal meets the Riparian Management Area width averaging standard (~~VMC~~ Section 20.740.110(C)(2)(c)); and
- d. How the proposal will not adversely affect the connectivity of habitat functions.

*C. Performance Standards.*

- 1. *General.*

a. Development or clearing activities shall protect the functions of the Habitat Conservation Areas on the site. The activity shall result in no net loss of functions. Protection can be provided by avoiding (the preferred protection) or minimizing and mitigating as described in the general critical areas approval criteria (Section VMC 20.740.060). Functions include:

1. Providing habitat for breeding, rearing, foraging, protection and escape, migration, and over-wintering; and
2. Providing complexity of physical structure, supporting biological diversity, regulating stormwater runoff and infiltration, removing pollutants from water, and maintaining appropriate temperatures.

b. An applicant shall replace any lost functions preferably by restoring or if not, then by enhancing other habitat functions, so long as the applicant demonstrates that enhancement of the other functions provides no net loss in overall functions and maintains habitat connectivity. An example of unavoidable loss of function would be interruption of a travel corridor in a Riparian Management Area or Buffer. To the maximum extent feasible, enhancement shall be undertaken on-site.

c. If development or clearing activity is within a Priority Habitat and Species area the applicant shall follow Washington Department of Fish and Wildlife Management Guidelines, Management Recommendations or other standards approved by the Washington Department of Fish and Wildlife. Where there are no guidelines, recommendations or other standards, development or clearing may occur provided that:

1. The development or clearing results in no net loss of habitat function on the site; and
2. Functionally significant habitat, defined as habitat that cannot be replaced or restored within 20 years, shall be preserved.

d. Signs for Fish and Wildlife Conservation Areas

1. *Temporary markers.* The location of the outer perimeter of the fish and wildlife habitat conservation area shall be marked in the field, and such marking shall be approved by the Shoreline Administrator ~~planning official~~ prior to the commencement of permitted activities. Such field markings shall be maintained throughout the duration of the permit.

2. *Permanent signs.* Permanent signs shall be posted on public and private properties at an interval of one per lot for single family residential uses or at a maximum interval of 200 feet or as otherwise determined by the Shoreline Administrator ~~planning official~~, and must be perpetually maintained by the property owner. The sign shall be worded as follows or with alternative language approved by the Shoreline Administrator ~~planning official~~: "The area beyond this sign is a fish and wildlife habitat conservation area. Alteration or disturbance is prohibited by law. Please call the City of Vancouver for more information."

2. Riparian Management Areas and Riparian Buffers.

In addition to the standards in ~~VMC~~ Section 20.740.060 and ~~VMC~~ Section 20.740.110(C)(1) the standards in this section shall apply in Riparian Management Areas and Buffers.

a. *Riparian Buffer*. Development or clearing activity may occur in the Riparian Buffer, providing that:

1. The planned mitigation results in no net loss of riparian habitat functions on the site, and
2. Functionally significant habitat, defined as habitat that cannot be replaced or restored within 20 years, shall be preserved unless the activity meets the conditions of ~~VMC~~ Section 20.740.110(C)(2)(b). An example of habitat that cannot be replaced within 20 years would be a stand of mature trees or a peat bog.

b. *Riparian Management Area*. No development or clearing activity is allowed within the Riparian Management Area unless such activity is:

1. A water-dependent, water-related or water-enjoyment activity where there are no feasible alternatives that would have a less adverse impact on the Riparian Management Area or Riparian Buffer. The applicant shall minimize the impact and mitigate for any unavoidable impact to functions; Cost may be considered, but shall not be overriding; or
2. A road, railroad, trail, dike, or levee or a water, sewer, stormwater conveyance, gas, power, cable, fiber optic, or telephone facility that cannot feasibly be located outside of the Riparian Management Area, that minimizes impacts, and that mitigates for any unavoidable impact to functions. Cost may be considered, but shall not be overriding; or
3. Mitigation for activities allowed by this chapter, providing the activity provides no net loss of riparian habitat functions on the site.

c. *Modification of the Riparian Management Area Width*. The width of the Riparian Management Area may be modified (See ~~VMC~~ 20.170.080(B)(1)) if all the following are met:

1. The square footage of the area meeting the performance standards of the Riparian Management Area (~~VMC~~ Section 20.740.110(C)(2)(b)) is not reduced; and
2. There is no net loss of functions as a result of the averaging; and
3. Notwithstanding any other provision, the reduction of the Riparian Management Area width at any location may be no greater than 25%.

d. Owners of developed properties within the Riparian Management Area or Riparian Buffer are encouraged to enhance the area by planting native plants and to apply integrated pest management.

- e. Agricultural activities in the Riparian Management Area or Riparian Buffer are encouraged to develop farm conservation plans. (Ord. M-3931 § 25, 2009; Ord. M-3844 § 2, 2007; Ord. M-3692 § 2, 2005)

## **20.740.120 Frequently Flooded Areas.**

VMC Chapter 20.740.120 Frequently Flooded Areas regulations apply within shoreline jurisdiction, but are not incorporated as part of this Shoreline Master Program.

~~A. *Designation.* Frequently Flooded Areas are the Areas of Special Flood Hazards identified by the Federal Insurance Administration and the Federal Emergency Management Agency (FEMA), respectively, in scientific and engineering reports entitled, Flood Insurance Study: Clark County, Washington and Incorporated Areas, Volumes 1 and 2 (Numbers 53011CV001A and 53011CV002A, respectively,) effective September 5, 2012 and any revisions thereto, with accompanying Flood Insurance Rate Maps (FIRMs and their digital version, DFIRMs) and any revisions thereto. The Flood Insurance Study (FIS), FIRMs and DFIRMs are available from the Planning Official, 415 West 6th Street, Vancouver, WA 98660. (See VMC 20.150.040 Meanings of Specific Words and Terms for definitions for Areas of Special Flood Hazards, Floodplain, Floodway, and Frequently Flooded Areas.)~~

~~Portions of channel migration zones located outside areas of special flood hazards are not designated as frequently flooded areas.~~

~~When base flood elevation (BFE) data has not been provided in frequently flooded areas (Zone A), the Planning Official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source in order to administer the provisions of this chapter. This best available information for flood hazard area identification shall be the basis for regulation until a new FIRM/DFIRM is issued.~~

### **Figure 20.740.120-1. Frequently Flooded Areas/Areas of Special Flood Hazards**



~~Adapted from Floodplain Management: A Local Administrator's Guide to the National Flood Insurance Program, Fifth Edition, FEMA Region 10~~

~~B. *Additional Critical Areas Report Requirements.* In addition to the Critical Areas Report requirements in VMC 20.740.050, the following information shall be submitted. Elevation data shall reference the NAVD 1988 Datum.~~

- ~~1. Base (100-year) flood elevation in relation to mean sea level. When base flood elevation has not been provided or is not available from an authoritative source, it shall be generated by the applicant for developments which contain at least 50 lots or 5 acres, whichever is less.~~
- ~~2. Elevation in relation to mean sea level, of the lowest floor (including basement) of all existing and proposed structures.~~

~~3.— Elevation in relation to mean sea level to which any structure’s lowest floor (including basement) is raised to be at least 1 foot above the base flood elevation or for nonresidential flood proofed structures, the elevation in relation to mean sea level to which any structure is flood proofed.~~

~~4.— Location of the channel migration zone. See the Clark County Shoreline Inventory & Characterization Report, Volume 1, Lewis and Salmon Washougal Watersheds and Rural Areas, Map 27, Potential Channel Migration Zone (CMZ) Areas for general locations of channel migration zones. The actual location of the channel migration zone on site must be identified by a qualified professional and mapped in accordance with the submittal requirements of VMC 20.740.050.~~

~~5.— Description of strategies taken to avoid, minimize, and mitigate unavoidable impacts to public safety. When the base flood elevation has not been provided or is not available from an authorized source (VMC 20.740.120(A)), the Critical Areas Report shall include a discussion of how and whether the proposed development would be reasonably safe from flooding. Historical data, high water marks, photographs of past flooding and other available information will be used as the basis for this discussion and conclusion.~~

~~6.— Certification, documentation, and demonstration by a qualified professional of how the applicable standards of VMC 20.740.120(C) will be met. To support the “no rise” analyses required in VMC 20.740.120(C)(1), the documentation required in the most recently updated or amended FEMA Region 10 publication, Floodplain Management: A Local Floodplain Administrator’s Guide to the National Flood Insurance Program shall be submitted.~~

~~C.— Performance Standards. Except as noted, the following standards apply to all structures and development (including but not limited to the placement of manufactured homes, substantial improvement, roads, railroads, trails, dikes, levees, or water, sewer, stormwater conveyance, gas, power, cable, fiber optic or telephone facilities) in all areas of special flood hazards and channel migration zones (CMZs). Additional restrictions apply in the floodway:~~

~~1.— Encroachments.~~

~~a.— Designated Floodway: Prohibited Encroachments. The following are prohibited in the floodway:~~

~~1.— Water wells (20.740.120(C)(4)(a)).~~

~~2.— On-site waste disposal systems (20.740.120(C)(5)(a)).~~

~~3.— Residential structures or other structures for human habitation including but not limited to:~~

~~a.— Building envelopes within subdivisions(20.740.120(C)(9)(a));~~

~~b.— New construction or reconstruction of residential structures (20.740.120(C)(10)(b)(1));~~

~~c.— Placement or replacement of manufactured homes (all types)  
(20.740.120(C)(10)(b)(2));~~

~~d. Critical facilities housing vulnerable populations and emergency services(20.740.120(C)(12)(a)); and~~

~~e. Recreational vehicles (20.740.120(C)(13)(a)).~~

~~b. Designated Floodway: Allowed Encroachments. In areas where the base flood elevation has been provided and a regulatory floodway has been designated, other encroachments including but not limited to fill, new construction, replacement structures, substantial improvements and other development shall be prohibited unless:~~

~~1. Certification by a qualified professional (in this case, a registered professional engineer) is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in a net increase in base flood elevation (less than 0.00 feet, rounded) or flood velocity during the occurrence of the base flood discharge. At a minimum, such “no rise” analyses shall include a step backwater analysis and a conveyance compensation analysis as required in the most recently updated or amended FEMA Region 10 publication, Floodplain Management: A Local Floodplain Administrator’s Guide to the National Flood Insurance Program; and~~

~~2. The applicable standards of VMC 20.740.120(C)(2-14) are also met.~~

~~e. No Designated Floodway: Allowed Encroachments. In areas where the base flood elevation has been provided but a regulatory floodway has not been designated, no encroachments including but not limited to new construction, substantial improvement, or other development (including fill) shall be permitted, unless:~~

~~1. The applicant has demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point; and~~

~~2. The applicable standards of VMC 20.740.120(C)(2-14) are also met.~~

~~d. Other Areas of Special Flood Hazards and CMZs. In areas of special flood hazards except the floodway or where the BFE has not been provided, or in channel migration zones, encroachments, including but not limited to fill, new construction, replacement structures, substantial improvements and other development shall be prohibited, unless:~~

~~1. A qualified professional provides certification demonstrating that the proposed project would not result in a net loss of flood storage capacity; and~~

~~2. The applicable standards of VMC 20.740.120(C)(2-14) are also met.~~

~~2. *Property Damage.* Development shall not result in adverse impacts to other properties either upstream or downstream.~~

~~3. *Drainage.* Drainage paths around structures and on slopes shall be adequate to guide floodwaters around and away from proposed structures and adjacent properties.~~

~~4. *Water.*~~

~~a. Water wells are prohibited in the floodway.~~

~~b. In areas of special flood hazards except the floodway and in CMZs, water wells shall be constructed to withstand a 100-year flood without adversely impacting groundwater quality (WAC 173-160-171).~~

~~e. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.~~

~~5. *Waste.*~~

~~a. On-site waste disposal systems are prohibited in the floodway.~~

~~b. In areas of special flood hazards except the floodway and in CMZs, on-site waste disposal systems shall be located to avoid flood damage to them or release of contaminants from them during a base flood event.~~

~~c. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.~~

~~6. *Construction Materials and Methods.*~~

~~a. Construction methods and practices shall minimize flood damage.~~

~~b. Construction materials and utility equipment shall be resistant to flood damage. For guidance on flood resistant materials see the most current FEMA Technical Bulletin 2, Flood Resistant Materials Requirements.~~

~~c. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during a base flood event. For guidance on the placement of building utility systems, see the most current FEMA Publication #348, Protecting Building Utilities from Flood Damage.~~

~~7. *Anchoring.* All new construction including substantial improvements and all types of manufactured homes shall:~~

~~a. Be elevated on a permanent foundation and securely anchored to an adequate foundation system to prevent flotation, collapse, or lateral movement.~~

~~b. Be installed or placed using methods and practices that minimize flood damage. Manufactured home placement shall follow the guidance in the most current FEMA P-85, Protecting Manufactured Homes from Floods and Other Hazards.~~

~~8. Enclosed Areas Below the Base Flood Elevation.~~

~~a. Enclosed areas below the base flood elevation shall be used only for vehicle parking, building access, or storage.~~

~~b. New or substantially improved enclosed areas below the base flood elevation shall be constructed in accordance with:~~

~~1. VMC 20.740.120(C)(7), Anchoring~~

~~2. VMC 20.740.120(C)(10)(c)(2)(d), Residential Construction~~

~~3. VMC 20.740.120(C)(6)(b-c), Construction Materials and Methods~~

~~c. Enclosed areas below the BFE shall not be considered to be the lowest floor when they are not part of a basement and meet the requirements of VMC 20.740.120(C)(10)(d).~~

~~d. Crawlspace Construction. Crawlspaces are a type of enclosed area below the BFE. Crawlspaces constructed at or above the lowest adjacent exterior grade are preferred. (Note: Insurance premiums for structures with below grade crawlspaces will be higher than those with the interior elevation at or above the lowest adjacent exterior grade.) Refer to the most current FEMA Technical Bulletin 11, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas (available from the Planning Official) for more information. Crawlspaces:~~

~~1. Are prohibited in areas with flood velocities greater than five feet (5') per second unless designed by a qualified professional (in this case an architect or professional engineer).~~

~~2. Shall meet the requirements of VMC 20.740.120(C)(8)(a-c), Enclosed Areas below the BFE.~~

~~3. Shall not be considered "basements" for the purposes of VMC 20.740.120 when constructed according to the following standards:~~

~~a. The interior grade of a crawlspace below the base flood elevation must not be more than 2' below the lowest adjacent exterior grade.~~

~~b. The height of the below grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed 4' at any point.~~

~~e. The crawlspace must be equipped with a drainage system that removes floodwaters from the interior area of the crawlspace in a reasonable period of time after a base flood event.~~

~~9. Subdivisions:~~

~~a. All subdivisions shall be designed:~~

~~1. To ensure that no residential structure or other structures for human habitation are located in the floodway even though lots may extend into the floodway;~~

~~2. To avoid placement of any structures in areas of special flood hazards and in CMZs;~~

~~3. Where it is not possible to design a subdivision in a manner to avoid placement of any structures in areas of special flood hazards or CMZs, the subdivision shall be designed to minimize or eliminate potential flood damage.~~

~~b. All subdivisions shall have facilities such as sewer, gas, power, cable, fiber optic, telephone, stormwater and water systems located and constructed to minimize or eliminate flood damage. (See VMC 20.740.120(C)(2), Property Damage; VMC 20.740.120(C)(4), Water; VMC 20.740.120(C)(5), Waste; VMC 20.740.120(C)(6), Construction Materials and Methods; and VMC 20.740.120(C)(7), Anchoring.)~~

~~e. All subdivisions shall have adequate drainage provided to reduce exposure to flood damage. (See VMC 20.740.120(C)(3), Drainage.)~~

~~10. Residential Construction (including Manufactured Homes):~~

~~a. Residential Construction in the Floodway:~~

~~1. New construction and reconstruction of residential development including placement and replacement of all types of manufactured homes is prohibited in the floodway.~~

~~2. Existing residential structures and manufactured homes in the floodway are nonconforming, but may be repaired or improved, provided:~~

~~a. The repair or improvement does not increase the ground floor area of the structure; and~~

~~b. The repair or improvement does not result in adverse impacts to other properties either upstream or downstream; and~~

~~e. The cost of the repair or improvement does not exceed 50% of the market value of the structure either:~~

~~1. Before the start of repair or improvement where there is no damage to the structure; or~~

~~2. Before flood or other damage to the structure occurred.~~

~~d. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the Planning Official and which are the minimum necessary to assure safe living conditions may be excluded from the 50%.~~

~~e. Any project for improvement to a structure identified as a historic place may be excluded from the 50%.~~

~~b. Residential Construction in Other Areas of Special Flood Hazards and CMZs. In areas of special flood hazards except the floodway and in channel migration zones:~~

~~1. New residential construction and reconstruction, including all types of manufactured homes and other structures for human habitation shall meet all the provisions of this chapter, including VMC 20.740.120(C)(8) and (10)(c-d).~~

~~2. New placement or replacement of all types of manufactured homes shall meet the standards of VMC 20.740.120(C)(7), Anchoring.~~

~~3. Repair or Substantial Improvement. All provisions of this chapter (including the elevation standards of VMC 20.740.120(C)(8) and (10)(c-d)), all state and local health, sanitary, safety codes, and where applicable, historic preservation codes shall be met when the cost of repair or improvement of an existing residential structure exceeds 50% of the market value of the structure either:~~

~~a. Before the start of repair or improvement where there is no damage to the structure; or~~

~~b. Before flood or other damage to the structure occurred.~~

~~e. Elevation~~

~~1. BFE Established. The lowest floor (including basement) of new residential structures (including but not limited to reconstruction, substantial improvement, the placement or replacement of all types of manufactured homes) shall be elevated at least 1 foot above base flood elevation. Structures shall be elevated using means other than fill (such as extended foundation or other enclosure walls, piles, or columns) whenever feasible.~~

~~2. *No BFE.* In areas where the base flood elevation has not been provided or is not available from an authorized source (VMC 20.740.120(A) and .120(B)(5)) and the Critical Areas Report demonstrates to the satisfaction of the Planning Official that the proposed development would be reasonably safe from flooding, new residential construction (including but not limited to substantial improvement and the placement of manufactured homes) shall be elevated at least 2' above the highest adjacent grade. (Note: Failure to elevate at least 2' above the highest adjacent grade may result in higher insurance rates.)~~

~~d. *Fully Enclosed Areas Below Lowest Floor.* Fully enclosed areas below the lowest floor that are subject to flooding are prohibited unless designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must be certified by a qualified professional (in this case, a registered professional engineer or architect), or must meet or exceed the following minimum criteria:~~

- ~~1. Contain a minimum of 2 openings having a total net area of not less than 1 square inch for every 1 square foot of enclosed area subject to flooding;~~
- ~~2. The bottom of all openings are no higher than 1 foot above grade; and~~
- ~~3. Openings permit the automatic entry and exit of floodwaters even when equipped with screens, louvers, or other coverings or devices.~~

~~For guidance on flood openings, see FEMA Technical Bulletin 1-93, Openings in Foundation Walls.~~

~~11. *Non Residential Construction.* New construction and substantial improvement of any nonresidential structure shall either be elevated (VMC 20.740.120(C)(11)(a or b)) or flood proofed (VMC 20.740.120(C)(11)(c)):~~

~~a. *Be Elevated: BFE Established.*~~

- ~~1. Have the lowest floor, including basement, elevated at least one foot above the base flood elevation; and~~
- ~~2. Meet the same standards for space below the lowest floor as described in 20.740.120(C)(8)(d) and VMC 20.740.120(C)(10)(d);~~

~~b. *Be Elevated: No BFE.*~~

- ~~1. In areas where the base flood elevation has not been provided or is not available from an authorized source (VMC 20.740.120(C)(2A) and (3.120(B)(5)) and the Critical Areas Report demonstrates to the satisfaction of the Planning Official that the proposed development would be reasonably safe from flooding, new nonresidential construction shall be elevated at least 2'~~

~~above the highest adjacent grade. Failure to elevate at least 2' above the highest adjacent grade may result in higher insurance rates; and~~

~~2. Meet the same standards for space below the lowest floor as described in 20.740.120(C)(8)(d) and VMC 20.740.120(C)(10)(d); or~~

~~e. *Be Flood-proofed.* Together with attendant utility and sanitary facilities shall:~~

~~1. Be flood-proofed so that below one foot (or more) above the base flood elevation, the structure is watertight with walls substantially impermeable to the passage of water;~~

~~2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;~~

~~3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the Planning Official as set forth in VMC 20.740.120(E).~~

~~12. *Critical Facilities.*~~

~~a. Critical facilities housing vulnerable populations and emergency services shall be prohibited in the floodway.~~

~~b. In areas of special flood hazard except the floodway and in CMZs, construction of new critical facilities shall be prohibited unless the applicant demonstrates that:~~

~~1. No feasible alternative site is available; and either:~~

~~a. The lowest floor, entrances, egresses, and to the extent feasible access routes are elevated to 3 feet above the base flood elevation or to the elevation of the 500-year flood, whichever is lower; or~~

~~b. The applicant demonstrates that other measures would ensure that in the event of a flood, the facility would remain safe and fully operational and that potentially harmful materials would not be displaced by or released into floodwaters. Such measures shall be conditions of approval of the Critical Areas Permit.~~

~~13. *Recreational Vehicles.*~~

~~a. Recreational vehicles shall be located outside the floodway.~~

~~b. Recreational vehicles in areas of special flood hazard except the floodway and in CMZs shall either:~~

- ~~1. Be on the site for fewer than 180 consecutive days;~~
- ~~2. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type water, sewer, stormwater, gas, power, cable, fiber optic, telephone, and security devices, and have no permanently attached additions; or~~
- ~~3. Meet the requirements of VMC 20.740.120(C)(7), Anchoring; VMC 20.740.120(C)(8), Enclosed Areas below the Base Flood Elevation; and VMC 20.740.120 (C)(10)(e), Elevation.~~

~~14. Alteration of Watercourse.~~

~~a. The planning official shall notify adjacent communities and the state coordinating agency, Washington State Department of Ecology, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.~~

~~b. Alteration or relocation of a watercourse shall be allowed only after:~~

- ~~1. Certification by a qualified professional that the alteration or relocation:~~
  - ~~a. Is the only feasible alternative or is part of a restoration project approved by the appropriate state or federal agencies;~~
  - ~~b. Will not diminish the flood-carrying capacity of the watercourse;~~
  - ~~c. Will not block side channels;~~
  - ~~d. Will be accomplished using soft armoring techniques wherever possible;~~
  - ~~e. Will avoid to the extent possible and then minimize and mitigate removal of vegetation including downed woody vegetation; and~~
  - ~~f. Will not endanger development in the channel migration zone.~~
- ~~2. The applicant provides assurance acceptable to the planning official of maintenance of the relocated channel such that the flood-carrying capacity of the watercourse is not diminished.~~

~~D. Variances and Minor Exceptions. Variances as interpreted in the National Flood Insurance Program are based on the principle that they pertain to a physical piece of property. They apply to the land and are not personal in nature, do not pertain to the structure, its inhabitants, or economic or financial circumstances. The development standards contained in VMC 20.740.120, Frequently Flooded Areas are required by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program (NFIP) to protect life and property from flood damage.~~

~~Variances from the NFIP standards of VMC 20.740.120 shall meet the approval criteria and other requirements of VMC 20.740.120(D) in addition to any other applicable variance criteria or requirements (e.g., VMC 20.290 or VMC 20.760). Variances from the NFIP standards of VMC 20.740.120 shall be processed as Type I or II variances or shoreline variances as appropriate, not as Minor Exceptions (VMC 20.740.070).~~

~~Variances or minor exceptions from other critical area standards (any standards of VMC 20.740 not in Section VMC 20.740.120) shall meet the applicable criteria and follow the applicable procedures for the relief requested (VMC 20.740.070, VMC 20.290, or VMC 20.760)~~

~~1. NFIP variances may be allowed:~~

~~a. For Historic Structures. NFIP variances may be issued for the repair, reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, the Washington Heritage Register, Washington's Heritage Barn Register, Washington's Historic Property Inventory Database, Clark County Cultural Resources Inventory, or Clark County Heritage Register, provided:~~

~~1. The proposed development will not preclude the structure's continued designation as a historic structure;~~

~~2. The variance is the minimum necessary to preserve the historic character and design of the structure; and~~

~~3. NFIP variance approval criteria at (VMC 20.740.120(D)(2)(a-d) are met.~~

~~b. From the Elevation Standard. An NFIP variance from the elevation standard may be issued for new construction and substantial improvements to be erected on a small or irregularly shaped lot contiguous to and surrounded by lots with existing structures constructed below the base flood elevation. As the lot size increases the technical justification required for issuing the variance increases.~~

~~c. From the Flood proofing Standard for Non-Residential Buildings. NFIP variances may be issued for nonresidential buildings to allow a lesser degree of flood proofing than watertight or dry flood proofing where it can be determined that such action:~~

~~1. Will have low damage potential;~~

~~2. Complies with all other NFIP variance criteria except VMC 20.740.120(D)(1)(a)(2);~~

~~3. Complies with VMC 20.740.120(C)(4), Water; VMC 20.740.120(C)(5), Waste; VMC 20.740.120(C)(7), Anchoring; and VMC 20.740.120(C)(9), Subdivisions.~~

~~d. For Allowed Development within the Floodway. NFIP variances may be issued for development within a floodway only when the requirements of VMC 20.740.120(C)(1)(b) are met.~~

~~2. *NFIP Variance Approval Criteria.* NFIP variances from elevation and flood proofing standards, and for development in the floodway (VMC 20.740.120(D)(1)(a)(2-4) may be granted only if the applicant demonstrates that the requested action conforms to all of the following criteria:~~

- ~~a. The NFIP variance is the minimum necessary, considering the flood hazard, to afford relief.~~
- ~~b. The applicant has demonstrated good and sufficient cause.~~
- ~~c. Failure to grant the NFIP variance would result in exceptional hardship to the applicant. (Exceptional hardship for an NFIP variance is described in a FEMA memorandum dated July 22, 1986 entitled Resource Materials on NFIP Variance Criteria available from the Planning Official.)~~
- ~~d. Granting the NFIP variance will not result in increased flood heights or velocities, additional threats to public safety, significantly increased property damage potential, extraordinary public expense, or conflict with existing local laws or ordinances.~~
- ~~e. Demonstration that the following factors have been considered:
  - ~~1. The danger that materials may be swept onto other lands to the injury of others;~~
  - ~~2. The danger to life and property due to flooding or erosion damage;~~
  - ~~3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;~~
  - ~~4. The importance of the services provided by the proposed facility to the community;~~
  - ~~5. The necessity to the facility of a waterfront location, where applicable;~~
  - ~~6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;~~
  - ~~7. The compatibility of the proposed use with existing and anticipated development;~~
  - ~~8. The relationship of the proposed use to the comprehensive plan;~~
  - ~~9. The safety of access to the property in times of flood for ordinary and emergency vehicles;~~
  - ~~10. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and~~
  - ~~11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of facilities such as sewer, gas, electrical, stormwater, and water systems, and streets and bridges.~~~~

~~3. *Notices Required.* A notice to the applicant is required whenever a variance is approved, approved with conditions, or denied. Such notice shall include the decision and the reasons for the decision. When a variance from the elevation standard is approved or approved with conditions, such notice shall state that the structure will be permitted to be built with a lowest floor elevation below that normally required with respect to the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.~~

~~E. *Information to be Obtained and Maintained.*~~

~~1. For all new and substantially improved structures and development, the planning official shall complete Section B of a current elevation certificate and obtain and record on that certificate:~~

~~a. For elevated (rather than flood proofed) structures and development, the actual (as-built) elevation in relation to mean sea level of the lowest floor (including basement), and whether or not the structure contains a basement.~~

~~b. For nonresidential, flood proofed structures, the elevation to which the structure was flood proofed. All flood proofing certifications shall also be maintained.~~

~~c. Maintain all records pertaining to development in frequently flooded areas subject to the provisions of this chapter, VMC 20.740, for public inspection.~~

~~2. *Records of Variance Actions.* The planning official shall keep records of all variance actions and report any approved variances to the Federal Insurance Administration upon request.~~

~~3. *Records of Appeal Actions.* The planning official shall keep records of all appeal actions. (Ord. M 4020 § 2, 2012; Ord. M 4017 § 9, 2012; Ord. M 3844 § 2, 2007; Ord. M 3692 § 2, 2005)~~

## **20.740.130 Geologic Hazard Areas.**

A. *Designation.* Designated or potential Geologic Hazard Areas include Landslide, Seismic, and Erosion Hazard Areas. With the exception of bank erosion hazard areas and fault rupture hazard areas, their potential locations are shown on maps available from the Shoreline Administrator ~~planning official~~. Final designations shall be based on site conditions and other available data or information ~~{See VMC 20.740.020(C)(1)}.~~

1. *Landslide Hazard Areas.* Potential landslide hazard areas are identified from the sources listed below.

a. Slopes greater than 25% on the property and adjacent areas within 100 feet, except engineered slopes such as cut and fill slopes along transportation routes (including trails), railroad and other berms, or dikes.

b. Areas of historic or active landslides, potential instability, or older landslide debris identified on the 1975 map by Allen Fiksdal of the Washington State Department of Natural Resources entitled, Slope Stability: Clark County Washington as revised or superseded, or identified from other available data or in the field by a qualified professional and adjacent areas within 100 feet.

2. *Seismic Hazard Areas.* Seismic Hazard Areas include Liquefaction or Dynamic Settlement, Ground Shaking Amplification, and Fault Rupture Hazard Areas.

a. *Liquefaction or Dynamic Settlement.* The following are designated Liquefaction or Dynamic Settlement Hazard Areas:

1. Areas with Low to Moderate, Moderate, Moderate to High, or High liquefaction susceptibility or Peat Deposits as indicated on the Alternative Liquefaction Susceptibility Map of Clark County, Washington based on Swanson's Groundwater Model by Stephen P. Palmer, Sammantha L. Magsino, James L. Poelstra, and Rebecca A. Niggemann, September, 2004, as revised or superseded.

2. Areas of fill (Fn) identified by the 1972 USDA Soil Conservation Service Soil Survey of Clark County Washington and by the Shoreline Administrator ~~planning official~~, based on other reliable evidence.

b. *Ground Shaking Amplification.* The following are designated Ground Shaking Amplification Hazard Areas:

Site Classes C to D, D, D to E, E and F as indicated on the Site Class Map of Clark County, Washington by Stephen P. Palmer, Sammantha L. Magsino, James L. Poelstra, and Rebecca A. Niggemann, September, 2004 as revised or superseded.

c. *Fault Rupture Hazard Areas.* Potential Fault Rupture Hazard Areas are faults identified on geological maps prepared and maintained by the Washington Department of Natural Resources (DNR), U.S. Geological Survey (USGS), Oregon Department of Geology and Mineral Industries (DOGAMI), Clark County, Washington, or identified from other available data or in the field by a qualified professional and adjacent areas within 100 feet.

3. *Erosion Hazard Areas.* Erosion Hazard Areas include Soil Erosion and Bank Erosion Hazard Areas.

a. *Soil Erosion Hazard Areas.* The following are designated Soil Erosion Hazard Areas:

Areas with soils identified as having a severe erosion hazard by the 1972 USDA Soil Conservation Service Soil Survey of Clark County Washington.

b. *Bank Erosion Hazard Areas.* Bank Erosion Hazard Areas are areas along lakes, streams, and rivers that are subject to regression or retreat due to lacustrine or fluvial processes and adjacent land within 100 feet.

B. *Additional Critical Areas Report Requirements.* In addition to the requirements of ~~VMC~~ Section 20.740.050, the following are Critical Areas Report requirements for development proposals in potential geologic hazard areas. These requirements may be adjusted as appropriate by the Shoreline Administrator ~~planning official~~. The Critical Areas Report will result in a conclusion as to whether the potential geologic hazard area is an actual geologic hazard area (See ~~VMC~~ Section 20.740.130(B)(6)). If it is, the Critical Areas Report requires additional information, mapping, and analysis (See ~~VMC~~ Section 20.740.130(B)(7)).

1. Identification of the site and project area (defined at VMC 20.150), topography in 2-foot contours (or other increment at the discretion of the Shoreline Administrator ~~planning official~~), gas, power, cable, fiber optic, telephone, sewer, water, and stormwater management facilities, wells, on-site septic systems, dikes, levees, and existing structures on the site plan required by ~~VMC~~ Section 20.740.050; and
2. Detailed review of field investigations, published data and references, data and conclusions from past geologic studies or investigations, site-specific measurements, tests, investigations, or studies, and the methods of data analysis and calculations that support the results, conclusions, and recommendations; and
3. Field investigation and evaluation of the areas on site for liquefaction or dynamic settlement, ground shaking amplification, fault rupture, and soil erosion hazards; and on or within 100 feet of the site for landslide and bank erosion hazards; and
4. A description of the surface and subsurface geology, hydrology, drainage patterns, soils, and vegetation on site for liquefaction or dynamic settlement, ground shaking amplification, fault rupture, and soil erosion hazards; and on or within 100 feet of the site for landslide and bank erosion hazards; and
5. Identification of the hazard area indicators that were found (if any) on site for liquefaction or dynamic settlement, ground shaking amplification, fault rupture, and soil erosion hazards; and on or within 100 feet of the site for landslide and bank erosion hazards; and
6. Conclusion as to whether there is a geologic hazard area on site or for landslide and bank erosion hazards on or within 100 feet of the site; and
7. If a liquefaction, dynamic settlement, ground shaking amplification, fault rupture, or soil erosion hazard is found to exist on site or if a landslide or bank erosion hazard is found to exist on or within 100 feet of the site:
  - a. Label and show on the site plan required by ~~VMC~~ Section 20.740.050:
    1. The location(s), extent, and type(s) of geologic hazard area(s) identified; and

2. The location(s) and extent of any area(s) that must be left undisturbed to protect the proposed development from damage or destruction and to protect the hazard area(s) from the impacts of the proposed development; and
3. The boundaries of the area that may be disturbed.
4. The dimension of the closest distance(s) between the geologic hazard area(s) and the project area.
5. The dimension of the closest distance(s) [See VMC 20.170.030(C)] between any nondisturbance area [~~VMC~~ Section 20.740.130(B)(7)(a)(2)] and the project area.

For bank erosion hazard areas, show these areas, boundaries, and dimensions based upon natural processes and, if applicable, proposed bank stabilization measures.

- b. Analysis of the erosion processes on site for soil erosion hazard areas and on or within 100 feet of the site for bank erosion hazard areas.
- c. Evaluation of the impact of the geologic hazard area(s) on the proposed development, other properties, and other critical areas.
  1. *Landslide hazard areas.* The impact of the run-out hazard of landslide debris from both upslope and downslope shall be included in the evaluation.
  2. *Bank erosion hazard areas.* Evaluation of impacts on other properties shall include properties both upstream and downstream of the subject property.
- d. Evaluation of the impact of the proposed development on the geologic hazard area(s).
- e. Assessments and conclusions regarding geologic hazard(s) for both existing and proposed (post-development) site conditions. The ultimate build-out scenarios must be considered and addressed in cases such as land division and master planning where build-out is not scheduled to occur as a direct or immediate result of project approval.
- f. Written discussion of:
  1. The risk of damage or destruction from the geologic hazard(s) with respect to human health and safety; infrastructure; the proposed development; other properties (both upstream and downstream for bank erosion hazard areas); and other critical areas; and
  2. Whether and to what degree the proposed development would increase the risk from the geologic hazard(s), such as the occurrence of a landslide or the rate of regression.
- g. Recommendations for mitigation of impacts to protect:

1. Human health and safety;
  2. Infrastructure;
  3. The proposed development;
  4. Other properties (both upstream and downstream for bank erosion hazard areas);
  5. Other critical areas; and
  6. The hazard area during construction and for the anticipated life of the proposed development. The ultimate build-out scenarios must be considered and addressed in cases such as land division and master planning where build-out is not scheduled to occur as a direct or immediate result of project approval.
- h. A demonstration of how the standards of ~~VMC~~ Section 20.740.130(C) applicable to each geologic hazard area will be met.

C. *Performance Standards.*

1. *Landslide, Soil Erosion, and Bank Erosion Hazard Areas.* Development in nondisturbance areas (~~VMC~~ Section 20.740.130(B)(7)(a)(2)) shall be prohibited. In other areas, development in landslide, soil erosion, and bank erosion hazard areas and their buffers [~~VMC~~ Section 20.740.130(C)(1)(j)] shall be prohibited except where the applicant has demonstrated compliance with or satisfaction of the following standards or requirements.

- a. The applicant has demonstrated that during construction and for the anticipated life of the proposed development, the proposed use(s), activity(ies), and structure(s):
  1. Will not increase the threat of the geological hazard beyond pre-development conditions; and
  2. Will not adversely impact other critical areas wherever feasible given the type of critical areas involved and the characteristics of the site; and
  3. Are designed so that the hazard to the proposed project is eliminated or mitigated to a level equal to or less than pre-development conditions; and
  4. The life safety risk is minimal or eliminated; and
  5. Are certified by a qualified professional as safe as designed and under anticipated conditions.

Landslide hazard areas may be eliminated through grading based on a Critical Areas Report which demonstrates that the slope will be stabilized prepared by a qualified professional (in this

case a licensed Engineering Geologist or Professional Engineer). The Critical Areas Permit shall be conditioned on a final inspection approval confirming that the grading and site are stable. At the applicant's expense, after site grading, (a) the qualified professional who prepared the Critical Areas Report shall provide inspection specifications; and (b) an inspector acceptable to the City Building Official shall inspect the grading and the site and submit a report to the City indicating whether the site is stable.

b. A plan for revegetation and landscape maintenance to ensure soil stabilization shall be developed and implemented in accordance with the mitigation plan requirements of ~~VMC~~ Section 20.740.050(F).

c. Clearing, grading, uprooting, or otherwise impairing the soil stabilizing function of vegetation shall be prohibited during the wet season (November 1st to May 1st), except as authorized under a valid state or federal permit or shoreline substantial development permit or shoreline statement exemption. ~~a City Type I permit [VMC 20.740.040(A)(2)(f)]~~.

d. Drainage patterns shall not be altered such that potential for damage or risk to the proposed project, the geologic hazard area, or other critical areas or buffers is increased.

e. The requirements of VMC 14.24, Erosion Control shall be met.

f. Trails shall be for pedestrian and nonmotorized vehicular use only and shall be the minimum width necessary to meet applicable regulations.

g. *Roads in Landslide and Bank Erosion Hazard Areas.* A road through or across a landslide or bank erosion hazard area shall meet the standards of ~~VMC~~ Section 20.740.130(C)(1)(a)-(f) and shall not be:

1. The sole access for a proposed subdivision (not including short subdivision) or critical facility;
2. Longer than 200 feet;
3. Steeper than a 15% grade.

h. *Markers and Signs in Landslide Hazard Areas.*

1. The boundary at the outer edge of landslide area tracts and easements shall be delineated with permanent survey stakes, using iron or concrete markers as established by local survey standards.
2. The boundary at the outer edge of the furthest of the landslide hazard area, nondisturbance area [~~VMC~~ Section 20.740.130(B)(7)(a)(2)], or buffer shall be identified with temporary signs

prior to any site alteration. Such temporary signs shall be replaced with permanent signs prior to occupancy or use of the site.

3. These provisions may be modified by the Shoreline Administrator ~~planning official~~ as necessary to ensure protection of sensitive features or wildlife needs.

i. Bank Stabilization for Existing Development in Bank Erosion Hazard Areas.

1. Bank stabilization measures may be employed to protect an existing structure when a Critical Areas Report conclusively demonstrates all of the following:

- a. Bank erosion threatens an established use or existing structure(s); and
- b. The threatened structure(s) cannot be relocated landward of any nondisturbance area [~~VMC Section~~ Section 20.740.130(B)(7)(a)(2)]; and
- c. Where applicable, bank stabilization measures are necessary to the operation and location of water-dependent, water-related, or water enjoyment activities consistent with the City of Vancouver Shoreline Management Master Program; and
- d. Bank stabilization measures will not cause a significant adverse impact on upstream or downstream properties or an impact that cannot be mitigated without developing bank stabilization measures for those properties; and
- e. Bank stabilization measures will not cause a significant adverse impact on fish, wildlife, or their habitats protected by this chapter.

2. When bank stabilization is allowed, it shall be accomplished using beach nourishment, bioengineering (soft armoring) techniques, or a combination of the two. Other techniques may be used when an approved Critical Areas Report demonstrates conclusively that beach nourishment, bioengineering (soft armoring) techniques, or a combination of the two will not provide sufficient protection for the remaining useful life of the structure(s) to be protected.

3. When bank stabilization is allowed, the pertinent policies and regulations of the City of Vancouver Shoreline Management Master Program shall apply in addition to the requirements of this section. The terms and conditions of any other required state or federal permit or approval shall also apply.

j. *Buffer.* The following regulations apply to landslide and bank erosion hazard area buffers. No buffer is required for soil erosion hazard areas. Buffers may be included in nondisturbance areas [~~VMC Section~~ Section 20.740.130(B)(7)(a)(2)] and required planting and maintenance activities may be undertaken within them.

1. Buffer width shall be measured on a horizontal plane from a perpendicular line established at all edges of the geologic hazard area [See ~~VMC Section~~ 20.170.030(B) and (K)].
2. A vegetated buffer shall be maintained around all landslide and bank erosion hazard areas. No alteration to the buffer shall be undertaken without an erosion control plan approved pursuant to the provisions of VMC 14.24, Erosion Control and this chapter. New plantings shall consist of native vegetation. Maintenance shall be the responsibility of the property owner.
3. The minimum buffer width for bank erosion hazard areas shall be the distance recommended in an approved Critical Areas Report.
4. The minimum buffer width for landslide hazard areas shall be the greatest of the following distances:
  - a. 50 feet from all edges of the landslide hazard area; or
  - b. A distance of 1/3 the height of the slope at the top of the slope and a distance of 1/2 the height of the slope at the bottom of the slope [See VMC 20.170.030(J)]; or
  - c. The minimum distance(s) recommended in an approved Critical Areas Report.
5. A larger buffer width may be required for landslide and bank erosion hazard areas at the discretion of the Shoreline Administrator ~~planning official~~ when:
  - a. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts; or
  - b. The area has a severe risk of slope failure or downslope stormwater drainage impacts; or
  - c. The area is directly adjacent to a riparian management area or wetland; or
  - d. Recommended in an approved Critical Areas Report.
6. The buffer width for landslide hazard areas may be reduced to as little as the smallest of the distances identified in ~~VMC Section~~ 20.740.130(C)(1)(j)(4) at the discretion of the Shoreline Administrator ~~planning official~~ when the dimensions of the landslide hazard area are smaller than those distances.

## 2. Seismic Hazard Areas

- a. *Liquefaction or Dynamic Settlement Hazard Areas.* All building structures in liquefaction or dynamic settlement hazard areas shall comply with the requirements of VMC Title 17, Building and Construction. No buffer is required for liquefaction or dynamic settlement hazard areas.

b. *Ground Shaking Amplification Hazard Areas.* All building structures in ground shaking amplification hazard areas shall comply with the requirements of VMC Title 17, Building and Construction applicable to the NEHRP soil classification of the subject property. No buffer is required for ground shaking amplification hazard areas.

c. *Fault Rupture Hazard Areas.*

1. A road through or across a fault rupture hazard area shall not be:
  - a. The sole access for a proposed subdivision (not including short subdivision) or critical facility;
  - b. Longer than 200 feet’;
  - c. Steeper than a 15% grade.
2. Structures for human habitation and critical facilities shall be prohibited within fault rupture hazard areas and buffers.
3. Buffer.
  - a. Buffer width shall be measured on a horizontal plane from a perpendicular line established at all edges of the geologic hazard area [See VMC 20.170.030(B)].
  - b. The buffer width shall be the greater of the following distances:
    - i. 50 feet from all edges of a fault rupture hazard area, except where critical facilities are involved, the minimum buffer distance shall be 100 feet [See VMC 20.170.030(L)]; or
    - ii. The minimum distance recommended in an approved Critical Areas Report.
  - c. A larger buffer width may be required when the Shoreline Administrator ~~planning official~~ determines that the buffer is not adequate to protect the proposed development. (Ord. M-3844 § 2, 2007; Ord. M-3692 § 2, 2005)

## **20.740.140 Wetlands.**

A. *Designating and Rating Wetlands.*

1. *Designating Wetlands.* Wetlands are those areas, designated in accordance with the approved federal wetland delineation manual and applicable regional supplements, 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 (but not as mitigation for impacts to wetlands) 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 shall include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands.

Final designations shall be based on site conditions and other available data or information (~~see VMC 20.740.020(C)(1)~~).

2. *Wetland Ratings.* Wetlands shall be rated according to the Washington State Department of Ecology (Ecology) wetland rating system, Washington State Wetland Rating System for Western Washington – 2014 Update, Ecology Publication No. 14-06-029, October 2014, or as revised by Ecology. The rating system document contains the definitions and methods for determining if the criteria below are met. The most recent version of the rating system form must be used.

a. *Wetland Rating Categories.*

i. *Category I.* Category I wetlands are:

- A. Relatively undisturbed estuarine wetlands larger than one acre;
- B. Wetlands of high conservation value that are identified by scientists of the Washington Natural Heritage Program of the Department of Natural Resources;
- C. Bogs;
- D. Mature and old-growth forested wetlands larger than one acre;
- E. Wetlands that perform many functions well, scoring twenty-three points or more.

These wetlands are those that:

- 1. Represent unique or rare wetland types;
- 2. Are more sensitive to disturbance than most wetlands;
- 3. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
- 4. Provide a high level of functions.

ii. *Category II.* Category II wetlands function at a moderately high function, scoring between twenty and twenty-two points.

iii. *Category III.* Category III wetlands are:

A. Wetlands with a moderate level of functions, scoring between sixteen and nineteen points; and

B. Can often be adequately replaced with a well planned mitigation project.

iv. *Category IV.* Category IV wetlands have the lowest levels of functions (scoring fewer than sixteen points) and are often heavily disturbed. These are wetlands that should be able to be replaced, or in some cases improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions, and should be protected to some degree.

B. *Additional Critical Areas Report Requirements.* A critical areas report for wetlands shall be prepared according to the Washington State Wetland Rating System for Western Washington – 2014 Update, Ecology Publication No. 14-06-029, October 2014 or as revised by Ecology. The critical areas report shall contain an analysis of the wetlands including the following site- and proposal-related information:

1. A written assessment, data sheets and accompanying maps of any wetlands or buffers on the site including the following information:

a. Hydrogeomorphic (HGM) subclassification and Cowardin class;

b. Wetland category;

c. Wetland delineation and required buffers;

d. Existing wetland acreage;

e. Vegetative, faunal, and hydrologic characteristics;

f. Soil types and substrate conditions;

g. Topographic elevations, at one-foot contours; and

h. A discussion of the water sources supplying the wetland and documentation of hydrologic regime (locations of inlet and outlet features, water depths throughout the wetland, evidence of recharge or discharge, evidence of water depths throughout the year – drift lines, algal layers, moss lines, and sediment deposits).

2. Functional evaluation for the wetland and buffer using Ecology's most current approved method and including the reference of the method and all data sheets.

3. Proposed mitigation, if needed, including a discussion of alternatives and trade-offs inherent in the various alternatives (for example, where enhancement for one function would adversely affect another), a written description and accompanying maps of the mitigation area, including the following information:

- a. Existing and proposed wetland acreage;
- b. Existing and proposed vegetative and faunal conditions;
- c. Surface and subsurface hydrological conditions of existing and proposed wetlands and hydrologically associated wetlands including an analysis of existing hydrologic regime and proposed hydrologic regime for enhanced, created, or restored mitigation areas;
- d. Relationship to lakes, streams and rivers in the watershed;
- e. Soil type and substrate conditions;
- f. Topographic elevations, at one-foot contours;
- g. Required wetland buffers including existing and proposed vegetation;
- h. Identification of the wetland's contributing area; and
- i. A functional assessment of proposed mitigation to ensure no net loss of shoreline ecological function.

C. *Performance Standards.*

1. *General Requirements.* Development or clearing activities shall protect the functions of wetlands and wetland buffers on the site. ~~Activities and shall meet all of result in no net loss of wetland or buffer functions. Protection may be provided by avoiding (the preferred protection) or minimizing and mitigating as described in~~ the general critical areas performance standards (Section VMC 20.740.060).

a. *Wetlands.*

i. In Category I wetlands only the following activities may be allowed if the applicant further demonstrates that avoiding all adverse impacts is not in the public interest or will deny all reasonable economic use of the site:

A. A road, railroad, trail, dike, or levee or a water, sewer, stormwater conveyance, gas, power, cable, fiber optic or telephone facility that cannot feasibly be located outside of the wetland, that minimizes the impact, and that mitigates for any unavoidable impact to functions. Cost may be considered, but shall not be overriding; or

B. Trails and wildlife viewing structures; provided, that the trails and structures minimize the impact and are constructed so that they do not interfere with wetland hydrology and do not result in increased sediment entering the wetland.

ii. In Category II wetlands only the following activities may be allowed if the applicant further demonstrates that avoiding all adverse impacts is not in the public interest or will deny all reasonable economic use of the site:

A. Activities allowed in Category I wetlands pursuant to subsection (C)(1)(a)(i) of this section.

B. Enhancement and restoration activities aimed at protecting the soil, water, vegetation or wildlife.

C. Within shoreline jurisdiction (~~VMC 20.760.020~~ SMP Chapter 2), water-dependent, water-related or water-enjoyment activities where there are no feasible alternatives that would have a less adverse impact on the wetland, its buffers and other critical areas.

D. Where non-water dependent, related or enjoyment activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited unless the applicant demonstrates that the basic project purpose cannot reasonably be accomplished and successfully avoid or result in less adverse impacts on a wetland on another site or sites in the city of Vancouver or Vancouver urban growth area.

iii. In Category III wetlands only the following activities may be allowed:

A. Activities allowed in Category II wetlands pursuant to subsection (C)(1)(a)(ii) of this section.

B. Other activities may be allowed if the applicant demonstrates that the basic project purpose cannot reasonably be accomplished and avoid or result in less adverse impacts on a wetland or its buffer than alternative uses or designs (including reduction in the size, scope, configuration or density of the project).

iv. In Category IV wetlands activities and uses that result in impacts may be permitted in accordance with an approved critical areas report and mitigation plan if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full mitigation for the loss of acreage and functions shall be provided under the terms established pursuant to subsection (C)(2) of this section.

b. *Wetland Buffers.*

i. *Standard Buffer Widths.* Standard buffer widths are those determined by Ecology and described in *Freshwater Wetlands in Washington State, Volume 2: Managing and Protecting Wetlands*, Ecology Publication No. 05-06-008, April 2005 or as revised by Ecology. Buffer widths are based on wetland category, wetland characteristics and land use intensity.

A. Land use intensities are defined by the Land Use and Development Code VMC 20.400 Zoning Districts and application is uniform to all uses within a given zoning district are as follows:

**Table 20.740.140-1. LAND USE INTENSITIES**

Land Use Intensity	VMC Title 20 Zoning Districts
High	All Residential, Commercial, or Industrial Zones
Moderate	<u>Park or General Greenway Open Space Zones</u> <del>Open Space Park or Open Space Greenway: General</del>
Low	<u>Lettuce Fields Greenway, Vancouver Lake Greenway, or Natural Area Open Space Zones</u> <del>Open Space Greenway: Lettuce Fields or Vancouver Lowlands; or Open Space Natural</del>

B. Level of function for habitat based on the Washington State Wetland Rating System is as follows:

**Table 20.740.140-2. RATING SYSTEM**

Level of Function	Habitat Score in Rating System
High	8 – 9

Level of Function	Habitat Score in Rating System
Moderate	6 – 7
Low	3 – 5

C. Buffer widths are measured horizontally from the edge of the wetland (see VMC 20.170.030(B) and (H)) and are as follows:

1. *Category I Wetlands.*

**Table 20.740.140 3. CATEGORY I WETLAND BUFFER WIDTHS**

Wetland Characteristics	Land Use Intensity	Buffer Width
Wetlands of High Conservation Value	High	250'
	Moderate	190'
	Low	125'
Forested Wetlands High Habitat Function	High	300'
	Moderate	225'
	Low	150'
Moderate Habitat Function	High	150'

<b>Wetland Characteristics</b>	<b>Land Use Intensity</b>	<b>Buffer Width</b>
	Moderate	110'
	Low	75'
Low Habitat Function	High	100'
	Moderate	75'
	Low	50'
Other Category I Wetlands High Habitat Function	High	300'
	Moderate	225'
	Low	150'
Moderate Habitat Function	High	150'
	Moderate	110'
	Low	75'
Low Habitat Function	High	100'
	Moderate	75'
	Low	50'

<b>Wetland Characteristics</b>	<b>Land Use Intensity</b>	<b>Buffer Width</b>

*2. Category II Wetlands.*

**Table 20.740.140-4. CATEGORY II WETLAND BUFFER WIDTHS**

<b>Wetland Characteristics</b>	<b>Land Use Intensity</b>	<b>Buffer Width</b>
High Habitat Function	High	300'
	Moderate	225'
	Low	150'
Moderate Habitat Function	High	150'
	Moderate	110'
	Low	75'
Low Habitat Function	High	100'
	Moderate	75'
	Low	50'

*3. Category III Wetlands.*

**Table 20.740.140-5. CATEGORY III WETLAND BUFFER WIDTHS**

<b>Wetland Characteristics</b>	<b>Land Use Intensity</b>	<b>Buffer Width</b>
Moderate Habitat Function	High	150'
	Moderate	110'
	Low	75'
Low Habitat Function	High	80'
	Moderate	60'
	Low	40'

~~4. Category IV Wetlands.~~

~~Table 20.740.140-6. CATEGORY IV WETLAND BUFFER WIDTHS~~

<b>Wetland Characteristics</b>	<b>Land Use Intensity</b>	<b>Buffer Width</b>
All Category IV Wetlands	High	50'
	Moderate	40'
	Low	25'

**Table 20.740.140-3. Buffers Required to Protect Water Quality Functions**

<b><u>Wetland Rating</u></b>	<b><u>Low Intensity Use</u></b>	<b><u>Moderate Intensity Use</u></b>	<b><u>High Intensity Use</u></b>
<u>Category I or II</u>	<u>50 ft.</u>	<u>75 ft.</u>	<u>100 ft.</u>
<u>Category III</u>	<u>40 ft.</u>	<u>60 ft.</u>	<u>80 ft.</u>

<u>Category IV</u>	<u>25 ft.</u>	<u>40 ft.</u>	<u>50 ft.</u>
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**Table 20.740.140-4. Buffers Required to Protect Habitat Functions in Category I, II and III Wetlands**

<u>Habitat Score in the Rating Form</u>	<u>Low Intensity Use</u>	<u>Moderate Intensity Use</u>	<u>High Intensity Use</u>
<u>5 points or less</u>	<u>See Table 40.450.030-2</u>	<u>See Table 40.450.030-2</u>	<u>See Table 40.450.030-2</u>
<u>6 or 7 points</u>	<u>75 ft.</u>	<u>110 ft.</u>	<u>150 ft.</u>
<u>8 or 9 points</u>	<u>150 ft.</u>	<u>225 ft.</u>	<u>300 ft.</u>
<u>Wetlands of High Conservation Value with a Habitat Score of 7 Points or Less</u>	<u>125 ft.</u>	<u>190 ft.</u>	<u>250 ft.</u>

D. All buffers shall be measured from the wetland boundary as surveyed in the field.

E. Areas which are completely functionally separated from a wetland and do not protect the wetland from adverse impacts may be excluded from buffers otherwise required.

ii. *Wetland Buffer Width Averaging.* The shoreline administrator may allow modification of the standard wetland buffer width in accordance with an approved critical areas report on a case-by-case basis by averaging buffer widths. Buffer width averaging shall not be used in combination with buffer width reduction ~~or a minor exception~~. Averaging of buffer widths (see VMC 20.170.080(B)(2)) may only be allowed where a qualified professional wetland scientist demonstrates that:

A. Such averaging will not reduce wetland functions or functional performance; and

B. The wetland varies in sensitivity due to existing physical characteristics, or the character of the buffer varies in slope, soils, or vegetation, and the wetland would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places; and

C. The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer; and

D. The buffer width is reduced by no more than twenty-five percent of the standard width and at no point to less than twenty-five feet.

iii. *Buffer Width Reduction Based on Reducing the Intensity of Impacts from Land Uses.* Buffer widths required for high intensity land uses may be reduced to those required for moderate land use intensity under the following conditions:

A. For wetlands with moderate or high habitat function:

1. A relatively undisturbed vegetated corridor at least one hundred feet wide is protected between the wetland and any other priority habitats and areas associated with priority species (~~VMC~~ Section 20.740.110(A)(1)(b)); and
2. Measures required to minimize the impacts of different land uses on wetlands are applied, as approved by the shoreline administrator. Such measures include, but ~~are~~ may not be limited to, ~~the examples summarized below~~ the measures listed in Table 20.740.140-5.

**Table 20.740.140-5. ~~EXAMPLES OF MEASURES REQUIRED TO~~ MINIMIZE LAND USE IMPACTS**

Examples of Disturbance	Uses and Activities that Cause the Disturbance	Examples of Measures to Minimize Impacts
Lights	Parking lots, warehouses, manufacturing, residential	Direct lights away from wetland
Noise	Manufacturing, residential, commercial	Locate activity that generates noise away from wetland
Toxic runoff	Parking lots, roads, manufacturing, residential, application of agricultural or landscaping chemicals	Route only treated runoff to a wetland  Establish covenants limiting use of toxic chemicals within 150' of wetland  Apply integrated pest management
Change in water regime	Impervious surfaces, lawns, tilling	Infiltrate or treat, detain, and disperse new runoff into buffer
Pets	Residential	Plant dense vegetation around buffer,

Examples of Disturbance	Uses and Activities that Cause the Disturbance	Examples of Measures to Minimize Impacts
		such as rose or hawthorn
Human disturbance	Residential, commercial, industrial	Plant dense vegetation around buffer, such as rose or hawthorn
Dust	Tilled fields	Utilize best management practices to control dust

B. For wetlands with low habitat function measures to minimize the impacts of different land uses on wetlands (subsection (C)(1)(b)(iii)(A)(2) of this section) are applied.

C. Buffer width reduction shall not be used in combination with buffer width averaging (subsection (C)(1)(b)(ii) of this section) ~~or a minor exception (VMC 20.740.070).~~

iv. *Buffer Maintenance.* Except as otherwise specified or allowed in accordance with this chapter, wetland buffers shall be maintained according to the approved critical areas permit.

v. *Buffer Uses.* The following uses may be permitted within a wetland buffer in accordance with the review procedures of this chapter; provided, they are not prohibited by any other applicable law or regulation and they are conducted in a manner so as to minimize impacts to the buffer and the wetland:

A. Activities allowed under the same terms and conditions as in the associated wetlands pursuant to subsection (C)(1)(a) of this section, provided trails shall be located in the outer twenty-five percent ~~to fifty percent~~ of the buffer when feasible and consistent with the public access provisions of this program.

B. Enhancement and restoration activities aimed at protecting the soil, water, vegetation or wildlife.

C. Passive recreation facilities including trails and wildlife viewing structures; provided, that the trails and structures are constructed with a surface that does not interfere with wetland hydrology.

~~D. Stormwater management facilities, limited to detention facilities, constructed wetlands, stormwater dispersion outfalls and bioswales, may be constructed in accordance with an approved critical areas report within the buffers of Category III or IV wetlands; provided, that:~~

- ~~1. No other location is feasible; and~~
- ~~2. The location of such facilities will not degrade the functions of the wetland or buffer.~~

D. Stormwater management facilities. Stormwater management facilities are not allowed in buffers of Category I or II wetlands. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, Runoff Treatment, or Flow Control BMP if all of the following criteria are met:

1. The wetland is classified as a Category III or a Category IV wetland with a habitat score of 3-5 points; and
2. There will be “no net loss” of functions and values of the wetland, and
3. The wetland does not contain a breeding population of any native amphibian species; and
4. The hydrologic functions of the wetland can be improved as outlined in questions 3, 4, 5 of Chart 4 and questions 2, 3, 4 of Chart 5 in the “Guide for Selecting Mitigation Sites Using a Watershed Approach,”; or the wetland is part of a priority restoration plan that achieves restoration goals identified in a Shoreline Master Program or other local or regional watershed plan; and
5. The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; and
6. All regulations regarding stormwater and wetland management are followed, including but not limited to local and state wetland and stormwater codes, manuals, and permits; and
7. Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.

Stormwater LID BMPs required as part of new and redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site.

c. *Signs and Fencing of Wetlands.*

- i. The location of the outer perimeter of the wetland and buffer shall be marked in the field, and such marking shall be approved by the shoreline administrator prior to the commencement

of permitted activities. Such field markings shall be maintained throughout the duration of the permit.

ii. A permanent physical demarcation along the upland boundary of the wetland buffer shall be installed and thereafter maintained. Such demarcation may consist of fencing, hedging or other prominent physical marking that allows wildlife passage, blends with the wetland environment, and is approved by the shoreline administrator.

iii. Permanent fencing of the wetland buffer on the outer perimeter shall be erected and thereafter maintained when there is a substantial likelihood of the presence of domestic grazing animals within the property unless the shoreline administrator determines that the animals would not degrade the functions of the wetland or buffer.

iv. Permanent signs shall be posted at an interval of one per lot for single-family residential uses or at a maximum interval of ~~two~~one hundred feet, or as otherwise determined by the shoreline administrator, and must be perpetually maintained by the property owner. The sign shall be worded as follows or with alternative language approved by the shoreline administrator: "The area beyond this sign is a wetland or wetland buffer. Alteration or disturbance is prohibited by law. Please call the City of Vancouver for more information."

2. *Compensatory Mitigation.* Compensatory mitigation for impacts to wetlands shall be provided pursuant to VMC 20.740.060 and shall be consistent with the Department of Ecology Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance, Version 1, Ecology Publication No. 06-06-011a March 2006, or as revised by Ecology. Watersheds are defined in VMC 20.740.020(C)(2) and Chapter 20.150 VMC.

a. *Mitigation for Lost or Affected Functions.* Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement and shall provide similar wetland or buffer functions as those lost, except when:

i. The lost wetland or buffer provides minimal functions as determined by a site-specific function assessment, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limited within a watershed through a formal Washington State watershed assessment plan or protocol; or

ii. Out-of-kind replacement will best meet formally identified watershed goals, such as replacement of historically diminished wetland types.

b. *Mitigation Actions.*

i. *Creation.* The manipulation of the physical, chemical or biological characteristics present to develop a wetland on an upland or deepwater site where a biological wetland did not previously

exist. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, hydric soils, and support the growth of hydrophytic plant species. Creation results in a gain in wetland acres and functions.

ii. *Reestablishment.* The manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Activities could include removing fill material, plugging ditches or breaking drain tiles. Reestablishment results in a gain in wetland acres and functions.

iii. *Rehabilitation.* The manipulation of the physical, chemical or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland. Activities could involve breaching a dike to reconnect wetlands to a floodplain, restoring tidal influence to a wetland, or breaking drain tiles and plugging drainage ditches. Rehabilitation results in a gain in wetland functions but not in wetland acres.

iv. *Enhancement.* The manipulation of the physical, chemical or biological characteristics of a biological wetland to increase or improve specific functions or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or wildlife habitat. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations to result in open water ponds, or some combination of these. Enhancement results in a change in certain wetland functions and can lead to a decline in other wetland functions. It does not result in a gain in wetland acres.

c. *Type and Location of Mitigation.* Compensatory mitigation for ecological functions shall be in kind. Compensatory mitigation shall be on site or within the impacted wetland's: (i) contributing area; (ii) stream reach; (iii) sub-watershed; or (iv) watershed. (Sub-watersheds and watersheds are identified on the Clark County Digital Atlas.) The mitigation site shall be where the greatest level of wetland functions can be achieved. Mitigation actions may be conducted in a different watershed when:

- i. Based on a determination of the natural capacity of the potential mitigation sites to mitigate for the impacts, there are no reasonable on-site or in-watershed opportunities, or those opportunities do not have a high likelihood of success. Consideration shall include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, and potential to impact riparian fish and wildlife habitat including connectivity; or
- ii. Watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been established and strongly justify location of mitigation at another site; or

iii. Credits from a certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.

d. *Mitigation Ratios.*

i. *Replacement Ratios.*

A. The replacement ratios shall apply to wetland mitigation that: (1) is for the same hydrogeomorphic subclass (e.g., riverine flow-through, depressional outflow or flats), and Cowardin class (e.g., palustrine emergent, palustrine forested or estuarine wetlands); (2) is on site; (3) is in the same category; (4) is implemented prior to or concurrent with alteration; and (5) has a high probability of success.

B. The replacement ratios are based on replacing the affected wetland with a compensation wetland of the same category, and hydrogeomorphic (HGM) subclass and Cowardin class.

C. The replacement ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification.

D. *Mitigation Ratios.* Mitigation ratios are as follows (see subsection (C)(2)(b) of this section for definitions of mitigation actions):

**Table 20.740.140-8. MITIGATION REPLACEMENT RATIOS**

<b>Wetland Category and Type</b>	<b>Reestablishment or Creation</b>	<b>Rehabilitation</b>	<b>Reestablishment or Creation (R/C) plus Rehabilitation (RH)</b>	<b>Reestablishment or Creation (R/C) plus Enhancement (E)</b>	<b>Enhancement Only</b>
Category I Bog	Not Considered Possible	6:1 Rehabilitation of a Bog	R/C Not Considered Possible	R/C Not Considered Possible	Case-by-Case
Category I Natural Heritage Site	Not Considered Possible	6:1 Rehabilitation of a Natural Heritage Site	R/C Not Considered Possible	R/C Not Considered Possible	Case-by-Case
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	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1

Wetland Category and Type	Reestablishment or Creation	Rehabilitation	Reestablishment or Creation (R/C) plus Rehabilitation (RH)	Reestablishment or Creation (R/C) plus Enhancement (E)	Enhancement Only
Functions					
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 III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
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

ii. *Adjustment of Replacement Ratios.* The shoreline administrator may adjust the replacement ratios to compensate for deviations from the requirements under subsection (C)(2)(d)(i)(A) of this section, subject to the following:

A. In most cases, adjustments to the replacement ratios will increase the required amount of mitigation. The required mitigation may be decreased under exceptional circumstances, for example, if programmatic out-of-kind mitigation yields watershed-scale benefits that would not be realized from in-kind mitigation, or if out-of-kind mitigation would protect irreplaceable wetlands.

e. *Mitigation Timing.* The mitigation shall be implemented prior to or concurrent with alterations. If mitigation is implemented after alteration is allowed, the Shoreline Administrator ~~planning official~~ may require additional mitigation to compensate for temporal losses of wetland functions.

f. *Buffers for Mitigation Wetlands.* Refer to Wetland Buffer Tables 20.740.140-3 through 20.740.140-6.

g. *Wetland Mitigation Banks.*

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

A. The bank is certified under Chapter 173-700 WAC;

B. The shoreline administrator determines that the wetland mitigation bank provides appropriate mitigation for the authorized impacts; and

C. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

ii. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.

iii. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions. (Ord. M-4289 § 4, 2019; Ord. M-4191 § 2, 2017; Ord. M-4176 § 3, 2016; Ord. M-3844 § 2, 2007; Ord. M-3692 § 2, 2005)

~~The Vancouver Municipal Code is current through Ordinance M-4289, passed December 16, 2019.~~

~~Disclaimer: The city clerk's office has the official version of the Vancouver Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.~~

~~City Website: [www.cityofvancouver.us](http://www.cityofvancouver.us)~~

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**Section 7.** The City of Vancouver Shoreline Master Program, Chapter 6 Specific Shoreline Use Regulations, Section 6.2 Shoreline Use, Modification, and Standards Table 6-1; Section 6.3.3.1 General Requirements; 6.3.3.4 Joint Use and Community Moorage Facilities; Section 6.3.4 Commercial Uses; Section 6.3.5 Forest Practices; Section 6.3.7 Institutional Uses; Section 6.3.9 Parking; Section 6.3.12 Signs; Section 6.4.2.2 Dredging; Section 6.4.2.3 Dredge Material Disposal; Section 6.4.5 Shoreline Stabilization – General; Section 6.4.9.1 Revetments – General, adopted by Ordinance M-3995 and as amended, are hereby amended to read as follows:

**Table 6-1. Shoreline Use, Modification and Development Standards**

Table 6-1 is to be used and understood together with the related policies and regulations of this Program.

“Uses” refers to uses, structures, and/or developments as applicable.

Setbacks are landward from the OHWM in the NT, UC, MI, HI, RC-RD, & RC-RL shoreline designations and waterward of the OHWM in the AQ Shoreline Designation.

<b>Abbreviations</b> P = Permitted; C = Conditional Use; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.	<b>AQ (Both)</b>	<b>NT (Both)</b>	<b>UC (Urban)</b>	<b>MI (Urban)</b>	<b>HI (Urban)</b>	<b>RC-RD (Rural)</b>	<b>RC-RL (Rural)</b>
<b>Shoreline Designation</b>	<b>Aquatic</b>	<b>Natural</b>	<b>Urban Conservancy</b>	<b>Medium Intensity</b>	<b>High Intensity</b>	<b>RC Residential</b>	<b>RC Resource Lands</b>
<b>Shoreline Uses</b>							
<b>Agriculture</b>							
Agriculture	<b>X</b>	<b>X</b>	<b>C</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
• <i>Setback</i>	N/A	N/A	100'	100'	100'	100'	100'
• <i>Height</i>	N/A	N/A	35'	35'	35'	35'	35'
<b>Aquaculture</b>							
Aquaculture, General	<b>P</b>	<b>X</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>
• <i>Setback</i>	0'	N/A	50'	50'	50'	50'	50'
<b>Boating Uses</b>							
Motorized Boat Launches	<b>P</b>	<b>X</b>	<b>C</b>	<b>C</b>	<b>P</b>	<b>P</b>	<b>P</b>
• <i>Setback</i>	0'	N/A	0'	0'	0'	0'	0'
Non-motorized Boat Launches	<b>P</b>	<b>C</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
• <i>Setback</i>	0'	0'	0'	0'	0'	0'	0'
Marinas	<b>P</b>	<b>X</b>	<b>X</b>	<b>C</b>	<b>P</b>	<b>C</b>	<b>C</b>
• <i>Setback</i>	0'	N/A	N/A	25'	25'	25'	25'
• <i>Height</i>							
- 0'-100' from OHWM	20'	N/A	N/A	25'	35'	25'	35'
- >100' from OHWM	20'	N/A	N/A	35'	45'	35'	45'
Docks, Piers, Mooring Buoys	<b>P<sup>1</sup></b>	<b>X</b>	<b>P<sup>1</sup></b>	<b>P<sup>1</sup></b>	<b>P<sup>1</sup></b>	<b>P<sup>1</sup></b>	<b>P<sup>1</sup></b>
• <i>Setback</i>	0'	NA	0'	0'	0'	0'	0'
<b>Commercial Uses</b>							
Water-dependent	<b>C</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>P</b>	<b>C</b>	<b>C</b>
• <i>Setback</i>	0'	N/A	N/A	0'	0'	0'	0'
• <i>Height</i>							
- 0'-100' from OHWM	35' <sup>3</sup>	N/A	N/A	35'	35' <sup>3,2</sup>	35'	35'
- >100' from OHWM	35' <sup>3</sup>	N/A	N/A	45'	60' <sup>3,2</sup>	45'	45'
Water-related, Water-enjoyment	<b>X/C<sup>3</sup></b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>P</b>	<b>C</b>	<b>C</b>
• <i>Setback</i>	N/A	N/A	N/A	25'	25' <sup>3</sup>	25'	25'
• <i>Height</i>							
- 0'-100' from OHWM	35' <sup>3</sup>	N/A	N/A	25'	35' <sup>3,2</sup>	35'	35'
- >100' from OHWM	35' <sup>3</sup>	N/A	N/A	35'	45' <sup>3,2</sup>	45'	45'
Non-water-oriented	<b>X</b>	<b>X</b>	<b>X</b>	<b>C<sup>4</sup></b>	<b>C<sup>4</sup></b>	<b>X</b>	<b>X</b>
• <i>Setback</i>	N/A	N/A	N/A	100'	100' <sup>3</sup>	N/A	N/A
• <i>Height</i>	N/A	N/A	N/A	<u>2535'</u>	<u>2535'</u> <sup>3,2</sup>	N/A	N/A
<b>Forestry</b>							
Log Storage	<b>C</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>X</b>	<b>P</b>
• <i>Setback</i>	0'	N/A	N/A	N/A	50'	N/A	50'

<b>Abbreviations</b> P = Permitted; C = Conditional Use; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.	<b>AQ (Both)</b>	<b>NT (Both)</b>	<b>UC (Urban)</b>	<b>MI (Urban)</b>	<b>HI (Urban)</b>	<b>RC-RD (Rural)</b>	<b>RC-RL (Rural)</b>
<b>Shoreline Designation</b>	<b>Aquatic</b>	<b>Natural</b>	<b>Urban Conservancy</b>	<b>Medium Intensity</b>	<b>High Intensity</b>	<b>RC Residential</b>	<b>RC Resource Lands</b>
Timber Harvest	<b>X</b>	<b>X</b>	<b>C</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
• <i>Setback</i>	N/A	N/A	100'	100'	50'	100'	50'
<b>Industrial Uses</b>							
Water-dependent	<b>P</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>X</b>	<b>X</b>
• <i>Setback</i>	0'	N/A	N/A	N/A	0'	N/A	N/A
• <i>Height</i>							
- 0'-100' from OHWM	UNL	N/A	N/A	N/A	UNL	N/A	N/A
- >100' from OHWM	UNL	N/A	N/A	N/A	UNL	N/A	N/A
Water-related	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>X</b>	<b>X</b>
• <i>Setback</i>	N/A	N/A	N/A	N/A	50'	N/A	N/A
• <i>Height</i>							
- 0'-100' from OHWM	N/A	N/A	N/A	N/A	UNL	N/A	N/A
- >100' from OHWM	N/A	N/A	N/A	N/A	UNL	N/A	N/A
Non-water-oriented	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>X</b>	<b>X</b>
• <i>Setback</i>	N/A	N/A	N/A	N/A	100'	N/A	N/A
• <i>Height</i>	N/A	N/A	N/A	N/A	35'	N/A	N/A
<b>Institutional Uses</b>							
Water-dependent	<b>C</b>	<b>X</b>	<b>C</b>	<b>P</b>	<b>P</b>	<b>C</b>	<b>C</b>
• <i>Setback</i>	0'	N/A	0'	0'	0'	0'	0'
• <i>Height</i>							
- 0'-100' from OHWM	35'	N/A	25'	35'	35'	35'	35'
- >100' from OHWM	35'	N/A	35'	45'	35'	45'	45'
Water-related	<b>X</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>P</b>	<b>C</b>	<b>X</b>
• <i>Setback</i>	N/A	N/A	N/A	25'	25'	50'	NA
• <i>Height</i>							
- 0'-100' from OHWM	N/A	N/A	N/A	35'	45'	35'	N/A
- >100' from OHWM	N/A	N/A	N/A	45'	60'	35'	N/A
Non-water-oriented	<b>X</b>	<b>X</b>	<b>X</b>	<b>PC<sup>4</sup></b>	<b>PC<sup>4</sup></b>	<b>X</b>	<b>X</b>
• <i>Setback</i>	N/A	N/A	N/A	100'	100'	N/A	N/A
• <i>Height</i>	N/A	N/A	N/A	35'	35'	N/A	N/A
<b>Mining</b>							
Gravel Mining	<b>C<sup>5</sup></b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>C<sup>5</sup></b>	<b>C<sup>5</sup></b>	<b>C<sup>5</sup></b>
• <i>Setback</i>	0'	N/A	N/A	N/A	200'	200'	200'
Hard Rock Mining	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>C<sup>5</sup></b>	<b>C<sup>5</sup></b>	<b>C<sup>5</sup></b>
• <i>Setback</i>	N/A	N/A	N/A	N/A	100'	100'	50'
<b>Parking</b>							
Primary Use	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
• <i>Setback</i>	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Accessory Use	<b>X</b>	<b>X</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
• <i>Setback</i>	N/A	N/A	100'	100'	50'	100'	100'

<b>Abbreviations</b> P = Permitted; C = Conditional Use; X = Prohibited; N/A = Not Applicable; UNL = Unlimited.	<b>AQ (Both)</b>	<b>NT (Both)</b>	<b>UC (Urban)</b>	<b>MI (Urban)</b>	<b>HI (Urban)</b>	<b>RC-RD (Rural)</b>	<b>RC-RL (Rural)</b>	
<b>Shoreline Designation</b>	<b>Aquatic</b>	<b>Natural</b>	<b>Urban Conservancy</b>	<b>Medium Intensity</b>	<b>High Intensity</b>	<b>RC Residential</b>	<b>RC Resource Lands</b>	
• <i>Height</i>	N/A	N/A	35'	35'	35'	35'	35'	
<b>Recreational Uses</b>								
Water-dependent	<b>P</b>	<b>P<sup>6</sup></b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	
• <i>Setback</i>	0'	0'	0'	0'	0'	0'	0'	
• <i>Height</i>	15'	15'	15'	35'	35'	35'	35'	
Water-related/enjoyment (trails generally parallel to the shoreline, accessory bldgs)	<b>C<sup>6</sup></b>	<b>C<sup>6</sup></b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	
• <i>Setback</i>	0'	50' <sup>7</sup>	50' <sup>7</sup>	50' <sup>7</sup>	20'	20'	20'	
• <i>Height</i>	15'	15'	15'	35'	35'	35'	35'	
Public access connections generally perpendicular to the shoreline to water-related/enjoyment features (viewpoints, fishing piers)								
• <i>Setback</i>	0'	0'	0'	0'	0'	0'	0'	
Non-water-oriented (golf courses, sports fields)	<b>X</b>	<b>X</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>X</b>	
• <i>Setback</i>	N/A	N/A	100'	100'	100'	200'	N/A	
• <i>Height</i>	N/A	N/A	25'	25'	25'	15'	N/A	
<b>Residential Uses</b>								
Single-family <sup>8</sup>	<b>X</b>	<b>X</b>	<b>P</b>	<b>P</b>	<b>X</b>	<b>P</b>	<b>P</b>	
• <i>Setback</i>	N/A	N/A	100'	50'	N/A	100'	100'	
• <i>Height</i>	N/A	N/A	35'	35'	N/A	35'	35'	
• <i>Density</i>	N/A	N/A	In accordance with the underlying zoning					
Floating homes (new)	<b>X</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	
• <i>Height</i>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	
Floating homes (existing) <sup>9</sup>	<b>P</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	
• <i>Height</i>	Existing	N/A	N/A	N/A	N/A	N/A	N/A	
Multifamily	<b>X</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>P</b>	<b>X</b>	<b>X</b>	
• <i>Setback</i>	N/A	N/A	N/A	35'	35'	N/A	N/A	
• <i>Height</i>	N/A	N/A	N/A	35'	35'	N/A	N/A	
• <i>Density</i>	N/A	N/A	N/A	In accordance with the underlying zoning		N/A	N/A	
<b>Signs<sup>167</sup></b>								
Sign heights are regulated in accordance with VMC 20.960 or VMC 20.450 as applicable. Free-standing informational signs in the Aquatic SD are limited to 15' <sup>10</sup> .								
Agricultural	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>P</b>	<b>P</b>	
Fascia or Wall Signs	<b>X</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	
Free Standing Informational	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	
High School Electronic Message	<b>X</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	
Monument	<b>X</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	

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<b>Shoreline Designation</b>	<b>Aquatic</b>	<b>Natural</b>	<b>Urban Conservancy</b>	<b>Medium Intensity</b>	<b>High Intensity</b>	<b>RC Residential</b>	<b>RC Resource Lands</b>
Navigation	P	P	P	P	P	P	P
<b>Transportation Uses</b>							
Highways, Arterials, Railroads (parallel to OHWM)	C <sup>11</sup>	X	P	P <sup>11</sup>	P <sup>11</sup>	P	P
• <i>Right-of-Way Setback</i>	0'	N/A	200'	100' <sup>11</sup>	100' <sup>11</sup>	200'	200'
Secondary/Public Access Roads (parallel to OHWM)	X	X	P	P	P	P	P
• <i>Right-of-Way Setback</i>	NA	N/A	100'	50'	50'	100'	100'
Secondary/Public Access Roads (perpendicular to OHWM)	X	X	P	P	P	P	P
• <i>Setback</i>	N/A	N/A	Limited to the setback for the use the road is serving <sup>12</sup>				
Bridges (perpendicular to shoreline)	C	C	C	P	P	C	C
• <i>Setback</i>	0'	0'	0'	0'	0'	0'	0'
<b>Utility Uses</b>							
Above-ground Utilities (parallel to shoreline)	C	C	P	P	P	P	P
• <i>Right-of-Way Setback</i>	0'	200'	100'	50'	50'	100'	100'
• <i>Structure Height</i>	15'	15'	35'	35'	UNL	15'	15'
• <i>Distribution Pole Height</i>	0'	45'	45'	45'	UNL	45'	45'
Electrical Transmission Lines	C	C	C	C	C	C	C
• <i>Tower Height</i>	UNL	UNL	UNL	UNL	UNL	UNL	UNL
Underground Utilities (parallel to shoreline)	C	C	P	P	P	P	P
• <i>Right-of-Way Setback</i>	0'	200'	100'	50'	50'	50'	50'
Underground Utilities (perpendicular to shoreline)	C	C	C	C	C	C	C
• <i>Right-of-Way Setback</i>	0'	0'	0'	0'	0'	0'	0'
<b>Unclassified Uses</b>							
Unclassified Uses	C	C	C	C	C	C	C
• <i>Setback</i>	0'	200'	100'	100'	100'	100'	100'
• <i>Height</i>	15'	15'	35'	35'	35'	35'	35'
<b>Shoreline Modification</b>							
<b>Dredging and Dredge Material Disposal</b>							
Non-maintenance Dredging	C	N/A	N/A	N/A	N/A	N/A	N/A
Maintenance Dredging	P	N/A	N/A	N/A	N/A	N/A	N/A
Dredge Material Disposal	C	X	X	C <sup>13</sup>	C <sup>13</sup>	C	C
Dredging & Disposal as part of Ecological Restoration/ Enhancement	P	C	P	P	P	P	P
<b>Fill</b>							
Speculative	X	X	X	X	X	X	X

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<b>Shoreline Designation</b>	<b>Aquatic</b>	<b>Natural</b>	<b>Urban Conservancy</b>	<b>Medium Intensity</b>	<b>High Intensity</b>	<b>RC Residential</b>	<b>RC Resource Lands</b>
Other	<b>C</b> <sup>14</sup>	<b>P</b> <sup>15</sup>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
<b>Flood Control Works and In-stream Structures</b>							
Dams, Dikes, & Levees	<b>C</b>	<b>X</b>	<b>C</b>	<b>C</b>	<b>P</b>	<b>C</b>	<b>C</b>
Instream structures	<b>C</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>Shoreline Restoration</b>							
Ecological Restoration / Enhancement / Mitigation	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
<b>Shoreline Stabilization</b>							
Bioengineered/Non-Structural	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>	<b>P</b>
Structural	<b>C</b>	<b>X</b>	<b>C</b>	<b>C</b>	<b>PC</b>	<b>C</b>	<b>C</b>
Breakwaters, Jetties, Rock Weirs, and Groins	<b>C</b>	<b>X</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>

<sup>1</sup> ~~Docks associated with a commercial or industrial water-dependent use permitted.~~ Private residential docks permitted as community or joint-use only. See Section 6.3.3.4.

<sup>2</sup> See Section 6.3.4(7).

<sup>3</sup> See Section 6.3.4(8). Allowed conditionally only on dock or pier structures located on the Columbia River from the Interstate 5 Bridge, downstream to the BNSF railroad bridge. See related policy Section 4.3.1(4).

<sup>4</sup> ~~As part of mixed-use development only.~~ See Section 6.3.4(4), 6.3.7(2) and (4).

<sup>5</sup> In Surface Mining Overlay areas only

<sup>6</sup> Passive only

<sup>7</sup> See Section 6.3.10(12, 13, and 14). Water-related/enjoyment features such as viewpoints, gazebos, or fishing piers may have a 0' setback when connected to a public access trail.

<sup>8</sup> See Section 6.3.11.1(914) for information about existing residential development on land.

<sup>9</sup> See Section 6.3.11.2(4) for information about existing floating homes.

<sup>10</sup> Above Ordinary High Water Mark (OHWM)

<sup>11</sup> See 6.3.13(6).

<sup>12</sup> New roads may connect to existing roads within shoreline jurisdiction as long as the connection is landward of the existing road and the ordinary high water mark.

<sup>13</sup> Permitted outside of channel migration zones.

<sup>14</sup> See Section 5.6.2(11).

<sup>15</sup> Permitted for restoration only; otherwise prohibited.

<sup>16</sup> Sign requirements adopted with either a formally-approved master plan or through a Special Sign District under VMC 20.960.110 shall prevail over this section.

### 6.3.3.1 General Requirements

1. All boating uses, development and facilities shall protect the rights of navigation.
2. Boating uses, developments, and facilities shall locate on stable shorelines in areas where:

- a. There is adequate water mixing and flushing;
  - b. Such facilities will not adversely affect flood channel capacity or otherwise create a flood hazard;
  - c. Water depths are adequate to minimize spoil disposal, filling, beach enhancement, and other channel maintenance activities; and
  - d. Water depths are adequate to prevent the structure from grounding out at the lowest low water.
3. Boating uses, developments and facilities shall not be located:
- a. Along braided or meandering river channels where the channel is subject to change in alignment;
  - b. On point bars or other accretion beaches; or
  - c. Where new or maintenance dredging will be required;
  - d. In areas with important bank margin habitat for all life stages of aquatic species; or
  - e. Where wave action caused by boating use would increase bank erosion rates.
4. Marinas shall be designed to:
- a. Provide thorough flushing of all enclosed water areas;
  - b. Allow the free movement of aquatic life in shallow water areas; and
  - c. Avoid and minimize any interference with geo-hydraulic processes and disruption of existing shore forms.
  - d. All moorage facilities shall be constructed and maintained in a safe and sound condition. Those that are abandoned or unsafe shall be removed or repaired promptly by the owner or lessee.
5. Boating facilities shall be sited and designed to ensure no net loss of shoreline ecological functions, and shall meet DNR requirements and other state guidance if located in or over state-owned aquatic lands. On the Columbia River, boating facilities shall be sited waterward of -15 feet CRD to protect shallow water habitat ~~unless shallow water habitat will be created as mitigation~~ unless adverse impacts to shallow water habitat are addressed through mitigation to ensure no net loss. Mitigation can include, enhancement, creation and/or payment of mitigation bank credits, and comply with Section 6.4.4.
6. 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.

7. Boating uses and facilities shall be located far enough from public swimming beaches, fishing, aquaculture harvest areas, and waterways used for commercial navigation to alleviate any adverse impacts, safety concerns and potential use conflicts.
8. Accessory uses at boating facilities shall be:
  - a. Limited to water-oriented uses, including uses that provide physical or visual shoreline access for substantial numbers of the general public; and
  - b. Located as far landward as possible while still serving their intended purposes.
9. Parking and storage areas shall be landscaped or screened to provide visual and noise buffering between adjacent dissimilar uses or scenic areas.
10. All marinas and public launch facilities shall provide restrooms/hand-sanitizing facilities for boaters' use that are designed, constructed and maintained to be clean, well lighted, safe and convenient for public use. One restroom and hand sanitizing facility shall be provided for every seventy-five (75) marina moorage slips or twenty (20) boat launch parking spaces.
11. Installation of boat waste discharge and disposal facilities such as pump-outs and portable dump stations shall be required at all marinas and public moorage facilities, and shall be provided at public boat launches to the extent possible. Such facilities shall include oil containment barriers when required by the US Coast Guard under provisions of the Clean Water Act. The locations of such facilities shall be considered on an individual basis in consultation with the Washington Departments of Health, Ecology, Natural Resources, Parks, and Fish and Wildlife, as necessary.
12. All utilities shall be placed at or below the dock surface, or below ground, as appropriate.
13. All signage shall adhere to the standards for signs in this chapter, VMC 20.960, and VMC 20.450, except that a marina or boat launch may have one advertising sign oriented towards the water that does not exceed twenty four (24) square feet in area and fifteen (15) feet in height above the OHWM.
14. Where appropriate, marinas and boat launch facilities shall install public safety signs, to include the locations of fueling facilities, pump-out facilities, and locations for proper waste disposal.
15. Boating facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals. Materials used for submerged portions, decking and other components that may come in contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, copper chromium, arsenic, pentachlorophenol or other similarly toxic materials is prohibited.

16. Boats shall be restricted from extended mooring on waters of the state except as allowed by state regulations and provided that lease or permission is obtained from the state and impacts to navigation and public access are mitigated.
17. No more than one private community or joint-use boating facility (boat launch, float, dock, pier, dock/pier combination, or mooring buoy) is allowed on a parcel or lot when a public facility is unavailable within ½-mile upstream or downstream of any property line and all applicable requirements are met.

#### **6.3.3.4 Joint Use and Community Moorage Facilities**

1. Community and joint use moorage facilities are defined (Chapter 8) and regulated as marinas (Section 6.3.3.3; defined in Chapter 8) if:
  - a. They provide commercial goods or services;
  - b. They have ten (10) or more slips;
  - c. Moorage is proposed to be leased to upland property owners; or
  - d. The proposal includes a boat launching facility other than a ramp.
2. Live-aboards are not allowed at joint-use or community moorages.
3. Covered moorage facilities associated with any residential development shall be prohibited.
4. Existing, legally-established, private recreational docks, piers, and floats for individual single-family developments are considered non-conforming uses and structures. If such dock or float is abandoned, becomes hazardous, or is removed for any reason, it may be replaced with only one joint-use or community facility that complies with the policies and regulations of this Program. All required permits and approvals shall be obtained prior to commencing construction.
5. A new private dock or pier serving an individual lot is prohibited.
6. New joint-use docks and piers serving two or more contiguous residential lots each having direct water frontage are allowed if no public marina or public boat launch is located within ½-mile upstream or downstream of any property line and all applicable requirements of this Program are met. Each residential lot proposed to have access to the joint-use dock must show development of the lot is capable of meeting the minimum development standards for zoning and the applicable provisions of Vancouver Shoreline Master Program.
7. New residential land divisions with shoreline frontage shall provide for community docks if there is an appropriate location for future construction of a dock. Proposed docks and piers shall include no more than one mooring space per dwelling unit. Where a new

moorage facility is proposed within a residential waterfront development, only one community moorage facility may be allowed, but only after demonstrating that such use is appropriate for the waterbody and that no public moorage facility is available to residents within ½-mile of the perimeter of the development. All conditions of approval related to required access easements and dedications shall be identified on the face of the plat. In addition, the community dock easement shall be recorded with the County Auditor.

8. Applicants for community or joint-use residential docks and piers shall demonstrate and document that adequate maintenance of the structure, activities, and associated landward area will be provided by identified responsible parties. The applicant shall file a legally enforceable joint use agreement or other legal instrument prior to the issuance of any building permits. The documents shall at minimum address the following:
  - a. Apportionment of construction and maintenance expenses;
  - b. Easements and liability agreements; and
  - c. Use restrictions.
9. Only a single, community moorage facility shall be permitted in association with hotels, motels, and multi-family residences. No more than one (1) mooring slip per unit shall be allowed.
10. The dimensions of a joint use or community moorage facility dock or pier shall be no greater than necessary, and shall meet the development standards listed below.
  - a. Fixed-piers shall not be permitted for residential use on rivers. Floating docks shall be required in rivers and streams unless it can be demonstrated that fixed docks will result in substantially less impact on geo-hydraulic processes and flood hazards can be minimized or mitigated. A fixed pier, landward of a floating dock, which connects to the shore at one end and to the floating dock by a gangway at the other is allowed.
  - b. Piers/anchors and/or ramps shall extend waterward, perpendicular from the ordinary high water mark (OHWM), to a point where the water depth is sufficient to prevent damage to shallow-water habitat (-15 feet CRD on the Columbia River).
  - c. The moorage facility may extend into the waterbody the minimum distance necessary to allow for moorage of the boats anticipated but in no instance more than 300' beyond the OHWM.
  - d. The bottom of either the pier or landward edge of the ramp shall be elevated at least 2 feet above the plane of OHWM.

- e. Piers and ramps shall be no more than 8 feet in width. Finger piers shall be no more than 8 feet wide and 45 feet long. Piers, ramps and docks shall be constructed to allow a minimum of 60% light penetration over 60% of each structure.
- f. Skirting shall not be placed on piers, ramps, floating docks, or floats. Protective bumper material will be allowed along the outside edge of the float or floating dock as long as the material does not extend below the bottom edge of the float frame or impede light penetration.
- g. Shoreline concrete anchors must be placed at least 10 feet landward from the OHWM, and shall be sized no larger than 4-feet wide by 4-feet long, unless otherwise approved by National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries), the US Army Corps of Engineers (Corps), and Washington Department of Fish and Wildlife (WDFW).
- h. Overwater structures shall be located in water sufficiently deep to prevent the structure from grounding out at the lowest low water.
- i. Docks used for motor boats should be located where the water will be deeper than seven (7) feet at the lowest low water to avoid prop scour.
- j. All docks and floats shall include stops that serve to keep the floats off the lake bottom or river bed at low water levels. If a bulkhead-like base is proposed for a fixed pier or dock where there is net positive littoral drift, the base shall be built landward of the OHWM or protective berms. When plastics or other non-biodegradable materials are used in float, pier, or dock construction, precautions shall be taken to ensure their containment.
- k. Pilings must be structurally sound and cured prior to placement in the water. Pilings employed for docks, piers, or any other structure shall have a minimum vertical clearance of one foot above extreme high water. Pile spacing shall be the maximum feasible to minimize shading and avoid a “wall” effect that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment.

#### **6.3.4 Commercial Uses**

1. Water-oriented commercial uses are preferred over nonwater-oriented commercial uses.
2. An applicant for a new commercial use or development shall demonstrate that the use or development will not cause a net loss of ecological function or adversely impact other shoreline resources or uses.
3. Loading, service areas, and other accessory uses shall be located landward of a commercial structure or underground whenever possible, but shall in no case be

waterward of the structure. Loading and service areas shall be screened from view with native plants.

4. ~~Where allowed, n~~Nonwater-oriented commercial uses may be ~~permitted~~allowed ~~only as part of a mixed-use development that:~~
  - a. As part of a mixed-use development that includes water-oriented uses and has a formally-approved master plan that complies with this Program, including having demonstrated consistency with the policies of Section 3.2 if its proposed location is on a shoreline of statewide significance, where there is a substantial public benefit with respect to the goals and policies of this Program such as providing public access and/or ecological restoration; or  
  
~~Has a formally-approved master plan that complies with this Program, including having demonstrated consistency with the policies of Section 3.2 if its proposed location is on a shoreline of statewide significance;~~
  - b. Where navigability is severely limited at the proposed site and the commercial use provides a significant public benefit with respect to the Act's objectives such as providing public access and ecological restoration; or ~~Includes water-oriented uses; and~~
  - c. If the site is physically separated from the shoreline by another property or public right-of-way. Provides a significant public benefit such as public access and/or ecological restoration.
5. Nonwater-oriented commercial uses meeting the conditions of Section 6.3.4(4) and located in a High Intensity shoreline designation on the Columbia River between the eastern boundary of Wintler Park and the railroad bridge (Columbia River Shoreline Enhancement Plan District) may occupy:
  - a. Up to 85% of the total frontage length of all parcels in the master-planned development (regardless of ownership); or
  - b. Up to 85% of the project area within shoreline jurisdiction of all parcels in the development (regardless of ownership).
6. Nonwater-oriented commercial uses meeting the conditions of Section 6.3.4(4) and not located in a High Intensity shoreline designation on the Columbia River between the eastern boundary of Wintler Park and the railroad bridge (Columbia River Shoreline Enhancement Plan District) may occupy:
  - a. Up to 25% of the total frontage length of all parcels in the master-planned development (regardless of ownership); or

- b. Up to 25% of the total project area within shoreline jurisdiction of all parcels in the master-planned development (regardless of ownership).
7. When a new, mixed-use commercial development meets all applicable provisions of Section 6.3.4 (Commercial Uses), Section 5.8.1 (Visual Access), and this Program and:
  - a. Is located in a High Intensity shoreline designation on the Columbia River between the eastern boundary of Wintler Park and the railroad bridge (Columbia River Shoreline Enhancement Plan District);
  - b. Has a formally-approved master plan that complies with this Program including having demonstrated consistency with the policies of Section 3.2 (Shorelines of Statewide Significance);
  - c. Includes water-oriented uses;
  - d. Provides public access to the shoreline;
  - e. Restores degraded shorelines; and
  - f. Building heights for commercial development in the High Intensity shoreline designation in Table 6-1 may be increased in accordance with the underlying zoning.
8. Water oriented commercial use is allowed on a dock or pier as a conditional use only under the follow circumstances:
  - a. The commercial dock or pier is located between the I-5 Bridge and the BNSF railroad bridge;
  - b. The commercial use of the dock or pier is included in a formally approved master plan that complies with this Program;
  - c. All uses shall be water-dependent, water-related or water-enjoyment;
  - d. There are design elements that link the site back to historic uses.
  - e. A dock or pier associated with an existing commercial building located on such dock or pier may be maintained, rebuilt, replaced and/or relocated as follows:
    - i. A rebuilt or replaced dock or pier shall not occupy a larger footprint then the dock or pier as it existed on March 15, 2018.
    - ii. A commercial building may be rebuilt, replaced or relocated on top of the dock or pier only when the applicant of a shoreline conditional use permit demonstrates the following:

1. The development shall include design elements that are reflective of the local maritime history and structures on the site, and enhance the public's experience along the city's waterfront.
2. The height of the structure shall not exceed 65 feet measured from ordinary high water mark.
3. The building shall not occupy a footprint that is larger than the footprint of the building existing on March 15, 2018. The building footprint may shift from its current location on the dock or pier as needed to comply with public access requirements of this program and/or existing or future state highway right-of-ways.
4. The building located on the dock or pier shall be positioned to maintain public access to the dock or pier and to the shoreline consistent with this Program and the policies set forth in the Vancouver City Center Vision (VCCV) Subarea Plan.

### **6.3.5 Forest Practices**

1. Commercial harvest of timber undertaken on shorelines shall comply with the applicable policies and provisions of the Forests and Fish Report (U.S. Fish and Wildlife Service, et al., 1999) and the Forest Practices Act, RCW 76.09 as amended, and any regulations adopted pursuant thereto (WAC 222), as administered by the Department of Natural Resources.
2. When timberland is to be converted to another use, such conversion shall be clearly indicated on the Forest Practices application. Failure to indicate the intent to convert the timberland to another use on the application will result in subsequent conversion proposals being reviewed pursuant to Conversion Option Harvest Plan. Failure to declare intent to convert on the application shall provide adequate grounds for denial of subsequent conversion proposals for a period of six years from date of Forest Practices application approval per RCW 76.09.060(3)(d), (e) and (f), RCW 76.09.460, and RCW 76.09.470.
3. With respect to timber situated within two hundred (200) feet landward of the OHWM within shorelines of the statewide significance, Ecology or the City shall allow only selective commercial timber cutting, so that no more than thirty percent (30%) of the merchantable trees may be harvested in any ten- (10-) year period of time; provided that other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions, or silviculture practices necessary for regeneration render selective logging ecologically detrimental; and provided further, that clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted. Exceptions to this standard shall be allowed by conditional use only.

4. For the purposes of this Program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered forest practices and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this Program, including vegetation conservation.
5. A forest practice that only involves timber harvest is not a development under the Act and is not subject to the Shoreline Master Program. A forest practice that includes activities other than timber harvest are a development under the Act and may require a Substantial Development Permit, as required by WAC 222-50-020

### **6.3.7 Institutional Uses**

1. Water-oriented institutional uses and developments are preferred.
2. Where allowed, nonwater-oriented institutional uses may be permitted as part of a mixed-use development provided that a significant public benefit such as public access and/or ecological restoration are provided.
3. Loading, service areas, and other accessory uses shall be located landward of a primary structure or underground whenever possible, but shall in no case be waterward of the structure. Loading and service areas shall be screened from view with native plants.
4. ~~Where a~~ Non-water-oriented institutional uses are allowed as a ~~conditional use only if~~; the following ~~must be~~ is demonstrated:
  - a. A water dependent use is not reasonably expected to locate on the proposed site due to topography, surrounding land uses, physical features of the site, or due to the site's separation from the water;
  - b. The proposed use does not displace a current water-oriented use and will not interfere with adjacent water-oriented uses; and
  - c. The proposed use will be of substantial public benefit by increasing the public use, enjoyment, ecological function, and/or access to the shoreline.
5. Over-water structures housing public safety equipment for public agency use to protect people, property, and the environment may be allowed as a conditional use and may be increased in number or expanded. See Section 6.3.3.3(10) and (11).

### **6.3.9 Parking**

1. Parking as a primary use is prohibited in all shoreline areas.
2. Temporary storage of vehicles for import or export in port areas shall not be considered parking.
3. Temporary storage of vehicles for import or export in port areas is prohibited over water.

4. Where parking is allowed as accessory to a permitted use, whenever feasible it should ~~shall~~ be located landward of the primary structure as far as possible or within the primary structure.

### 6.3.12 Signs

1. Free-standing signs shall be for only informational purposes such as directional, navigational, educational/interpretive, and safety purposes, unless otherwise allowed under this Program and as specified in Table 6-1.
2. Signs for commercial purposes shall be limited to fascia or wall signs and as regulated by VMC Chapter 20.960, unless otherwise provided for in this chapter for specific uses.
3. All signs shall be located and designed to minimize interference with vistas, viewpoints, and visual access corridors to the shoreline.
4. Overwater signs or signs on floats or pilings shall be prohibited, except when related to navigation or a water-dependent use.
5. Illuminated signs shall be limited to informational, directional, navigational or safety purposes and shielded so as to eliminate glare when viewed from surrounding properties or watercourses.
6. Sign requirements adopted with either a formally-approved master plan or through a Special Sign District under VMC 20.960.110 shall prevail over the provisions of this section.

### 6.4.2.2 Dredging

1. Dredging shall be avoided where possible. Dredging shall be permitted only where it is demonstrated that the proposed water-dependent or water-related uses will not result in significant 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 shall be prohibited between the OHWM and minus fifteen (-15) feet CRD, unless adverse impacts to shallow water habitat is addressed through mitigation to no net loss. Mitigation can include, enhancement, creation and/or payment of mitigation bank credits. ~~and comply with Section 6.44. shallow water habitat will be created to mitigate for the dredging project.~~

4. Dredging activity is prohibited in the following locations:
  - a. Along net positive drift sectors and where geohydraulic-hydraulic processes are active and accretion shore forms would be damaged, altered, or irretrievably lost;
  - b. In shoreline areas with bottom materials that are prone to significant sloughing and refilling due to currents or tidal activity which result in the need for continual maintenance dredging;
  - c. In habitats identified as critical to the life cycle of officially designated or protected fish, shellfish, or wildlife.
5. Dredging techniques that cause minimum dispersal and broadcast of bottom material shall be used, and only the amount of dredging necessary shall be permitted.
6. 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 reentering the water;
  - 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; or
  - f. To acquire sand and gravel for commercial purposes from within the Columbia River.
7. Dredging for fill is prohibited except where the material is necessary for restoration of shoreline ecological functions.

#### **6.4.2.3 Dredge Material Disposal**

1. ~~Dredge material disposal shall be avoided where possible.~~ Dredge disposal shall be permitted only where it is demonstrated that the proposed water-dependent or water-related uses will not result in significant 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. When such impacts are unavoidable, they shall be minimized and mitigated such that they result in no net loss of shoreline ecological functions. Environmentally sound beneficial uses of suitable dredge material are encouraged as an alternative to conventional placement practices, when feasible.

2. Near shore or landside disposal of dredge materials shall not be located upon, adversely affect, or diminish:
  - a. Stream mouths, wetlands, or significant plant communities (approved mitigation plans may justify exceptions);
  - b. Prime agricultural land except as enhancement;
  - c. Natural resources including but not limited to sand and gravel deposits, timber, or natural recreational beaches and waters except for enhancement purposes;
  - d. Designated or officially recognized wildlife habitat and concentration areas;
  - e. Water quality, quantity, and drainage characteristics; and
  - f. Public access to shorelines and water bodies.
3. Dredged material shall be disposed of on land only at sites reviewed and approved by the USACOE and the Shoreline Administrator. Applicants shall demonstrate that the proposed site will ultimately be suitable for a use permitted by this Program. Disposal shall be undertaken such that:
  - a. The smallest possible land area is affected, unless dispersed disposal is authorized as a condition of permit approval for soil enhancement or other purposes;
  - b. Shoreline ecological functions and processes will be preserved, including protection of surface and ground water;
  - c. Erosion, sedimentation, floodwaters or runoff will not increase adverse impacts to shoreline ecological functions and processes or property; and
  - d. Sites will be adequately screened from view of local residents or passersby on public right-of-ways to the maximum extent practicable.
4. The following conditions shall apply to land disposal sites:
  - a. Springs and aquifers shall be identified and protected.
  - b. Containment dikes and adequate settling basins shall be built and maintained so that the water discharged from the site carries a minimum of suspended sediment. Required basins shall be designed to maintain at least one foot of standing water at all times to encourage proper settling.
  - c. Proper diversion of surface discharge shall be provided to maintain the integrity of the natural streams, wetlands, and drainage ways.

- d. There shall be a single point of ingress and egress for removal of the de-watered material.
  - e. Runoff shall be directed through grassy swales or other treatment features that assures protection of water quality and a location that maximizes circulation and fishing.
  - f. Sites shall be revegetated with appropriate native species as soon as possible to retard erosion and restore wildlife habitat and other critical areas functions;
  - g. Vegetation shall be maintained by the property owner;
  - h. Dredge materials deposited upland and not part of a permitted dike or levee shall constitute fill, and when deposited within shoreline jurisdiction, shall comply with the fill regulations; and
  - i. The applicable requirements of VMC 14.24, 14.25, and 14.26 shall be met.
5. Dredged material shall be disposed of in water only at sites approved by the USACOE and the Shoreline Administrator. Disposal techniques that cause minimum dispersal and broadcast of bottom material shall be used, and only if:
- ~~a. Land disposal is infeasible, less consistent with this Program, or prohibited by law;~~
  - a. ~~b.~~ Nearshore disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible;
  - b. ~~e.~~ Offshore habitat will be protected, restored, or enhanced;
  - c. ~~d.~~ Adverse effects on water quality or biologic resources from contaminated materials will be mitigated;
  - d. ~~e.~~ Shifting and dispersal of spoil will be minimal; and
  - e. ~~f.~~ Water quality will not be adversely affected.
6. The deposition of dredged materials in water or wetlands shall be permitted only in approved, open water disposal sites and:
- a. To improve wildlife habitat;
  - b. To correct material distribution problems adversely affecting fish habitat;
  - c. To create, expand, rehabilitate, or enhance a beach when permitted under this Program and any required state or federal permit; or
  - d. When land deposition is demonstrated to be more detrimental to shoreline resources than water deposition.

#### 6.4.5 Shoreline Stabilization – General

1. New shoreline stabilization to protect new residential development is prohibited. For other types of new development new shoreline stabilization is prohibited unless it can be demonstrated through a geotechnical analysis by a qualified professional that:
  - a. The proposed use cannot be developed without shore protection; or
  - b. Shore protection is necessary to restore ecological functions; or
  - c. Shore protection is necessary for a hazardous substance remediation project.
2. New or expanded shore stabilization shall:
  - a. Be designed using best available science and in accordance with applicable Ecology and WDFW guidelines;
  - b. Not result in a net loss of shoreline ecological functions;
  - c. Not cause significant erosion or beach starvation;
  - d. Not be located where valuable geohydraulic, hydraulic, or biological processes are sensitive to interference and critical to shoreline conservation;
  - e. Document that alternative solutions (including relocation or reconstruction of existing structures) are not feasible or do not provide sufficient protection;
  - f. Demonstrate that future stabilization measures would not be required on the project site or adjacent properties; and
  - g. Be certified by a qualified professional.
3. New or expanded structural shoreline stabilization for existing primary structures, including roads, railroads, and public facilities 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 years as a result of shoreline erosion caused by stream processor waves, and only when significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes.
4. Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.
5. Replacement of an existing 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, and utility systems from erosion

caused by stream undercutting or wave action; provided that, the existing shoreline stabilization structure is removed from the shoreline as part of the replacement activity. Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the structure is a residence that was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. New or expanded shore stabilization shall be designed in accordance with applicable Ecology and WDFW guidelines and certified by a qualified professional.

6. ~~Shoreline stabilization projects that meet the criteria of Section 2.3.2(18) require a statement of exemption (Section 2.3.3) and if exempt will be regulated under RCW 77.55.181. Stabilization projects that do not meet these criteria will be regulated by this Program.~~ Shoreline stabilization projects that are part of a fish habitat enhancement project meeting the criteria of RCW 77.55.181 are shall be consistent with the provisions set forth in 2.1.1 and 2.3.2. exempt and will be regulated under the state process set forth in RCW 77.55.181. Stabilization projects that are not part of such a fish enhancement project will be regulated by this Program.
7. Small-scale or uncomplicated shoreline stabilization projects (for example, tree planting projects) shall be reviewed by a qualified professional to ensure that the project has been designed using best available science.
8. Large-scale or more complex shoreline stabilization projects (for example, 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.
9. Standards for new stabilization structures when found to be necessary include limiting the size to the minimum necessary to achieve the stabilization objective, using measures to assure no net loss of shoreline ecological functions, using soft approaches, and mitigating for impacts.

#### **6.4.9.1 Revetments - General**

1. Revetments must be in support of an allowable shoreline use that is in conformance with the provisions of this Program, unless it can be demonstrated that such activities are necessary and in the public interest for the maintenance of shoreline environmental resources.
2. Design of revetments shall include and provide improved access to public shorelines whenever possible and appropriate. All forms of revetments shall be constructed and maintained in a manner that does not reduce water quality and/or fisheries habitat.
3. Design of the proposed revetment shall incorporate proper consideration of:
  - a. Data on local geophysical conditions;

- b. Data on stream flow, velocity, and/or flood capacity; and
  - c. Effects on adjacent properties.
4. ~~Bank revetments, where permitted, shall be placed at the extreme edge or bank of the shoreline.~~ Construction below ordinary high water mark is not considered fill when needed to construct the revetment. Revetments, where permitted, shall minimize encroachment waterward of the ordinary high water mark. In the Columbia River, adverse impacts to shallow water habitat between the OHWM and minus fifteen (-15) feet CRD shall be mitigated to ensure no net loss of ecological function. Mitigation can include enhancement, creation and/or payment of mitigation bank credits. Placement of revetments waterward of the OHWM are not considered fill.
  5. Revetments shall only be used when habitat-friendly alternatives are not feasible.

**Section 8.** The City of Vancouver Shoreline Master Program, Chapter 7 Administration and Enforcement, Section 7.1 General Provisions; Section 7.2.2 City Hearing Examiner; Section 7.2.3 City Planning Commission; Section 7.2.4 City Council; Section 7.2.5 State Department of Ecology and Attorney General; Section 7.3 Master Program Amendments; Section 7.4.1 Administrative Interpretations; Section 7.4.2 Statement of Exemption; Section 7.4.3 Shoreline Substantial Development Permits; Section 7.4.4 Shoreline Conditional Use Permits; Section 7.4.5 Shoreline Variance Permits; Section 7.4.7 Hearings; Section 7.4.8.3 Appeal Review Process; Section 7.4.8.4 State Shoreline Hearings Board; Section 7.4.9 Notification to Ecology and the Attorney General; Section 7.4.10 Ecology Review; Section 7.5.2 Requirement for Restoration Plan; Section 7.8 Rescission of Permits, adopted by Ordinance M-3995 and as amended, are hereby amended to read as follows:

## **7.1 General Provisions**

1. Except as specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to RCW 90.58, the Act and this Program.
2. Uses and developments that are not considered substantial developments pursuant to RCW 90.58.030(3)(e), WAC 173-27-040, and Section 2.3-2 of this Program shall not require a Shoreline Substantial Development Permit (SDP) but shall conform to the

policies and regulations of this Program and the Act and shall obtain a Statement of Exemption (SOE) (Sections ~~2.3-3~~ and ~~7.42-7~~).

3. Classification of a use or development as permitted does not necessarily mean the use/development is allowed. It means the use/development may be allowed subject to review and approval by the City and/or Ecology. The City may attach conditions of approval to any permitted use via a permit or statement of exemption as necessary to assure consistency of a project with the Act and this Program.
4. To be authorized under this Program, all uses and developments shall be planned and carried out in a manner that is consistent with the City codes and this Program regardless of whether a shoreline substantial development permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.
5. Applicants requesting review for permits or statement of exemption under this Program have the burden to prove that the proposed development or activity is consistent with the criteria that must be met before a permit or statement of exemption is granted.
6. Applicants shall submit all information and documentation determined by the Shoreline Administrator as necessary to process an application
7. The City shall not issue any permit for development within the shoreline jurisdiction until approval has been granted pursuant to this Program.
8. A development or use that does not comply with the bulk, dimensional, and/or performance standards of this Program shall require a shoreline variance even if the development or use does not require a substantial development permit.
9. A development or use that is listed as a conditional use pursuant to this Program, or is an unlisted use, must obtain a Shoreline Conditional Use Permit (SCUP) even if the development or use does not require a substantial development permit.
10. Issuance of a Shoreline Substantial Development Permit, Shoreline Variance (SV) or Shoreline Conditional Use Permit does not constitute approval pursuant to any other federal, state or City laws or regulations.
11. All shoreline permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Shoreline Administrator, documenting compliance with bulk and dimensional policies and regulations of this Program. The Shoreline Administrator may attach conditions to the approval as necessary to assure consistency with ~~the~~ RCW 90.58 and this Program. Such conditions may include a requirement to post a performance bond assuring compliance with permit requirements, terms and conditions.
12. Proposed actions that would alter designated critical areas or their buffers, as established by this Program (Chapters 5.3 and 5A) shall be reviewed for compliance with this

Program. If required, the applicable critical area report and/or mitigation plan and/or habitat management plan shall be submitted as part of the development application or request for statement of exemption. The critical area review shall be conducted and processed in conjunction with the highest threshold of review that is applicable to the primary development proposed:

- a. Statement of Exemption;
  - b. Land Use Permit or Building Permit;
  - c. Excavation, Grading, Clearing and Erosion Control Permit;
  - d. SEPA Threshold Determination;
  - e. Shoreline Substantial Development Permit;
  - f. Shoreline Conditional Use Permit;
  - g. Shoreline Variance; or
  - h. Revisions to Shoreline Permits.
13. Habitats of Local Importance may be proposed by the property owner or the City (Chapter 5A, ~~VMC~~ Section 20.740.100) and shall be designated according to a Type IV legislative procedure (~~VMC~~ Chapter 5A, Section 20.210.070).
14. The final decision on a shoreline permit (Type II application) Shoreline Conditional Use or Shoreline Variance (Type III application) shall be made within 120 calendar days after the date of a fully complete determination is made per VMC 20.210. However, per RCW 47.01.485(1) to the greatest extent practicable, a final determination on all permits required for a project on a state highway as defined in RCW 46.04.560 shall be made no later than 90 days after a fully complete determination is made per VMC 20.210.

### **7.2.2 City Hearing Examiner**

1. The City Hearing Examiner shall be responsible for making final determinations on appeals of:
  - a. Statements of Exemption;
  - b. Shoreline Substantial Development Permits; and
  - c. Revisions to Statements of Exemption and Shoreline Substantial Development Permits.
2. The City Hearing Examiner shall be responsible for making recommendations to Ecology on:

- a. Applications for Shoreline Conditional Use Permits;
  - b. Applications for Shoreline Variances; and
  - c. Applications for ~~Shoreline Substantial Development Permits in conjunction with a required~~ Shoreline Conditional Use Permit or Shoreline Variance. The Hearing Examiner shall make a decision on a Shoreline Substantial Development Permit or Shoreline Permit Exemption when submitted with a Shoreline Condition Use or Variance. Both the decision on the Substantial Development Permit and recommendation to Ecology on the Conditional Use or Variance shall be sent to Ecology per the requirements of this SMP.
3. The City Hearing Examiner shall be responsible for rescinding approved Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, and Shoreline Variances (Section 7.8).
  4. On Type IV quasi-judicial applications such as planned developments processed per VMC Title 20, the Hearing Examiner shall make recommendation to City Council on shoreline permits, when review is consolidated with the Type IV application.

### **7.2.3 City Planning Commission**

The City Planning Commission shall be responsible for hearing and making recommendations for action to the City Council on the following types of matters:

1. Amendments to the Shoreline Master Program. Any of the provisions of this Program may be amended as provided for in WAC 173-26-100 and 173-26-104.
2. Review and adjustments. Periodic review of this Program shall be conducted as required by state law and regulations RCW 90.58.080(4). Adjustments shall be made as necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations. This review process shall be consistent with WAC 173-26-090 and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.
3. Type IV quasi-judicial applications such as planned developments processed per VMC Title 20.

### **7.2.4 City Council**

1. The City Council shall consider appeals of the Hearing Examiner decision on proposals that include Shoreline Conditional Use Permits, Shoreline Variances, and SSDPs processed in conjunction with SCUPs and/or SVs.
2. The City Council shall be responsible for making final determinations on amendments to the Shoreline Master Program at the local level. The local plan shall be adopted by ordinance. The Council shall enter findings and conclusions setting forth the factors it

considered in reaching its decision. The Program adopted by the City Council shall be submitted to Ecology for review and adoption. Ecology must approve all master programs before they become effective.

3. When submitted with a Type IV quasi-judicial applications such as planned developments processed per VMC Title 20, the City Council shall make a decision on a Shoreline Substantial Development Permit or Shoreline Permit Exemption and shall make a recommendation to Ecology on a Shoreline Condition Use or Variance. Both the decision on the Substantial Development Permit and the recommendation to Ecology on the Conditional Use or Variance shall be sent to Ecology per the requirements of this SMP.

### **7.2.5 State Department of Ecology and Attorney General**

1. The duties and responsibilities of Ecology shall include, but are not limited to the following:
  - a. Reviewing and approving Program amendments prepared by the City pursuant to WAC 173-26-120 (State Process for Approving/Amending Shoreline Master Programs).
  - b. Reviewing and petitioning for review of the City's Statement of Exemption and Shoreline Substantial Development Permit decisions.
  - c. Final approval and authority to condition or deny Shoreline Conditional Use Permits and Shoreline Variance Permits filed by the City.

### **7.3 Master Program Amendments**

1. This Program shall be periodically reviewed no later than eight (8) years following its approval by Ecology and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations. This review process shall be consistent with ~~WAC 173-26~~ requirements in RCW 90.58.080 and WAC 173-26-090 and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public. The Program shall be consistent with the City comprehensive plan and development regulations adopted under RCW 36.70A and other local requirements.
2. Any of the provisions of this Program may be amended as provided for in RCW 90.58.120 and .200 and Chapter 173-26 WAC. Amendments or revision to this Program, as provided by law, do not become effective until approved by Ecology.
3. Proposals for shoreline re-designation (i.e., amendments to the shoreline maps and descriptions) must demonstrate consistency with the criteria set forth in WAC 173-22-040.

#### 7.4.1 Administrative Interpretations

1. Interpretation, enforcement, and administration of this Program shall be in conformance with the provisions of WAC 173-26-140. The City establishes the following procedures for processing Administrative Interpretations:
  - a. Application. Any person may request in writing the Shoreline Administrator's interpretation of a code provision of this Program when it pertains to a specific property or project by means of a Type I application pursuant to Section 20.210.040 VMC.
  - b. The Shoreline Administrator may independently initiate an interpretation of any conflicting or unclear provisions of this Program.
  - c. Consultation with the Ecology. Prior to issuing an interpretation, the Shoreline Administrator shall formally consult with the Ecology to insure that any formal written interpretations are consistent with the purpose and intent of chapter 90.58 RCW and the applicable guidelines.
  - d. Catalog. To ensure that the Shoreline Administrator's interpretations are applied consistently over time, the Shoreline Administrator shall catalog these interpretations. The Shoreline Administrator shall retain and maintain the catalog of interpretations.

#### 7.4.2 Statement of Exemption

1. Any person requesting an exemption from the substantial development permit review procedures shall submit a completed application for Shoreline Exemption to the Shoreline Administrator.
2. Proposals for Statements of Exemption shall comply with the provisions of Section 2.3.3.
3. Applications for Statements of Exemption under section 2.3.3 are to be processed using the Type I review procedures as set forth in VMC 20.210.040. The Shoreline Administrator shall forward documentation of decisions on Statements of Exemption to Ecology as required by Section ~~7.92.3.3~~ and WAC 173-27-~~050+30~~ or its successor.

#### 7.4.3 Shoreline Substantial Development Permits

1. Applications for Shoreline Substantial Development Permits are to be processed using the Type II review procedures as set forth in VMC 20.210.050, **WITH THE EXCEPTION THAT THE PUBLIC COMMENT PERIOD SHALL BE AT LEAST 30 DAYS (WAC 173-27-110(2)(e))**.
2. Applications shall be reviewed, and shall only be approved if the application conforms with the criteria for approval found in WAC 173-27-150 and this Program, including the provisions of Section 2.2.

3. In addition, upon completion of the local appeal period, the Shoreline Administrator shall forward the application and decision to Ecology in compliance with the provisions of 7.4.9; ~~Ecology~~ and WAC 173-27-130 or its successor.

#### **7.4.4 Shoreline Conditional Use Permits**

1. Shoreline Conditional Use Permits are required for any proposed use or development which is listed as a conditional use in this program and for any use not specifically addressed in this program. A Shoreline Conditional Use Permit cannot be used to allow any use or structure specifically prohibited by this program.
2. Shoreline Conditional Use Permit Review Procedures
  - a. Applications for Shoreline Conditional Use Permits are to be processed using the Type III review procedures as set forth in VMC 20.210.060 and VMC 20.210.120 except that the Hearing Examiner shall make a recommendation to Ecology.
  - b. Applications shall be reviewed, and shall only be approved if the application conforms with the criteria for approval found in WAC 173-27-160 and this Program, including the provisions of Section 2.7.
  - c. Upon completion of the local appeal period, the Shoreline Administrator shall forward the application and ~~decision~~ recommendation to Ecology in compliance with the provisions of 7.4.9; ~~Ecology~~ and WAC 173-27-130 or its successor.

#### **7.4.5 Shoreline Variance Permits**

1. The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.
2. Shoreline Variance Permit Review Procedures
  - a. Applications for Shoreline Variance Permits are to be processed using the Type III review procedures as set forth in VMC 20.210.060 and VMC 20.210.120 except that the Hearing Examiner shall make a recommendation to Ecology.
  - b. Applications shall be reviewed, and shall only be approved if the application conforms to the criteria for approval found in WAC 173-27-170 and this Program, including the provisions of Section 2.6.
  - c. In addition, upon completion of the local appeal period, the Shoreline Administrator shall forward the application and ~~decision~~ recommendation to

Ecology in compliance with the provisions of 7.4.9, ~~Ecology~~ and WAC 173-27-130 or its successor.

## 7.4.7 Hearings

1. Applications which require an open-record hearing shall be considered by the Hearing Examiner. When an open-record hearing is required, all other land use permit applications for a specific site or project shall be considered concurrently, including any accompanying environmental appeal, under VMC 20.210. Therefore, in this situation, applications for which the Shoreline Administrator has authority shall be transferred to the jurisdiction of the Hearing Examiner to allow consideration of all land use actions concurrently.
2. Any decision or ruling of the Hearing Examiner ~~on a shoreline substantial development permit not processed in conjunction with an SCUP or SV may be appealed to the State Shorelines Hearing Board~~ may be appealed per Section 7.4.8.
3. The Planning Commission may hold an open-record hearing on ~~amendments to the SMP including map amendments and Type IV quasi-judicial applications including planned developments~~, forward a recommendation to the City Council. The City Council shall conduct an open-record hearing on same, make a decision on a Shoreline Development Permit or Statement of Exemption and make a recommendation on a Shoreline Conditional Use or Variance, and forward a final recommendation/decision to Ecology. ~~Ecology's decision on an SMP amendment may be appealed to the Growth Management Hearings Board (GMHB) (See Section 7.8.4.5).~~

### 7.4.8.3 Appeal Review Process

1. General. All complete appeals submitted shall be scheduled for review at a public hearing such that a final decision can be rendered within 60 calendar days for closed-record appeals, and within 90 calendar days for open-record appeals. Further extensions are permitted upon mutual agreement of the appellant, the applicant, and the Shoreline Administrator. If a final decision is not reached within this time, the Shoreline Administrator shall so notify the appellant and shall provide a reason for the delay and an estimated date of final decision issuance.
2. Statement of Exemption
  - a. Venue. Appeals of the Shoreline Administrator's decision on a Statement of Exemption are conducted before the Hearing Examiner in an open record proceeding.
  - b. Notice. At least 10 calendar days prior to the hearing date, notice shall be sent by mail to the appellant.
  - c. Decision Timeline. The Hearing Examiner shall issue a decision within 14 calendar days of the close of the record

- d. Further Local Review. The decision of the Hearing Examiner is the final ~~and may not be appealed~~ local appeal.

3. Shoreline Substantial Development Permit

- a. Venue. Appeals of the Shoreline Administrator's decision on a Shoreline Substantial Development Permit are conducted before the Hearing Examiner in an open record proceeding.
- b. Notice. At least 10 calendar days prior to the hearing date, notice shall be sent by mail to:
  - i. The applicant and all owners of the site that is the subject of the application;
  - ii. All parties of record;
  - iii. Any neighborhood or community organization recognized by the City Council and whose boundaries include the site;
  - iv. Any person who has submitted a written request to be notified; and
  - v. The appellant and all parties to the appeal.
- c. Decision Timeline. The Hearing Examiner shall issue a decision within 14 calendar days of the close of the record
- d. Further Local Review. No additional local review is provided. ~~However, within 21 days of the issuance of the Hearing Examiner's decision, further appeal may be filed with Superior Court and/or the State Shorelines Hearings Board.~~

4. Shoreline Variances, Shoreline Conditional Use Permits, and Substantial Development Permits Processed in Conjunction with Such Permits

- a. Venue. Appeals of the Hearing Examiner's decision on Shoreline Variances, Shoreline Conditional Use Permits and Substantial Development Permits Processed in Conjunction with such permits are conducted before the City Council in a closed record proceeding.
- b. Notice. At least 10 calendar days prior to the hearing date, notice shall be sent by mail to:
  - i. The applicant and/or appellant and all owners of the site that is the subject of the application;
  - ii. All parties of record;
  - iii. Any neighborhood or community organization recognized by the City Council and whose boundaries include the site;

- iv. Any person who provided oral or written testimony entered into the record at the public hearing.
  - v. Anyone who requested in writing a notification of the decision on a particular matter; and
  - vi. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the city that includes provision for such notice or which is otherwise entitled to such notice.
- c. Decision Timeline. The City Council shall issue a decision within 14 calendar days of the close of the record.
- d. Further Local Review. No additional local review is provided, ~~in the case of Shoreline Conditional Use Permits and Shoreline Variances. The city is making a recommendation to Ecology. Ecology's final decision may be appealed by filing an appeal with Superior Court and/or the State Shorelines Hearings Board.~~
- ~~The City Council decision on any Substantial Development Permit processed in conjunction with a Shoreline Conditional Use Permit or Shoreline Variance may be appealed separately to the State Shoreline Hearings Board.~~

#### 7.4.8.4 State Shoreline Hearings Board

1. Appeals of any final permit decision may be made to the Shorelines Hearing Board as governed by the procedures established in RCW 90.58.180 (Appeals from Granting, Denying, or Rescinding Permits) and WAC 461-08 (Practice and Procedure, Review of the Granting, Denying or Rescinding of Substantial Development Permits, Hearings).
2. Such appeals must be filed within twenty-one (21) days from the date of filing of the permit decision ~~was filed~~.
3. The provisions of this section shall apply to any final order, requirement, permit, decision, or determination on land use proposals made by the Shoreline Administrator, Hearing Examiner or City Council on appeal. These ~~may include, but are not limited to,~~ Shoreline Substantial Development Permits, ~~Statements of Exemption,~~ Shoreline Conditional Use Permits, Shoreline Variances, and Shoreline Revisions.

#### 7.4.9 Notification to Ecology and the Attorney General

1. ~~2.~~ The Shoreline Administrator shall notify Ecology and the Attorney General of any ~~Statement of Exemption,~~ Substantial Development Permit decision and/or recommendation on a Conditional Use or Variance Permit ~~decisions~~ made by the Shoreline Administrator (or Hearing Examiner or City Council when required), whether it is an approval or denial. The notification shall occur after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed. When a Substantial Development Permit and either Conditional Use or

Variance Permit are required for a development, the submittal of the permits shall be made concurrently. The Shoreline Administrator shall file the following with Ecology and the Attorney General by return receipt requested by mail:

- a. A copy of the complete application per WAC 173-27-180;
  - b. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);
  - c. The final decision or recommendation of the City;
  - d. The permit data sheet per WAC 173-27-990;
  - e. Affidavit of public notice; and
  - f. Where applicable, the documents required by the State Environmental Policy Act (RCW 43.21C).
2. 4. When the project has been modified in the course of the local review process, plans or text shall be provided to Ecology that clearly indicates the final approved plan.
  3. ~~5.~~ Ecology shall review the documentation provided by the Shoreline Administrator for completeness. If Ecology determines that the submittal does not contain all of the documents and information required by this section, Ecology shall identify the deficiencies and notify the City and the applicant in writing. Ecology will not act on Conditional Use or Variance Permit submittals until the material requested in writing is received.

#### **7.4.10 Ecology Review**

1. Ecology may petition for review of the City's decision on a ~~Statement of Exemption or a Shoreline Substantial Development Permit~~ to the Shorelines Hearings Board. Such petition must be commenced within twenty one (21) days from the date of filing of the City's ~~the final decision was filed~~.
2. Ecology shall make a final decision approving, approving with conditions, or disapproving a Shoreline Conditional Use Permit or Shoreline Variance Permit and convey its decision to the City and the applicant within thirty (30) days of the date of submittal by the City ~~of filing by the City~~. The Shoreline Administrator will notify those interested persons having requested notification of such decision.
3. Ecology shall base its determination to approve, approve with conditions or deny a Conditional Use Permit or Variance Permit on consistency with the policy and provisions of the SMA, the criteria listed in this Program and the provisions of WAC 173-27-160 for

conditional use permits, WAC 173 27-170 for variances and WAC 173-27-210 relating to minimum standards for conditional use and variance permits.

4. Appeals of Ecology decisions on Shoreline Conditional Use Permits and Shoreline Variance Permits shall be made to the Shorelines Hearing Board as specified in Section 7.4.8.4.

## 7.5.2 Requirement for Restoration Plan

1. In the event the City initiates enforcement action under this Program or files a complaint in court, the City may require a restoration plan consistent with the requirements of this Program. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in Chapter 5A, VMC 20.740.090(C). The Shoreline Administrator shall, at the violator's expense, seek expert advice in determining whether the plan restores the affected area to its pre-existing condition or, where that is not possible, restores the functions of the affected area. Inadequate plans shall be returned to the applicant or violator for revision and re-submittal.
2. Minimum Performance Standards for Restoration
  - a. For alterations to frequently flooded areas, wetlands, and fish and wildlife habitat conservation areas, the following minimum performance standards shall be met for the restoration of a critical area, provided that if the violator can demonstrate that greater functional and habitat values can be obtained, these standards may be modified:
    - i) The structure and functions of the critical area or buffer prior to violation shall be restored, including water quality and habitat functions;
    - ii) The soil types and configuration prior to violation shall be replicated;
    - iii) The critical area and buffers shall be replanted with native vegetation (a list of native species is available from the Shoreline Administrator). ~~If the critical area or buffer is on a site that meets the criteria of Chapter 5A, VMC 20.740.030(B)(1)(f)(1), the vegetation for replanting must be not only native but also fire-resistant. A list of native, fire-resistant species is available from the Shoreline Administrator;~~ and
    - iv) Information demonstrating compliance with the requirements in Chapter 5A, VMC 20.740.050(F) Mitigation Plan Requirements shall be submitted to the Shoreline Administrator.

- b. For alterations to frequently flooded and geologic hazard areas, the following minimum performance standards shall be met for the restoration of a critical area or buffer, 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-violation hazard;
  - ii) The risk of personal injury resulting from the alteration shall be eliminated or minimized;
  - iii) Drainage patterns shall be restored to those existing before the alteration; and
  - iv) The hazard area and buffers shall be replanted consistent with pre-violation conditions with native vegetation sufficient to minimize the hazard. ~~If the critical area or buffer is on a site that meets the criteria of Chapter 5A, VMC 20.740.030(B)(1)(f)(1), the vegetation for replanting must be not only native but also fire resistant. A list of native, fire resistant species is available from the Shoreline Administrator.~~
3. As a condition of the restoration plan, the applicant shall grant reasonable access to the property.

## **7.8 Rescission of Permits**

1. This section applies to requests or decisions to rescind Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, and Shoreline Variances.
2. The Hearing Examiner shall have the power to rescind or modify approved Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, and Shoreline Variances in accordance with the Type III procedures of VMC 20.210.060 and VMC 20.210.120.
3. City staff or any other persons who are aggrieved by activities undertaken under a shoreline permit may request in writing that the Hearing Examiner rescind or modify the permit.
4. Upon receipt of a request for rescission, the Shoreline Administrator shall schedule a public hearing for the next Hearing Examiner meeting where the review can be accommodated and the required notice given.
5. Notice of Public Hearing.
  - a. The Shoreline Administrator shall publish a notice of the rescission hearing at least fourteen days before the hearing date.

- b. The Shoreline Administrator shall mail notice of the hearing to the party to which the permit was issued, the owner of the property for which the permit was issued, the person or persons who requested the Hearing Examiner rescind the permit and any persons who requested notice of the hearing in writing at least ten days before the hearing date.
- c. The notice shall include the following information:
  - i. The name of the permit holder and, if applicable, the project name.
  - ii. The street address of the subject property and a description of the property in non-legal terms sufficient to identify the location.
  - iii. A brief description of the issues.
  - iv. The date, time and place of the public hearing.
  - v. A statement of the right of any person to participate in the public hearing by providing written statements before or at the hearing and orally at the hearing.
6. The Hearing Examiner shall hold a public hearing before deciding whether to rescind or add conditions to the permit. Any person can submit written statements or speak. At the hearing, the Hearing Examiner may request such additional information as is reasonably necessary to evaluate whether the permit or variance should be rescinded.
7. After the public hearing has concluded, the Hearing Examiner shall decide whether to rescind, modify, or add conditions to the permit.
  - a. The decision may be made at the same public meeting as the public hearing or at another public meeting. The Hearing Examiner shall issue a decision within fourteen days of closure of the public record.
  - b. The decision shall be based on the decision criteria in Section 7.8(13).
  - c. If the Hearing Examiner decides to rescind the permit, the Hearing Examiner may require restoration or reclamation of the property and may set time limits for the completion of these activities.
  - d. The Hearing Examiner shall adopt findings of fact and conclusions which support the decision and any required conditions.
8. Unless appealed to City Council, the decision of the Hearing Examiner and the findings of fact and conclusions shall be reduced to writing and mailed by the Shoreline Administrator to the permit holder, the property owner, Ecology and the Washington State Attorney General within fourteen days of the date of the decision.
9. Effect of Decision.

- a. Unless appealed to the City Council, the decision of the Hearing Examiner is the final decision of the City.
  - b. If the Hearing Examiner rescinds the permit, all activity authorized by the Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, or Shoreline Variance Permit shall immediately cease, unless the decision maker grants a period of time to complete the activity or reclaim the site or a court authorizes continued operation during an appeal.
10. Appeal of decision to City Council. The City Council shall hold a public hearing before deciding whether to uphold or overturn a Hearing Examiner's decision to rescind or add conditions to the permit. Any person can submit written statements or speak. At the hearing, members of the City Council may request such additional information as is reasonably necessary to evaluate whether the permit should be rescinded.
- a. After the public hearing has concluded, the City Council shall decide whether to uphold or overturn the Hearings Examiner's decision to rescind, modify, or add conditions to the permit. The City Council shall also have the authority to modify the decision of Hearings Examiner.
  - b. The decision may be made at the same public meeting as the public hearing or at another public meeting. The City Council shall issue its decision within 90 days of the filing of an appeal of a rescission,
  - c. The decision shall be based on the decision criteria in Section 7.8(13).
  - d. If the City Council upholds or modifies the Hearing Examiner decision to rescind the permit, the City Council may require restoration or reclamation of the property and may set time limits for the completion of these activities.
  - e. In its decision on the appeal of the Hearing Examiner decision, the City Council shall adopt findings of fact and conclusions which support the decision and any required conditions.
11. The decision of the City Council on the appeal of the Hearing Examiner decision shall include the findings of fact and conclusions shall be reduced to writing and mailed by the Shoreline Administrator to the permit holder, the property owner, Ecology and the Washington State Attorney General within twelve days of the date of the decision.
12. Effects of Decision.
- a. The decision of the City Council on the appeal of a Hearing Examiner decision on the rescission may be appealed to the Washington State Shorelines Hearings Board as provided in RCW 90.58.180 and Chapter 461-08 WAC.
  - b. If, on appeal, the City Council rescinds the permit, all activity authorized by the

Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, Or Shoreline Variance Permit shall immediately cease, unless the City Council grants a period of time to complete the activity or reclaim the site or a court authorizes continued operation during an appeal.

13. Criteria for ~~Reeission~~ Rescission.

- a. The Hearing Examiner or City Council, on appeal, may rescind or modify a permit upon finding that one or more of the following criteria are met.
  - i. The permit approval was obtained by fraud or through the provision of misleading application material.
  - ii. The permit is being exercised contrary to the terms or conditions of approval or in violation of law.
  - iii. The use or activity for which approval was granted is being exercised so as to be detrimental to the public health, safety, or welfare.

14. Ecology may initiate permit rescission. Under the provisions of RCW 90.58.140(8), if Ecology is of the opinion that noncompliance exists, Ecology shall provide written notice to the City and the permittee. If Ecology is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the City has taken no action to rescind the permit, Ecology may petition the Shoreline Hearings Board for a rescission of the permit upon written notice of the petition to the City and the permittee if the request by Ecology is made to the Hearings Board within fifteen days of the termination of the thirty-day notice to the City.

**Section 9.** The City of Vancouver Shoreline Master Program, Chapter 8, Definitions, adopted by Ordinance M-3995 and as amended, are hereby amended to read as follows:

**D**

- 46. Date of Filing** – means the date of actual receipt by Ecology of the City’s decision on a substantial development permit. For a variance or conditional use permit, the date of filing is the date Ecology’s decision is transmitted to the City. For a variance or conditional use permit decision in conjunction with a shoreline substantial development permit decision, the date of filing is the date Ecology’s decision is transmitted to the City.
- 47. Development** - a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this Program at any state of water level. “Development” does not include

dismantling or removing structures if there is no other associated development or re-development.

N

**126a. Non-conforming Lot** - A nonconforming lot may be developed if permitted by other land use regulations of the city and so long as such development conforms to all other requirements of this Program and the Act.

S

**185. Substantial Development** - "Substantial development" shall mean any development of that the total cost or fair market value ~~exceeds five thousand seven hundred and eighteen dollars (\$5,718)~~ seven thousand forty-seven dollars (\$7,047), or as adjusted by the State Office of Financial Management, or any development that materially interferes with the normal public use of the water or shorelines of the state, except as specifically exempted pursuant to RCW 90.58.030(3)(e).

**Section 10.** The City of Vancouver Shoreline Master Program, Appendix A Unofficial Shoreline Designation Maps, adopted by Ordinance M-3995 and as amended, are hereby amended as shown in Exhibit 1.

**Section 8. Severability.** If any clause, sentence, paragraph, section, or part of this ordinance or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any parts thereof to any other person or circumstances and to this end the provisions of each clause, sentence, paragraph, section or part of this law are hereby declared to be severable.

**Section 9. Effective Date.** This ordinance shall take effect fourteen days from the date of Ecology's approval and written notice of final action to the City, in accordance with RCW 90.58.090.

Read first time: April 5, 2021

Ayes: Councilmembers Paulsen, Lebowsky, Glover, Stober, Mayor McEnerny-Ogle

Nayes: Councilmember Hansen

Absent: Councilmember Fox

Read second time: April 19, 2021

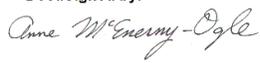
PASSED by the following vote:

Ayes: Councilmembers Fox, Paulsen, Lebowsky, Glover, Stober, Mayor McEnerny-Ogle

Nayes: Councilmember Hansen

Absent: None

SIGNED this 19th day of April, 2021.

DocuSigned by:  
  
58CB15C0832F403...  
Anne McEnerny-Ogle, Mayor

Attest:  
DocuSigned by:  
  
BCF6734E40E94AE...  
Natasha Ramras, City Clerk

Approved as to form:

DocuSigned by:  
  
9A7D02E31F694A2...  
Jonathan Young, City Attorney

## EXHIBITS

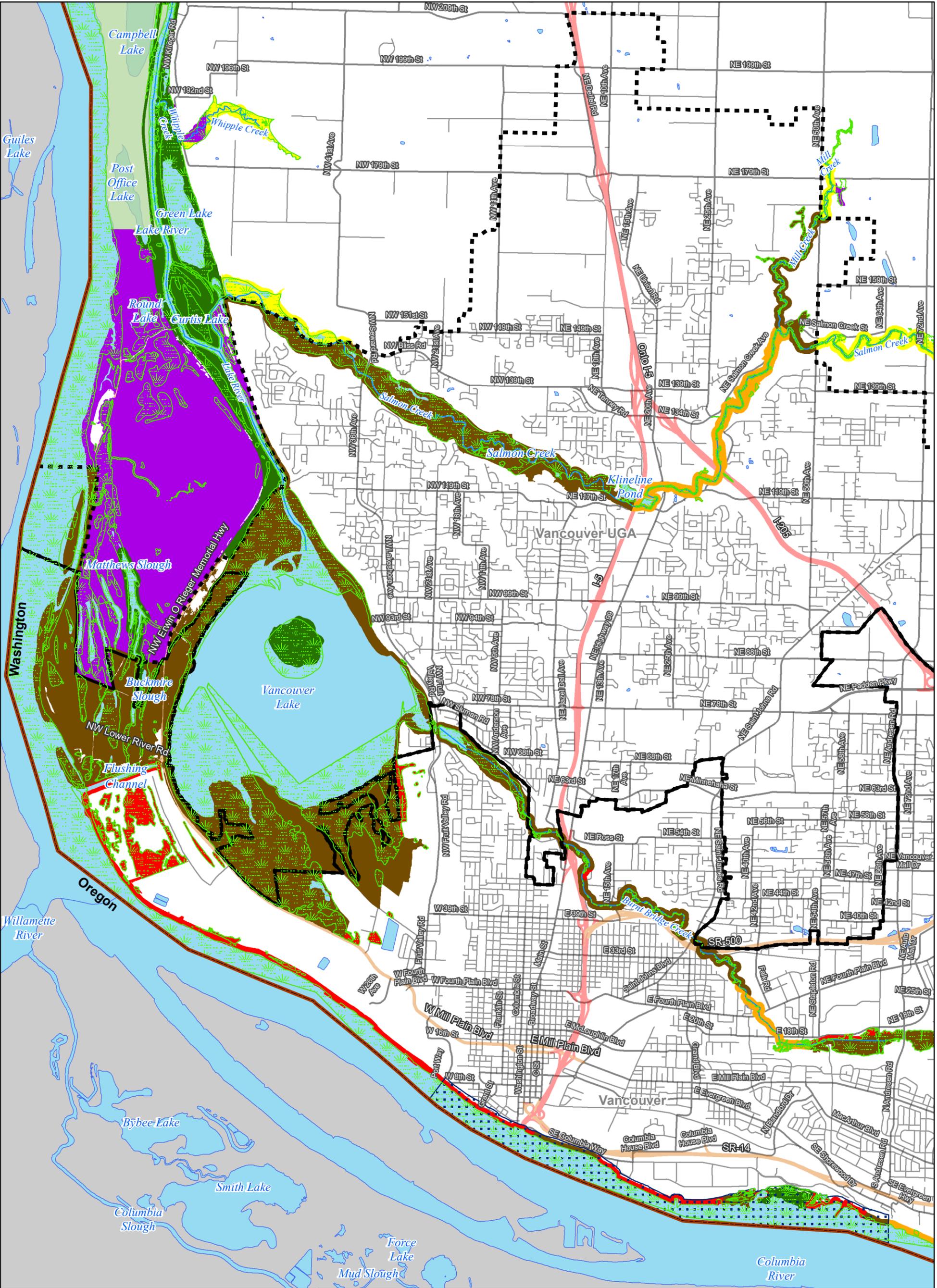
Exhibit 1: City of Vancouver Shoreline Master Program Appendix A: New Unofficial Shoreline Designation Maps

## SUMMARY

### ORDINANCE NO. M-4334

AN ORDINANCE relating to the Shoreline Master Program periodic review as required by Revised Code of Washington (“RCW”) Chapter 90.58, the Shoreline Management Act; amending the City of Vancouver Shoreline Master Program (SMP) Chapter 2 Applicability, Shoreline Permits and Exemptions, Section 2.1 Applicability; Section 2.3 Exemptions from a Shoreline Substantial Development Permit; Chapter 3, Shoreline Master Program Goals and Policies, Section 3.6 Flood Prevention and Flood Damage Minimization; Chapter 4 Shoreline Designations, Section 4.3 Shoreline Designations; Chapter 5 General Shoreline Use and Development Regulations, Section 5.1 General Shoreline Use and Development Regulations; Section 5.3 Critical Areas Protection; Section 5.4 Public Access; Section 5.6 Site Planning and Development; Section 5.7 Vegetation Conservation; Section 5.9 Water Quality and Quantity; Chapter 5A VMC 20.740, Critical Areas Protection; Chapter 6 Specific Shoreline Use Regulations, Section 6.2 Shoreline Use, Modification, and Standards Table 6-1; Section 6.3 Use-specific Development Regulations; Section 6.4 Shoreline Modification Regulations; Chapter 7 Administration and Enforcement, Section 7.1 General Provisions; Section 7.2 Administrative Authority and Responsibility; Section 7.3 Master Program Amendments; Section 7.4 Permitting Procedures; Section 7.5 Enforcement; Section 7.8 Rescission of Permits; Chapter 8, Definitions; and Appendix A Unofficial Shoreline Designation maps; subject to approval by the Washington State Department of Ecology (Ecology); providing for severability; and providing for an effective date.

The full text of this ordinance will be mailed upon request. Contact Raelyn McJilton, Records Officer at 360-487-8799, or via [www.cityofvancouver.us](http://www.cityofvancouver.us) (Go to City Government and Public Records).



**Shoreline Designations**

- Aquatic
- Natural
- Urban Conservancy
- Medium Intensity
- High Intensity
- Rural Conservancy Residential
- Rural Conservancy Resource Land
- USFWS National Wildlife Refuges\*

- Associated Wetlands\*\*
- City Limits
- Urban Growth Areas
- Columbia River Shoreline Enhancement Plan District
- County Boundary

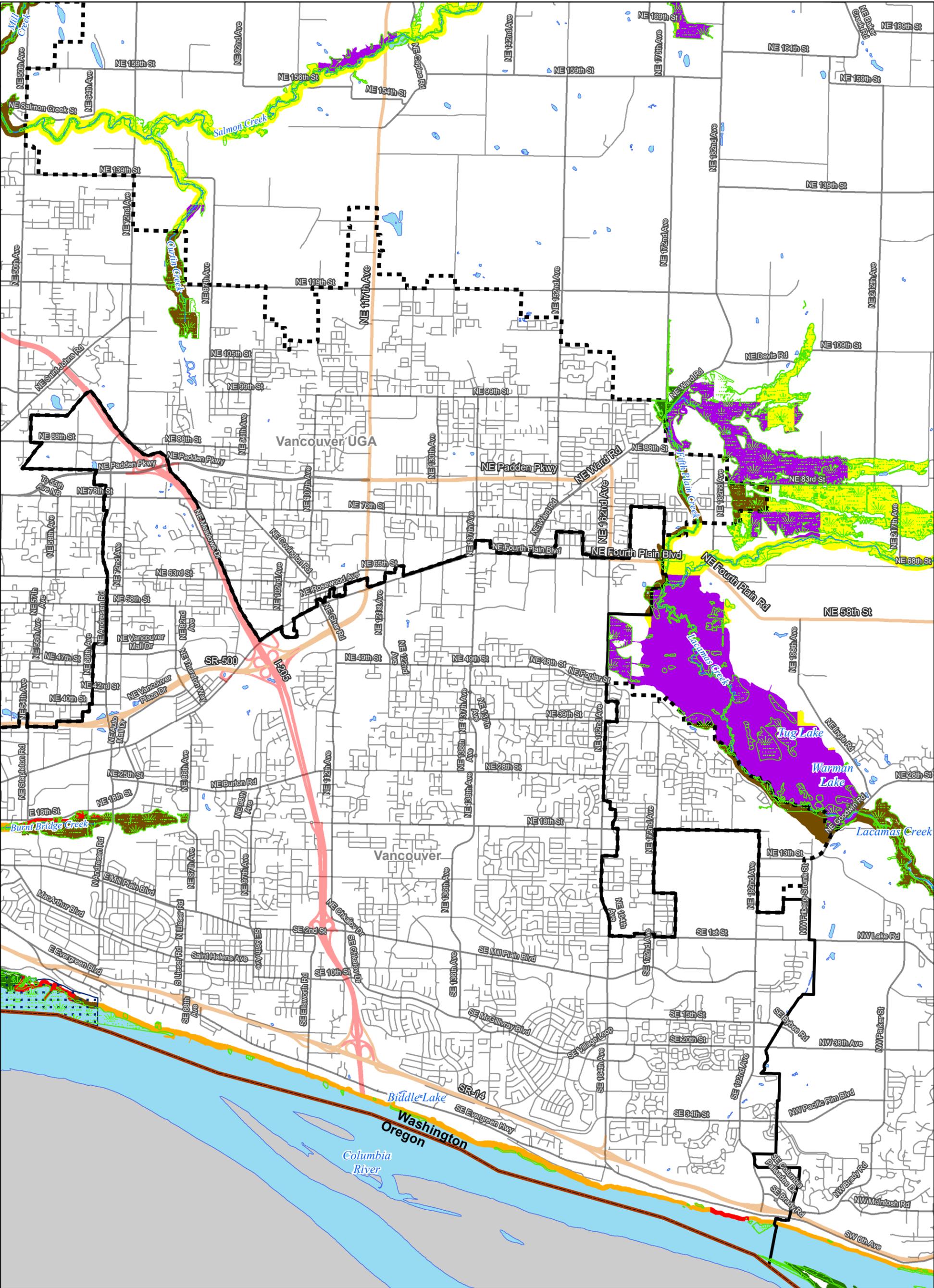
\* Private development in RNWR is regulated under the Rural Conservancy Residential provisions of this SMP

\*\* Definitive presence will be determined on a project basis.

0 0.25 0.5 1 Miles

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**Unofficial Shoreline Designation Map (West)**  
 City of Vancouver, Washington  
 1/26/2021 Draft  
 Data Sources: Clark County, 2009, 2011; DNR, 2007; City of Vancouver, 2020



**Shoreline Designations**

- Aquatic
- Natural
- Urban Conservancy
- Medium Intensity
- High Intensity
- Rural Conservancy Residential
- Rural Conservancy Resource Land
- USFWS National Wildlife Refuges\*

- Associated Wetlands\*\*
- City Limits
- Urban Growth Areas
- Columbia River Shoreline Enhancement Plan District
- County Boundary

\* Private development in RNWR is regulated under the Rural Conservancy Residential provisions of this SMP  
 \*\* Definitive presence will be determined on a project basis.

0 0.25 0.5 1 Miles

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**Unofficial Shoreline Designation Map (East)**  
 City of Vancouver, Washington  
 1/26/2021 Draft  
 Data Sources: Clark County, 2009, 2011; DNR, 2007; City of Vancouver, 2020



## MEMORANDUM

**DATE:** May 27, 2021

**TO:** Natasha Ramras, City Clerk  
Jonathan Young, City Attorney

**FROM:** Brent D. Boger, City Attorney's Office/Civil Division 

**RE:** Corrections to Ordinance Exhibit Shoreline Master Program

**CC:** Rebecca Kennedy Long Range Planning Manager  
Cayla Cothron, Associate Long Range Planner

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On April 19, 2021 Council adopted changes to the Shoreline Master Program by (Ordinance M-4334). The rather lengthy ordinance included some errors that I believe fit within the Clerk's ability to correct clerical errors in accordance with VMC 1.01.080.

### PROPOSED CORRECTION 1.

#### **Ordinance Section 2, 2.3.2 List of Exemptions (p. 9)**

1. Any development of which the total cost or fair market value does not exceed seven thousand, ~~seven hundred, eighteen dollars~~ forty-seven dollars (\$7,047.00) 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. 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.

Analysis: While this would appear substantive at first look, the correct figure appears elsewhere in the exhibit to Ordinance M-4334 and is inconsistent with the above figure.<sup>1</sup> Moreover the Office of Financial Management actually establishes the figure on a statewide basis which would

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<sup>1</sup> Ordinance No. M-4334, Section 9, 185. Substantial Development definition, p. 133

be controlling.<sup>2</sup> Keeping the incorrect number in the ordinance would have no legal effect and would only be confusing.

#### **PROPOSED CORRECTON 2.**

##### **Ordinance Section 5 5, 5.1.2 Adverse Impacts and Mitigation (p. 20)**

6. Developments permitted in the Aquatic Shoreline Designation along the Columbia River shall be sited waterward of -15 feet CRD unless adverse impacts to shallow water habitat is are addressed through mitigation to ensure no net loss. Mitigation can include, enhancement, creation and/or payment of mitigation bank credits.

Analysis: This is simply changing the correct verb case from singular to plural and has no legal effect.

#### **PROPOSED CORRECTION 3.**

##### **Ordinance Section 6, 20.740.140 Tables (p. 87-88)**

Analysis: Table 20.740.140-3 and -4 have proper lowercase titles which are inconsistent with the other tables in the section. We would propose to capitalize them to upper case. This proposed change has no legal effect.

#### **PROPOSED CORRECTON 4.**

##### **Ordinance Section 8, 7.4.7 Hearings (p. 124)**

3. The Planning Commission may hold an open-record hearing on Type IV quasi-judicial applications including planned developments, and forward a recommendation to the City Council. The City Council shall conduct an open-record hearing on same, make a decision on a Shoreline Development Permit or Statement of Exemption and make a recommendation on a Shoreline Conditional Use or Variance, and forward a final recommendation/decision to Ecology.

Analysis: This simply adds the conjunction “and” to correct the grammar and sentence structure. The change has no legal effect.

#### **PROPOSED CORRECTION 5.**

##### **Ordinance Section 9, ‘S’ Definitions (p. 133)**

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<sup>2</sup> Washington State Office of Financial Management (OFM) Notice of Substantial Development Dollar Threshold Adjustment (2017)

**185. Substantial Development** - "Substantial development" shall mean any development of ~~that~~ which the total cost or fair market value exceeds seven thousand forty-seven dollars (\$7,047), or as adjusted by the State Office of Financial Management, or any development that materially interferes with the normal public use of the water or shorelines of the state, except as specifically exempted pursuant to RCW 90.58.030(3)(e).

Analysis: This is the same issue as noted in Correction 1 above, except the ordinance bill mistakenly struck the word "exceeds". Without the word, the sentence makes no sense. We would propose to include the word "exceeds" in the revised exhibit to the Ordinance.

In addition, the use of the word "that" is used grammatically incorrectly in the first sentence. We propose to make the change as noted.

These proposed corrections have no legal effect.