

**GOLDENDALE CITY COUNCIL
REGULAR MEETING
FEBRUARY 21, 2023
6:00 PM**

NOTE: THIS MEETING IS BEING HELD IN PERSON OR CAN BE ACCESSED REMOTELY BY TELEPHONE AND ZOOM VIDEO. TO PARTICIPATE VIA ZOOM, YOU WILL NEED TO CALL 415-762-9988. THE MEETING ID NUMBER IS 373 290 5204. YOU WILL BE ABLE TO CALL IN AT 6:45. YOU CAN FIND THE INSTRUCTIONS FOR ZOOM ON THE WEBSITE.

- A. Call to Order
 - a. Pledge of Allegiance
- B. Roll Call
- C. Closed Public Comment (Agenda Business Only, comments limited to 3 minutes)
- D. Public Hearing
 - 1. SMP Public Hearing
- E. Agenda
 - 1. Approval of Agenda
 - 2. Consent Agenda
 - a. Approval of Minutes
 - b. Claims
 - c. Payroll
 - d. Other
- F. Presentations
- G. Department Reports
- H. Council Business
 - 1. Washington Exclusive Right to Sell Listing Contract with J & M Realty
 - 2. Agricultural Use Agreement
- I. Resolutions
- J. Ordinances
- K. Report of Officers - Council, Mayor, City Administrator
- L. Open Public Comment – 3 Minute Limit
- M. Executive Session
- N. Adjournment

NEXT REGULAR COUNCIL MEETING WILL BE ON MARCH 6TH, 2023 AT 6:00 PM.

AGENDA TITLE: CONSENT AGENDA

DATE: February 21, 2022

ACTION REQUIRED:

ORDINANCE _____ COUNCIL INFORMATION _____ X
RESOLUTION _____ OTHER _____
MOTION _____ X

EXPLANATION:

The consent agenda includes the following:

Minutes of the February 6th regular council meeting, second pay period January checks #56618 – 56624, 901553 – 901554, Direct Deposit 2/8/23 in the amount of \$93,967.56, 2/17/2023 claims checks #56616 – 56665, 901555 - 901556 in the amount of \$157,964.10.

FISCAL IMPACT:

Payroll checks in the amount of \$93,967.56, claims checks in the amount of \$157,964.10.

ALTERNATIVES:

Approve the consent agenda.

Remove certain items from the consent agenda for further discussion.

STAFF RECOMMENDATION:

Approve the consent agenda

MOTION:

I MOVE TO APPROVE THE CONSENT AGENDA.

**GOLDENDALE CITY COUNCIL
REGULAR MEETING
FEBRUARY 6, 2023
6:00 PM**

Mayor Michael Canon called to order the regular meeting of the Goldendale City Council followed by the Pledge of Allegiance.

ROLL CALL

Council Present: Mayor Michael A Canon (Not voting), Council Member Steve Johnston, Council Member Dave Jones, Council Member Loren Meagher, Council Member Ellie Casey, Council Member Andy Halm, Council Member Filiberto Ontiveros, Council Member Miland Walling

Staff Present (Not Voting): City Administrator Pat Munyan, Clerk Treasurer Sandy Wells, Police Chief Jay Hunziker, Fire Department Captain Julianna Ontiveros

CLOSED PUBLIC HEARING

No Comments

AGENDA AND CONSENT AGENDA

Mayor Michael Canon would like to amend tonight's agenda and add under presentations F2 Goldendale Chamber of Commerce Update.

Motion: I move to amend tonight's agenda to add F2 Goldendale Chamber of Commerce Update and approve the agenda as amended and consent agenda, **Action:** Motion, **Moved by** Council Member Miland Walling, **Seconded by** Council Member Andy Halm.

Motion Passed Unanimously

PRESENTATIONS

Goldendale Middle School FFA Presentations by FFA Students, the Goldendale Middle School gave a presentation on the pros and cons of using electric tractors for farmers.

Goldendale Chamber of Commerce Update by Mindy Jackson and Felicia Gray, The Chamber of Commerce showed a promotional video that was recorded around Goldendale and gave an update on the art they have been working on for some new murals. Mindy invited the council to a community business meeting on February 9th, 2023, at 6pm at the Goldendale Grange.

DEPARTMENT REPORTS

City Administrator Pat Munyan, Public Works needs to replace the deck on the Ekone Park Gazebo. Pat gave the council an update on the Airport Project. Sandy and I have been working on getting some grant reimbursements done.

Police Chief Jay Hunziker, the two new entry level officers will start on the payroll March 1st. They have an academy date of March 7th. They are on standby for that class. They will have a graduation date sometime in July. The lateral officer that we hired starts February 17th. Jessica's replacement for the Police Admin Assistant starts on February 16th. We will be at full staff once the entry levels are on staff full time.

Fire Department Captain Julianna Ontiveros, the Goldendale Fire Department is at 23 calls this year so far. We have had 3 new applications turned in for new Fire Department members so that will make a total of 27 volunteers for the fire department. The Fire Department has been accepted by the Department of Health as an agency that is certified to use Narcan. We will be another resource to help with the drug crisis.

COUNCIL BUSINESS

Interlocal Agreement for Dispatch Services by Mayor Mike Canon, the agreement for Interlocal Radio System Use and 911/ Dispatch Services agreement was approved on December 19, 2022, for a five-year agreement. The commissioners only approved a one-year agreement. The amount of the agreement for the year 2023 stayed the same. The city shall pay Klickitat County \$45,020.35 for the period of January 1, 2023, through December 31, 2023, for services as stated in the agreement.

Motion: I move to authorize the mayor to execute the interlocal radio system use and 911/Dispatch services agreement in the amount of \$45,020.35 for the period from January 1, 2023, to December 31, 2023, **Action:** Motion, **Moved by** Council Member Loren Meagher, **Seconded by** Council Member Ellie Casey.

Motion Passed (**summary:** Ayes = 6, Nays =0, Abstain =1)

Ayes: Council Member Dave Jones, Council Member Ellie Casey, Council Member Miland Walling, Council Member Loren Meagher, Council Member Andy Halm, Council Member Steve Johnston

Abstain: Council Member Filiberto Ontiveros

WA ST Department of Commerce Federal General Grant Contract by Pat Munyan, the attached contract agreement is to implement the Small Business Innovation Grant funds in the amount of \$1,036,800.00 to construct an Incubator Business Center. In the event the agreement is approved by City Council, the administration will move to complete the agreement with Washington State Department of Commerce to speed up the process to move to construction to complete the project in the tight timeline allowed for the agreement.

Council Member Steve Johnston asked several questions regarding the contract about what certain items are. Nicole Lundin helped answer some of Steve's questions and concerns along with Pat Munyan.

Motion: I move to authorize the mayor to execute the Washington State Department of Commerce Federal General Grant Contract, **Action:** Motion, **Moved by** Council Member Filiberto Ontiveros, **Seconded by** Council Member Andy Halm.

Motion Passed (**summary:** Ayes = 6, Nays =1, Abstain =0)

Ayes: Council Member Dave Jones, Council Member Ellie Casey, Council Member Miland Walling, Council Member Loren Meagher, Council Member Andy Halm, Council Member Filiberto Ontiveros

Nays: Council Member Steve Johnston

Interlocal Joint Use Agreement with Central Klickitat Conservation District by Pat Munyan, Central Klickitat Conservation District is requesting this agreement to utilized unused spaces within the City Hall facility for storage and office space. This is a 2-year agreement. The purpose of this interlocal agreement is to provide structure for a relationship between two governmental parties that don't often work together while encouraging government cooperation for responsible fiscal management of public funding.

Motion: I move to authorize the mayor to execute the Washington State Department of Commerce Federal General Grant Contract, **Action:** Motion, **Moved by** Council Member Miland Walling, **Seconded by** Council Member Andy Halm.

Motion Passed (**summary:** Ayes = 6, Nays =0, Abstain =1)

Ayes: Council Member Dave Jones, Council Member Ellie Casey, Council Member Miland Walling, Council Member Andy Halm, Council Member Filiberto Ontiveros, Council Member Steve Johnston

Abstain: Council Member Loren Meagher

American Red Cross Month by Mayor Canon, The Red Cross would like the mayor to sign a proclamation declaring March as American Red Cross Month

Motion: I move to authorize the mayor to execute the proclamation declaring March as American Red Cross Month, **Action:** Motion, **Moved by** Council Member Filiberto Ontiveros, **Seconded by** Council Member Ellie Casey.

Motion Passed Unanimously

Consulting Engineer Agreement by Pat Munyan, Pioneer was the only Engineer firm the applied for the RFP for Consulting Engineering services for the design and manage the small innovation incubator facility project.

Motion: I move to authorize the mayor to execute the consulting engineering contract between the City of Goldendale and Pioneer Surveying & Engineering, **Action:** Motion, **Moved by** Council Member Loren Meagher, **Seconded by** Council Member Filiberto Ontiveros.

Motion Passed Unanimously

RESOLUTIONS

Tourism Awards 2023 by Mayor Mike Canon, The City Council approved the recommendation of the Event Committee. The Resolution is to authorize reimbursement funding for tourism events and festivals in 2023 with lodging tax revenues.

Motion: I move to adopt resolution number 726 authorizing funding for tourism events and festivals in 2023 in the amount of \$80,700.00, **Action:** Motion, **Moved by** Council Member Filiberto Ontiveros, **Seconded by** Council Member Dave Jones.

Motion Passed (**summary:** Ayes = 5, Nays =1, Abstain =1)

Ayes: Council Member Dave Jones, Council Member Ellie Casey, Council Member Miland Walling, Council Member Loren Meagher, Council Member Filiberto Ontiveros

Nays: Council Member Steve Johnston

Abstain: Council Member Andy Halm

REPORT OF OFFICERS

Council Member Dave Jones, I wanted to thank the fire department for all their hard work in saving my neighbors house. I want to give props to the Goldendale Chamber of Commerce and all the future plans that are ahead.

Council Member Filiberto Ontiveros, I'm glad we can have different views as a council. Our community is very diverse and welcome freedom of speech.

Council Member Steve Johnston, we are having a public works meeting at 3:00 tomorrow.

Clerk Treasurer Sandy Wells, I have been in contact with Felicia Gray to redo our logo. We are excited to get that replaced.

Council Member Miland Walling, several weeks ago we had a meeting with Congressman Newhouse. The congressman was really pleased with the projects we were working on.

Mayor Mike Canon, we welcome all the different businesses in this town to help make Goldendale grow.

OPEN PUBLIC COMMENT

Nicole Lundin, Goldendale, gave an update on the Goldendale Chamber of Commerce Small Business Innovation Grant.

Rob Wing, Goldendale, I appreciate the council members. I think the city of Goldendale should invest in the airport. I want to thank the Public Works Department for their hard work. We had a water line break and they responded very quickly. I also wanted to thank GPD. Our house got broken into and the Goldendale Police Department helped us get our positions back. Mr. Wing also agreed with Filiberto that we don't have to agree with everyone but we can have a good discussion.

Sheri Bousquet, Goldendale (on zoom), spoke against solar fields in Klickitat County.

Greg Wagner, Goldendale, spoke against solar fields in Klickitat County

ADJOURNMENT

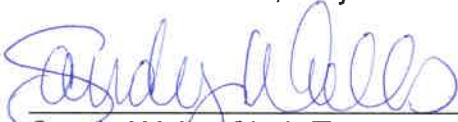
7:38 PM

Motion: I motion to Adjourn the meeting, Action: Motion, Moved by Council Member Andy Halm, Seconded by Council Member Ellie Casey.

Motion passed unanimously.

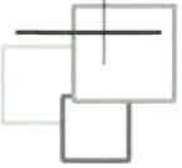


Michael A Canon, Mayor



Sandy Wells, Clerk-Treasurer

Register



Fiscal: 2023
Deposit Period: 2023 - Feb 2023
Check Period: 2023 - Feb 2023 - 1st Council Feb 2023

Number	Name	Print Date	Clearing Date	Amount
Columbia State Bank	20016310			
Check				
56616	Doug Frantum	2/8/2023		Void
56617	Freightliner Northwest Union Gap	2/8/2023		\$3,691.85
56625	Oregon Telephone Corp	2/10/2023		\$89.47
56626	Alllys Building Center	2/21/2023		\$579.36
56627	Aramark Uniform Serv Inc	2/21/2023		\$706.90
56628	Aspect Consulting LLC	2/21/2023		\$3,576.50
56629	Basin Feed & Supply	2/21/2023		\$15.04
56630	Bishop Sanitation Inc	2/21/2023		\$129.00
56631	Bryant Pipe & Supply Inc	2/21/2023		\$106.45
56632	Centurylink NC	2/21/2023		\$22.63
56633	Control Systems NW LLC	2/21/2023		\$6,014.92
56634	Elemech Electrical & Mechanical	2/21/2023		\$27,442.70
56635	Eurofins Microbiology Laboratories INC	2/21/2023		\$172.60
56636	FBI-LEEDA	2/21/2023		\$50.00
56637	Ferguson Portland Waterworks #3011	2/21/2023		\$1,879.53
56638	Goldendale City of	2/21/2023		\$3,137.11
56639	Goldendale Market Fresh	2/21/2023		\$25.34
56640	Goldendale Sentinel	2/21/2023		\$96.69
56641	Grainger	2/21/2023		\$455.98
56642	Hattenhauer Energy Co LLC	2/21/2023		\$1,175.68
56643	Heiman Fire Equipment Inc	2/21/2023		\$475.70
56644	Holcombs Market	2/21/2023		\$61.94
56645	Klickitat CO Emer Mgmt	2/21/2023		\$11,255.09
56646	Klickitat County PUD	2/21/2023		\$17,854.02
56647	Krystal L Smith	2/21/2023		\$1,275.00
56648	L N Curtis & Sons	2/21/2023		\$499.07
56649	Menke Jackson Beyer LLP	2/21/2023		\$1,012.00
56650	Miland Walling	2/21/2023		\$278.46
56651	Norco Inc	2/21/2023		\$51.99
56652	Pioneer Surveying & Engineering Inc	2/21/2023		\$3,125.00
56653	Radcomp Technologies	2/21/2023		\$6,842.86
56654	Republic Services Inc	2/21/2023		\$704.07
56655	RH2 Engineering Inc	2/21/2023		\$37,200.27
56656	Shred Northwest Inc	2/21/2023		\$84.00
56657	Teresa D Johnson CPA Inc	2/21/2023		\$1,499.17
56658	The Watershed Company	2/21/2023		\$2,007.50

Number	Name	Print Date	Clearing Date	Amount
56659	US Cellular	2/21/2023		\$5,603.10
56660	Verizon Wireless	2/21/2023		\$370.23
56661	Vic's Auto & Supply	2/21/2023		\$14.72
56662	Vision Municipal Solutions LLC	2/21/2023		\$2,241.13
56663	WA St Auditor	2/21/2023		\$1,024.80
56664	WA St Dept of Health	2/21/2023		\$2,866.90
56665	Washington State Patrol	2/21/2023		\$621.15
901555	HSA Bank Employee Plan Funding	2/21/2023		\$15.75
901556	HSA Bank Employee Plan Funding	2/21/2023		\$11,612.43
	Total		Check	\$157,964.10
	Total		20016310	\$157,964.10
	Grand Total			\$157,964.10

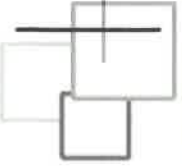
**CITY OF GOLDENDALE
CLAIMS REGISTER**

I, the undersigned, do hereby certify that the materials have been furnished, the services rendered, or the labor performed as shown on Check numbers 56616 through 56665, 901553-901556 in the amount of \$157964.10, and unpaid obligations against the City of Goldendale, Washington and that I am authorized to certify said claims.

DATED this day 17 of February , 2023.



Sandy Wells, Clerk-Treasurer



Register Activity

Fiscal: 2023
Period: 2023 - Feb 2023
Council Date: 2023 - Feb 2023 - 1st Council Feb 2023

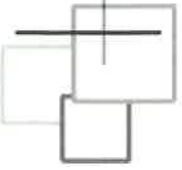
Reference	Date	Amount	Notes
Reference Number: 56617	Freightliner Northwest Union Gap	\$3,691.85	
SR003067880 Invoice	1/6/2023	\$3,691.85	Report #4103
Reference Number: 56625	Oregon Telephone Corp	\$89.47	
Invoice - 2/10/2023 4:35:00 PM	2/10/2023	\$89.47	Refund Water Bill due to error
Reference Number: 56626	Allyns Building Center	\$579.36	
346053	1/3/2023	\$13.75	Outlet Cord
346076	1/3/2023	\$40.88	Mini Hacksaw, Blade, Coupling
346128	1/4/2023	\$27.50	Sealant
346173	1/5/2023	\$9.66	Timer
346300	1/9/2023	\$40.29	Rake
346347	1/10/2023	\$108.76	Tape, Brass Nipple, Bushings, Valve
346453	1/12/2023	\$23.10	Pliers
346682	1/18/2023	\$28.48	Caulk Gun
346733	1/19/2023	\$37.06	Adhesive
346967	1/25/2023	\$67.27	Conduit, Coupling, PVC Elbow
346995	1/26/2023	\$139.54	Mason Line, Screws, Tape, Staple Gun
347051	1/27/2023	\$28.57	Knife, Chalk Reel
347133	1/30/2023	\$14.50	Saw
Reference Number: 56627	Aramark Uniform Serv Inc	\$706.90	
5291152169	1/3/2023	\$67.85	Mats Cleaner
5291152183	1/3/2023	\$50.78	Uniforms
5291152189	1/3/2023	\$32.61	Rugs, Towel, Mop
5291152208	1/3/2023	\$16.67	Mats
5291155710	1/10/2023	\$23.44	Mats Cleaner
5291155738	1/10/2023	\$50.78	uniforms
5291155747	1/10/2023	\$32.61	Rugs, Towel, Mop
5291155762	1/10/2023	\$16.67	Mats
52911612963	1/17/2023	\$67.85	Mats cleaner
5291161314	1/17/2023	\$51.07	Uniforms
5291161319	1/17/2023	\$32.61	Rugs Towel Mop
5291161334	1/17/2023	\$16.67	Mats
5291165287	1/24/2023	\$23.44	Mats Cleaner
5291165322	1/24/2023	\$32.61	Rugs, Towel, Mop
5291165338	1/24/2023	\$16.67	Mats

Reference	Date	Amount	Notes
Reference Number: 56627	Aramark Uniform Serv Inc	\$706.90	
<u>52911685317</u>	1/24/2023	\$50.78	Uniforms
<u>5291169605</u>	1/31/2023	\$23.44	Mats Cleaner
<u>5291169627</u>	1/31/2023	\$51.07	Uniforms
<u>5291169630</u>	1/31/2023	\$32.61	Rugs, Towel, Mop
<u>5291169638</u>	1/31/2023	\$16.67	Mats
Reference Number: 56628	Aspect Consulting LLC	\$3,576.50	
<u>50052</u>	2/15/2023	\$474.00	Well Analysis
<u>50053</u>	2/15/2023	\$3,102.50	Project 160331 - on call assistance
Reference Number: 56629	Basin Feed & Supply	\$15.04	
<u>81482</u>	1/9/2023	\$15.04	Gloves
Reference Number: 56630	Bishop Sanitation Inc	\$129.00	
<u>A-126896</u>	2/8/2023	\$129.00	Airport Port-a-potty Rental
Reference Number: 56631	Bryant Pipe & Supply Inc	\$106.45	
<u>2023937</u>	2/7/2023	\$106.45	Rubber hose
Reference Number: 56632	Centurylink NC	\$22.63	
<u>Invoice - 2/17/2023 2:32:03 PM</u>	2/17/2023	\$22.63	
Reference Number: 56633	Control Systems NW LLC	\$6,014.92	
<u>CSNW-1050</u>	2/16/2023	\$6,014.92	Chlorinatio Well Repairs
Reference Number: 56634	Elemech Electrical & Mechanical	\$27,442.70	
<u>17168</u>	1/24/2023	\$27,442.70	Bulk Water Station Piping
Reference Number: 56635	Eurofins Microbiology Laboratories INC	\$172.60	
<u>2301045</u>	2/8/2023	\$172.60	Lab Testing
Reference Number: 56636	FBI-LEEDA	\$50.00	
<u>69102535-23</u>	2/8/2023	\$50.00	Membership
Reference Number: 56637	Ferguson Portland Waterworks #3011	\$1,879.53	
<u>1176261</u>	2/1/2023	\$432.19	Gaskets
<u>1176277</u>	2/1/2023	\$1,447.34	Couplings
Reference Number: 56638	Goldendale City of	\$3,137.11	
<u>Invoice - 2/17/2023 2:43:44 PM</u>	2/5/2023	\$3,137.11	Water/ Sewer Utilities
Reference Number: 56639	Goldendale Market Fresh	\$25.34	
<u>7101</u>	1/7/2023	\$25.34	Donuts

Reference	Date	Amount	Notes
Reference Number: 56640	Goldendale Sentinel	\$96.69	
<u>155859</u>	2/8/2023	\$71.83	Small Works Rooster
<u>155860</u>	2/8/2023	\$24.86	Senior Discount
Reference Number: 56641	Grainger	\$455.98	
<u>9598089242</u>	2/6/2023	\$264.92	Truck Parts
<u>9598089259</u>	2/6/2023	\$138.61	Tee Malleable Iron
<u>997911420</u>	2/6/2023	\$52.45	Bushing
Reference Number: 56642	Hattenhauer Energy Co LLC	\$1,175.68	
<u>CL08202</u>	2/15/2023	\$1,175.68	Fuel
Reference Number: 56643	Heiman Fire Equipment Inc	\$475.70	
<u>0917616-IN</u>	2/8/2023	\$475.70	Fire Equipment
Reference Number: 56644	Holcombs Market	\$61.94	
<u>3039030949</u>	1/27/2023	\$2.09	Ice
<u>4019421036</u>	1/6/2023	\$24.69	Water/ Ice
<u>4052681249</u>	1/20/2023	\$2.09	Ice
<u>4077941127</u>	1/31/2023	\$33.07	Bleach
Reference Number: 56645	Klickitat CO Emer Mgmt	\$11,255.09	
<u>203-01-C00523</u>	2/17/2023	\$11,255.09	1st Quarter Dispatch Services
Reference Number: 56646	Klickitat County PUD	\$17,854.02	
<u>Invoice - 2/17/2023 3:29:28 PM</u>	2/17/2023	\$17,854.02	Electric Utilities
Reference Number: 56647	Krystal L Smith	\$1,275.00	
<u>297913</u>	2/13/2023	\$1,275.00	Janitorial
Reference Number: 56648	L N Curtis & Sons	\$499.07	
<u>INV666115</u>	1/10/2023	\$190.28	Duty Holster
<u>INV672632</u>	1/31/2023	\$308.79	Shirt / Pants
Reference Number: 56649	Menke Jackson Beyer LLP	\$1,012.00	
<u>044-General January 2023</u>	1/31/2023	\$1,012.00	Research
Reference Number: 56650	Miland Walling	\$278.46	
<u>Invoice - 2/17/2023 3:35:45 PM</u>	2/17/2023	\$278.46	Milage
Reference Number: 56651	Norco Inc	\$51.99	
<u>36912178</u>	1/31/2023	\$51.99	Cylinder Rental
Reference Number: 56652	Pioneer Surveying & Engineering Inc	\$3,125.00	
<u>21-902-21</u>	1/24/2023	\$250.00	Byars Ave improvement

Reference	Date	Amount	Notes
Reference Number: 56652 <u>23-902-1</u>	Pioneer Surveying & Engineering Inc 1/24/2023	\$3,125.00 \$2,875.00	Waterline replacement
Reference Number: 56653 <u>97123</u> <u>97124</u> <u>97125</u> <u>MSP-97458</u>	Radcomp Technologies 2/2/2023 2/2/2023 2/2/2023 2/7/2023	\$6,842.86 \$34.40 \$241.88 \$129.00 \$6,437.58	VGA Display Port Video Cable Monitor Ram Upgrade February Billing
Reference Number: 56654 <u>0487-00088347</u>	Republic Services Inc 1/31/2023	\$704.07 \$704.07	Garbage Service
Reference Number: 56655 <u>89474</u> <u>89557</u>	RH2 Engineering Inc 2/14/2023 2/16/2023	\$37,200.27 \$32,800.49 \$4,399.78	WWTP Improvements Scada Servies
Reference Number: 56656 <u>53038020923</u>	Shred Northwest Inc 2/9/2023	\$84.00 \$84.00	Shred
Reference Number: 56657 <u>6219</u>	Teresa D Johnson CPA Inc 1/31/2023	\$1,499.17 \$1,499.17	Accounting Assistance
Reference Number: 56658 <u>2023-0184</u>	The Watershed Company 2/9/2023	\$2,007.50 \$2,007.50	SPM Consulting
Reference Number: 56659 <u>0558404341</u>	US Cellular 1/24/2023	\$5,603.10 \$5,603.10	Cell Service
Reference Number: 56660 <u>9926876456</u> <u>9927002759</u>	Verizon Wireless 2/4/2023 2/6/2023	\$370.23 \$360.09 \$10.14	Police Vehicles Chlorination Station
Reference Number: 56661 <u>072445</u>	Vic's Auto & Supply 1/10/2023	\$14.72 \$14.72	
Reference Number: 56662 <u>09-11421</u> <u>09-12273</u> <u>09-12319</u>	Vision Municipal Solutions LLC 9/7/2022 1/20/2023 1/30/2023	\$2,241.13 \$977.34 \$915.10 \$348.69	Waterbill Mailing Waterbill Mailing Payroll Forms
Reference Number: 56663 <u>L152699</u>	WA St Auditor 2/9/2023	\$1,024.80 \$1,024.80	Audit

Reference	Date	Amount	Notes
Reference Number: 56664 <u>Invoice - 2/17/2023 4:02:11 PM</u>	WA St Dept of Health 2/17/2023	\$2,866.90 \$2,866.90	Operator Certification System Fee
Reference Number: 56665 <u>00180152</u>	Washington State Patrol 2/10/2023	\$621.15 \$621.15	Fire Safety Reveiw
Reference Number: 901555 <u>W441274</u>	HSA Bank Employee Plan Funding 2/6/2023	\$15.75 \$15.75	Service Fee
Reference Number: 901556 <u>Invoice - 2/17/2023 3:06:33 PM</u>	HSA Bank Employee Plan Funding 2/14/2023	\$11,612.43 \$11,612.43	HSA Funding



Register

Number	Name	Fiscal Description	Cleared	Amount
56618	Johnston, Steve	2023 - Feb 2023 - 1st Council Feb 2023		\$45.69
56619	Council Trust Acct.	2023 - Feb 2023 - 1st Council Feb 2023		\$1,137.08
56620	Deferred Comp Program	2023 - Feb 2023 - 1st Council Feb 2023		\$400.00
56621	Dept of Labor & Industries	2023 - Feb 2023 - 1st Council Feb 2023		\$2,043.55
56622	Dept of Retirement	2023 - Feb 2023 - 1st Council Feb 2023		\$11,788.70
56623	Employment Security	2023 - Feb 2023 - 1st Council Feb 2023		\$157.58
56624	Goldendale, City of	2023 - Feb 2023 - 1st Council Feb 2023		\$80.00
901553	City of Goldendale	2023 - Feb 2023 - 1st Council Feb 2023		\$21,481.29
901554	Employment Security - PFML	2023 - Feb 2023 - 1st Council Feb 2023		\$463.48
Direct Deposit Run -	Payroll Vendor	2023 - Feb 2023 - 1st Council Feb 2023		\$56,370.19
2/8/2023				\$93,967.56

AGENDA BILL: D-1

AGENDA TITLE: SMP Public Hearing

DATE: February 21, 2023

ACTION REQUIRED:

ORDINANCE_____ COUNCIL INFORMATION_____ X _____

RESOLUTION_____ OTHER_____

MOTION_____ X _____

EXPLANATION:

Alex Capron will be present to give an update on the SMP prior to the opening of the public hearing.

FISCAL IMPACT:

ALTERNATIVES:

STAFF RECOMMENDATION: *No action needed.*

MOTION: No Motion needed

SHORELINE MASTER PROGRAM

CITY OF GOLDENDALE

~~June 2016~~Revised January 2023
Ecology Grant Agreement Task 10

Prepared for:



City of Goldendale
1103 S. Columbus
Goldendale, WA 98620

Prepared with assistance from:



THE
WATERSHED
COMPANY

Prepared with funding from:



DEPARTMENT OF
ECOLOGY
State of Washington

TABLE OF CONTENTS

1 GENERAL PROVISIONS	1
1.1 Purpose	1
1.2 Authority	1
1.3 Applicability	1
1.4 Relationship to other regulations	1
1.5 Liberal construction	2
1.6 Severability	2
1.7 Effective date	2
2 DEFINITIONS	2
3 SHORELINE JURISDICTION	13
3.1 Shoreline jurisdiction	13
3.2 Official Shorelines Map	13
4 SHORELINE POLICIES	15
4.1 General policies	15
4.1.1 Archaeological & historic resources	15
4.1.2 Critical areas	15
4.1.3 Environmental protection	15
4.1.4 Flood hazard reduction	15
4.1.5 Public access	16
4.1.6 Vegetation conservation	16
4.1.7 Water quality & quantity	16
4.2 Shoreline use & modification policies	17
4.2.1 General shoreline use & modification policies	17
4.2.2 Agriculture	18
4.2.3 Aquaculture	18
4.2.4 Boating facilities	18
4.2.5 Commercial development	18
4.2.6 Dredging & dredge material disposal	18
4.2.7 Fill & excavation	19
4.2.8 Forest practices	19
4.2.9 Industrial development	19
4.2.10 In-stream structures	19
4.2.11 Mining	19
4.2.12 Recreational development	19
4.2.13 Residential development	19
4.2.14 Shoreline habitat & natural systems enhancement projects	19

4.2.15 Shoreline stabilization.....	2019
4.2.16 Transportation & parking.....	2019
4.2.17 Utilities.....	20
5 ENVIRONMENT DESIGNATIONS	2120
5.1 High-Intensity.....	2120
5.1.1 Purpose.....	2120
5.1.2 Designation.....	2120
5.1.3 Management policies.....	2120
5.2 Shoreline Residential	21
5.2.1 Purpose.....	21
5.2.2 Designation.....	2224
5.2.3 Management policies.....	2224
5.3 Parks & Recreation.....	2224
5.3.1 Purpose.....	2224
5.3.2 Designation.....	22
5.3.3 Management policies.....	2322
5.4 Aquatic	2322
5.4.1 Purpose.....	2322
5.4.2 Designation.....	23
5.4.3 Management policies.....	23
6 GENERAL REGULATIONS	2423
6.1 Archaeological & historic resources.....	2423
6.2 Critical areas	24
6.3 Environmental protection	2524
6.4 Flood hazard reduction.....	2726
6.5 Public access	2928
6.6 Vegetation conservation	3231
6.7 Water quality & quantity	3433
7 SHORELINE USE & MODIFICATION REGULATIONS.....	34
7.1 General shoreline use & modification regulations.....	34
7.2 Agriculture	3736
7.3 Aquaculture	37
7.4 Boating facilities.....	3837
7.5 Commercial development	3837
7.6 Dredging & dredge material disposal.....	3938
7.7 Fill & excavation.....	4140
7.8 Forest practices.....	4241
7.9 Industrial development	4241
7.10 In-stream structures.....	4342

7.11 Mining	4342
7.12 Recreational development	4342
7.13 Residential development	43
7.14 Shoreline habitat & natural systems enhancement projects	4443
7.15 Shoreline stabilization	4544
7.16 Transportation & parking	4847
7.17 Utilities	4948
8 ADMINISTRATION, PERMITS & ENFORCEMENT	5049
8.1 Administrative responsibilities	5049
8.2 Nonconforming uses, lots & structures	5150
8.3 Exemptions	52
8.4 Shoreline permit application requirements	53
8.5 Shoreline permit application notice requirements	5655
8.6 Special shoreline permit procedures for limited utility extensions & bulkheads	5756
8.7 Shoreline permit review criteria	5857
8.7.1 Review criteria for all development	5857
8.7.2 Review criteria for shoreline substantial development permits	5857
8.7.3 Review criteria for shoreline conditional use permits	5857
8.7.4 Review criteria for shoreline variance permits	5958
8.8 Filing with Ecology	6160
8.9 Time requirements of shoreline permits	6261
8.10 Shoreline permit revisions	6362
8.11 Requests for review of final permit decisions	6564
8.12 Enforcement	6564
8.13 Amendments	6564
8.14 Shoreline activity tracking	6564
8.15 Annexation	6665

LIST OF TABLES

Table 7-1. Shoreline use and modification matrix	3534
--------------------------------------------------------	------

APPENDICES

APPENDIX A: OFFICIAL SHORELINES MAP

APPENDIX B: SHORELINE CRITICAL AREAS REGULATIONS

SHORELINE MASTER PROGRAM

CITY OF GOLDENDALE

1 GENERAL PROVISIONS

1.1 Purpose

- (1) The purpose of the City's Shoreline Master Program is to implement the requirements of RCW 90.58, the Shoreline Management Act of 1971. RCW 90.58.080 directs local governments to develop and administer local shoreline master programs for regulation of uses on shorelines of the state.

1.2 Authority

- (1) The City's Shoreline Master Program is enacted and administered according to the following state law and rules:
 - A. The Shoreline Management Act of 1971, RCW 90.58;
 - B. State master program approval/amendment procedures and master program guidelines, WAC 173-26; and
 - C. Shoreline management permit and enforcement procedures, WAC 173-27.

1.3 Applicability

- (1) The City's Shoreline Master Program shall apply to all shorelines of the state as defined in RCW 90.58.030.
- (2) Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to RCW 90.58, the Shoreline Management Act, and the City's Shoreline Master Program whether or not a permit is required.
- (3) Federal agency activities must comply with WAC 173-27-060.

1.4 Relationship to other regulations

- (1) Compliance with the City's Shoreline Master Program does not constitute compliance with other federal, state, and local regulations and permit requirements that may apply. In addition to the City, agencies that may have regulatory authority for shoreline projects includes, but is not limited to, the US Army Corps of Engineers, the Washington State

Department of Fish and Wildlife, and Ecology. The applicant is responsible for complying with all other applicable requirements.

- (2) When any provision of the City's Shoreline Master Program or any other federal, state, or local provision conflicts with the City's Shoreline Master Program, the provision that is most protective of shoreline resources shall prevail.
- (3) The City's Shoreline Master Program includes critical areas regulations applicable only in shoreline jurisdiction; these regulations shall control within shoreline jurisdiction over the general critical area regulations adopted pursuant to the Growth Management Act.

1.5 Liberal construction

- (1) As provided for in RCW 90.58.900, the Shoreline Management Act is exempted from the rule of strict construction. Therefore, the City's Shoreline Master Program shall be liberally construed to give full effect to the purposes and policies for which it was enacted.

1.6 Severability

- (1) If any provision of the City's Shoreline Master Program, or its application to any person or legal entity or circumstances, is held invalid, the remainder of the City's Shoreline Master Program, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

1.7 Effective date

- (1) The City's Shoreline Master Program is hereby adopted on June 20, 2016 (Resolution No. 656). The City's Shoreline Master Program and all amendments thereto shall become effective 14 days from the date of Ecology's written notice of final approval.

2 DEFINITIONS

- (1) **"Agricultural activities"** means agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement

facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.

- (2) **"Agricultural equipment"** includes, but is not limited to:
 - A. The following used in agricultural operations: equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;
 - B. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
 - C. Farm residences and associated equipment, lands, and facilities; and
 - D. Roadside stands and on-farm markets for marketing fruit or vegetables.
- (3) **"Agricultural facilities"** has the same meaning as "agricultural equipment."
- (4) **"Agricultural land"** means those specific land areas on which agricultural activities are conducted as of the date of adoption of the City's Shoreline Master Program as evidenced by aerial photography or other documentation. After the effective date of the City's Shoreline Master Program, land converted to agricultural use is subject to compliance with its requirements.
- (5) **"Agricultural products"** includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within 20 years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products.
- (6) **"Amendment"** means a revision, update, addition, deletion, and/or reenactment to the City's Shoreline Master Program.
- (7) **"Applicant"** means any person, public agency, or business entity such as a corporation or partnership which applies for a development proposal, permit, or approval subject to review under the City's Shoreline Master Program.
- (8) **"Aquaculture"** means the culture or farming of fish or other aquatic plants and animals. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area.
- (9) **"Areas with a critical recharging effect on aquifers used for potable water"** are areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water.

- (10) **"Associated wetlands"** means those wetlands that are in proximity to and either influence or are influenced by waters subject to the Shoreline Management Act.
- (11) **"Average grade level"** means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property that will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.
- (12) **"Buffer"** means that area which surrounds and protects a critical area from adverse impacts to the functions and values of that area.
- (13) **"Channel migration zone"** means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings. For purposes of the City's Shoreline Master Program, the channel migration zone shall not extend beyond the floodway.
- (14) **"City"** means the City of Goldendale.
- (15) **"Classification"** means defined categories to which critical areas are assigned.
- (16) **"County"** means Klickitat County.
- (17) **"Critical areas"** include the following areas and ecosystems: wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. "Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.
- (18) **"Designation"** means the identification of particular lands for classification. For planning purposes, designation establishes: a classification scheme, general land distribution and location, and extent of land use.
- (19) **"Development"** means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Shoreline Management Act at any stage of water level.
Development does not include dismantling or removing structures if there is no other associated development or re-development.

Commented [BH1]: Recommended addition from SMP
Periodic Review Checklist 2017(b)

- (20) **"Ecological functions"** means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.
- (21) **"Ecological restoration"** has the same meaning as "restore."
- (22) **"Ecology"** means the Washington State Department of Ecology.
- (23) **"Ecosystem-wide processes"** means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.
- (24) **"Exempt"** developments are those set forth in WAC 173-27-040; RCW 90.58.030(3)(e); RCW 90.58.140(9); RCW 90.58.147; RCW 90.58.355; and RCW 90.58.515 that are not required to obtain a shoreline substantial development permit but which must otherwise comply with applicable provisions of the Shoreline Management Act and the City's Shoreline Master Program.
- (25) **"Feasible"** means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions. In cases where the City's Shoreline Master Program requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the City may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.
 - A. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
 - B. The action provides a reasonable likelihood of achieving its intended purpose; and
 - C. The action does not physically preclude achieving the project's primary intended legal use.
- (26) **"Fill"** means the addition of soil, sand, rock, gravel, sediment, earth-retaining structure, or other material to an area waterward of the ordinary high water mark, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.
- (27) **"Flood"** means a temporary rise in stream flow or stage that results in water overtopping its banks and inundating areas adjacent to the channel.
- (28) **"Floodplain"** is synonymous with 100-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method that meets the objectives of the Shoreline Management Act.

- (29) **"Floodway"** means the area that either has been established in Federal Emergency Management Agency flood insurance rate maps or floodway maps or consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.
- (30) **"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to: road and trail construction, including forest practices hydraulic projects that include water crossing structures, and associated activities and maintenance; harvesting, final and intermediate; precommercial thinning; reforestation; fertilization; prevention and suppression of diseases and insects; salvage of trees; and brush control. "Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.
- (31) **"Frequently flooded areas"** are lands in the floodplain subject to a one percent or greater chance of flooding in any given year.
- (32) **"Geologically hazardous areas"** are areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events may not be suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.
- (33) **"Geotechnical analysis"** has the same meaning as "geotechnical report."
- (34) **"Geotechnical report"** means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or

geologists who have professional expertise about the regional and local shoreline geology and processes.

- (35) **"Grading"** means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.
- (36) **"Guidelines"** means those standards adopted by Ecology to implement the policy of RCW 90.58 for regulation of use of the shorelines of the state.
- (37) **"Habitat of local importance"** is a habitat with which a species of local importance has a primary association.
- (38) **"Hazard tree"** means a tree with a high probability of falling due to a debilitating disease, a structural defect, a root ball more than 50 percent exposed, or having been exposed to wind throw within the past ten years, and where there is a residence or residential accessory structure within a tree length of the base of the trunk, or where the top of a bluff or steep slope is endangered. Where not immediately apparent to the review authority, the hazard tree determination shall be made after review of a report prepared by an arborist or forester.
- (39) **"Height"** is measured from average grade level to the highest point of a structure, provided that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, and that temporary construction equipment is excluded in this calculation.
- (40) **"In-stream structures"** are structures placed by humans within a stream or river waterward of the ordinary high water mark that either cause or have the potential to cause water impoundment or the diversion, obstruction, or modification of water flow.
- (41) **"May"** means the action is acceptable, provided it conforms to the provisions of the City's Shoreline Master Program.
- (42) **"Mitigation"** means the use of any or all of the actions that are listed in descending order of preference in regulation 6.3(3). In some cases, the City's Shoreline Master Program will specify the required mitigation, such as providing for buffer widths. In other instances, the applicant will develop mitigation.
- (43) **"Must"** means a mandate; the action is required.
- (44) **"Natural or existing topography"** means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.
- (45) **"Nonconforming use or developmentdevelopment or structure"** means a shoreline use or development that was lawfully constructed or established prior to the effective date of the City's Shoreline Master Program, or amendments thereto, but that does not

conform to present regulations or standards of the City's Shoreline Master Program; a building or structure or portion thereof which was lawfully erected, altered or maintained, but no longer conforms with present regulations such as setbacks, buffer or yards, area, bulk height or density standards of the Master Program.

(46) **"Nonconforming use"** means an activity in a structure or on a tract of land that was legally established prior to the effective date of the act or shoreline master program, which does not conform to the use regulations of the current site zoning.

(45)(47) **"Nonconforming lot"** means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.

Commented [DN2]: recommended updates from the SMP
Periodic Update checklist 2017(g)

(46)(48) **"Nonwater-oriented uses"** means those uses that are not water-dependent, water-related, or water-enjoyment.

(47)(49) **"Ordinary high water mark"** on all lakes and streams is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City or Ecology: provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water.

(48)(50) **"Party of record"** includes all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified the City of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.

(49)(51) **"Performance standards"** means a measure, control, procedure, or process which ensures the protection or preservation of critical areas.

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

(51)(53) **"Potentially associated wetland"** refers to areas shown on the Official Shorelines Map that may require additional site-specific evaluation to confirm/verify whether the area meets the definition of "associated wetlands."

(52)(54) **"Primary association"** means an area in which there is a high relative density or species richness, and the area is significant for providing breeding habitat, winter range, or movement corridors.

~~(53)~~(55) **"Priority habitat"** means a habitat type with unique or significant value to one or more species.

- A. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; refugia habitat; limited availability; high vulnerability to habitat alteration; or unique or dependent species.
- B. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife.

~~(54)~~(56) **"Priority species"** means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

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

~~(55)~~(57) **"Provisions"** means policies, regulations, standards, or environment designations.

- (56)(58) **"Public interest"** means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.
- (57)(59) **"Qualified professional"** means an accredited or licensed professional with a combination of education and experience in a discipline appropriate for the subject matter that is being commented on; someone who would qualify as an expert in their field.
- (58)(60) **"Restoration"** has the same meaning as "restore."
- (59)(61) **"Restore"** means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.
- (60)(62) **"Shall"** means a mandate; the action is required.
- (61)(63) **"Shorelands"** means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the waters that are subject to the provisions of the City's Shoreline Master Program.
- (62)(64) **"Shoreline areas"** means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.
- (63)(65) **"Shoreline conditional use"** means a use, development, or substantial development that is classified as a shoreline conditional use or is not classified within the City's Shoreline Master Program.
- (64)(66) **"Shoreline functions"** has the same meaning as "ecological functions."
- (65)(67) **"Shoreline jurisdiction"** has the same meaning as "shoreline areas."
- (66)(68) **"Shoreline modifications"** means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.
- (67)(69) **"Shoreline permit"** means any shoreline substantial development permit, shoreline variance permit, shoreline conditional use permit, or revision authorized under RCW 90.58.

~~(68)~~(70) **"Shoreline stabilization"** includes actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, wind, or wave action. These actions include structural and nonstructural methods. Nonstructural methods include building setbacks, relocation of the structure to be protected, groundwater management, and planning and regulatory measures to avoid the need for structural stabilization.

~~(69)~~(71) **"Shoreline variance"** is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the City's Shoreline Master Program and not a means to vary a use of a shoreline.

~~(70)~~(72) **"Shorelines"** means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except shorelines of statewide significance; shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

~~(71)~~(73) **"Shorelines of the state"** are the total of all "shorelines" and "shorelines of statewide significance" within the state.

~~(72)~~(74) **"Should"** means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act, the Guidelines, and the City's Shoreline Master Program against taking the action.

~~(73)~~(75) **"Significant vegetation removal"** means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

~~(74)~~(76) **"Species of local importance"** are those species whose population is vulnerable (i.e. it is endangered, threatened or sensitive), that are vulnerable to habitat manipulation, or that are a game species. The species must also be native or indigenous to Washington State.

~~(75)~~(77) **"Structure"** means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

~~(76)~~(78) **"Substantial development"** shall mean any development of which the total cost or fair market value exceeds ~~\$6,416,504~~, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold

Commented [DN3]: SMP Periodic Checklist, item 2022a

must be adjusted for inflation by the Office of Financial Management every five years, beginning September 15, 2012, based upon changes in the consumer price index during that time period. See WAC 173-27-040 for a list of developments that shall not be considered substantial development.

~~(77)~~(79) **"Substantially degrade"** means to cause significant ecological impact.

~~(78)~~(80) **"Water-dependent use"** means a use or portion of a use that cannot exist in a location that is not adjacent to the water and that is dependent on the water by reason of the intrinsic nature of its operations.

~~(79)~~(81) **"Water-enjoyment use"** means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use, or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

~~(80)~~(82) **"Water-oriented use"** means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

~~(81)~~(83) **"Water-related use"** means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

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

~~(82)~~(84) **"Waters of the state"** means all salt waters and fresh waters waterward of ordinary high water lines and within the territorial boundaries of the state.

~~(83)~~(85) **"Wetlands"** means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as

a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(84)(86) **“Wetland functions and values”** means the beneficial roles served by wetlands that may include but are not limited to: water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage; conveyance and attenuation; groundwater recharge and discharge; erosion control; and aesthetic value protection.

3 SHORELINE JURISDICTION

3.1 Shoreline jurisdiction

- (1) **Shorelines of the state.** In accordance with the Shoreline Management Act, the City's shoreline jurisdiction subject to the City's Shoreline Master Program includes all "shorelines of the state" and "shorelands." Shorelines of the state are the total of all "shorelines" and "shorelines of statewide significance." The City's shorelines include the Little Klickitat River; the City has no shorelines of statewide significance. The City's shoreline jurisdiction does not include the optional inclusion of the entire 100-year floodplain or land necessary for buffers for critical areas.
- (2) **Where shoreline jurisdiction does not include an entire parcel.** In circumstances where shoreline jurisdiction does not include an entire parcel, only that portion of the parcel within shoreline jurisdiction and any use, activity or development proposed within shoreline jurisdiction on that portion of the parcel is subject to the City's Shoreline Master Program.

3.2 Official Shorelines Map

- (1) **Official Shorelines Map.**
 - A. The City's shoreline jurisdiction and the environment designations established by the City's Shoreline Master Program are shown on the Official Shorelines Map. The Official Shorelines Map is adopted by reference and declared to be a part of the City's Shoreline Master Program. The Official Shorelines Map can be seen in Appendix A.
 - B. The Official Shorelines Map may be updated administratively or through an amendment to the City's Shoreline Master Program as indicated in regulation 3.2(2) below. Minor mapping inaccuracies corrected administratively shall not be greater than one acre in size. Ecology shall be provided with an updated Official Shorelines Map when any updates are made.

- (2) **Official Shorelines Map approximate.** The Official Shorelines Map only approximately identifies or depicts the lateral extent of shoreline jurisdiction and environment designations from the shoreline waterbody. The actual lateral extent of shoreline jurisdiction and environment designations shall be determined on a site-specific basis at the time a development is proposed based on the location of the ordinary high water mark, floodway, floodplain, and the presence of associated wetlands.
- A. Ordinary high water mark and wetland boundary determinations are valid for five years from the date the determination is made. After five years has elapsed, the City shall determine whether a revision or additional assessment is necessary.
 - B. Any mapped potentially associated wetlands that are not designated shall be assigned the category of the contiguous waterward environment designation.
 - C. Any areas within shoreline jurisdiction that are not mapped and/or designated due to minor mapping inaccuracies in the lateral extent of shoreline jurisdiction related to site-specific surveys of ordinary high water mark, floodway, and/or floodplain are automatically assigned the category of the contiguous waterward environment designation. Where the mapping inaccuracy results in inclusion of an unmapped associated wetland, that wetland shall be assigned the designation of the adjoining area. Correction of such minor mapping inaccuracies may be made and incorporated into the Official Shorelines Map without an amendment to the City's Shoreline Master Program.
 - D. Any areas within shoreline jurisdiction that are not mapped and/or designated that are not addressed by regulation 3.2(2)B or regulation 3.2(2)C shall be assigned a Parks and Recreation designation until the shoreline can be redesignated through an amendment to the City's Shoreline Master Program conducted consistent with Section 8.13, Amendments.
 - E. Any area shown on the Official Shorelines Map as within shoreline jurisdiction that does not meet the criteria for shoreline jurisdiction shall not be subject to the requirements of the City's Shoreline Master Program. Correction of such minor mapping inaccuracies may be made and incorporated into the Official Shorelines Map without an amendment to the City's Shoreline Master Program.
 - F. When interpreting the exact location of an environment designation boundary line, the location shown on the Official Shorelines Map shall prevail consistent with the following rules:
 - 1. Boundaries indicated as approximately following parcel, tract, or section lines shall be so construed.

2. In cases of boundary line adjustments or subdivisions, the designation of the parent parcel shall not change as a result, except if pursuant to an amendment to the City's Shoreline Master Program.
3. Boundaries indicated as approximately following roads and railroads shall be construed to follow the nearest right-of-way edge.
4. Boundaries indicated as approximately parallel to or extensions of features indicated in regulations 3.2(2)F.1 through 3.2(2)F.3 above shall be so construed.

4 SHORELINE POLICIES

4.1 General policies

4.1.1 Archaeological & historic resources

- (1) Due to the limited and irreplaceable nature of the resource(s), the destruction of or damage to any site having historic, cultural, scientific or educational value, as identified by the appropriate authorities, should be prevented.

4.1.2 Critical areas

- (1) The existing ecological functions and ecosystem-wide processes of critical areas should be protected.
- (2) Human uses and values that are compatible with the protection of the existing ecological functions and ecosystem-wide processes of critical areas, such as public access and aesthetic values, should be promoted provided that impacts to ecological functions are first avoided, and any unavoidable impacts are mitigated.

4.1.3 Environmental protection

- (1) The City's Shoreline Master Program should assure, at a minimum, no net loss of ecological functions necessary to sustain shoreline natural resources.
- (2) To assure no net loss of shoreline ecological functions, individual uses and developments should be required to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the City's Shoreline Master Program or other applicable regulations.

4.1.4 Flood hazard reduction

- (1) When evaluating alternate flood control measures, the removal or relocation of structures in flood-prone areas should be considered.
- (2) Where feasible, preference should be given to non-structural flood hazard reduction measures over structural measures.

- (3) River and stream processes should be returned to a more natural state where feasible and appropriate, including the removal of artificial restrictions to natural channel migration and the restoration of off-channel hydrological connections.
- (4) Flood hazard protection measures should not result in a net loss of ecological functions and ecosystem-wide processes associated with rivers and streams.

4.1.5 Public access

- (1) The public interest with regard to rights to access waters held in public trust by the state should be promoted and enhanced, while protecting private property rights and public safety.
- (2) Space necessary for water-dependent uses should be protected.
- (3) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water, should be protected.
- (4) The design, construction, and operation of permitted uses in shorelines of the state should be regulated to minimize, insofar as practical, interference with the public's use of the water.

4.1.6 Vegetation conservation

- (1) Vegetation conservation should be undertaken to protect the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of shorelines, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

4.1.7 Water quality & quantity

- (1) Impacts to water quality and quantity that would result in a net loss of shoreline ecological functions or in a significant impact to aesthetic qualities or recreational opportunities should be prevented.
- (2) Low impact development facilities that do not substantially change the character of the shoreline should be encouraged in association with development allowed in shoreline jurisdiction.

4.2 Shoreline use & modification policies

4.2.1 General shoreline use & modification policies

- (1) The development of property in shoreline jurisdiction should protect the public's health, safety, and welfare; the land and its vegetation and wildlife; and property rights while implementing the policies of the Shoreline Management Act.
- (2) The City, when determining allowable uses and resolving use conflicts on shorelines within jurisdiction, shall apply the following preferences and priorities in the order listed below.
 - A. Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.
 - B. Reserve shoreline areas for water-dependent and associated water-related uses.
 - C. Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.
 - D. Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.
 - E. Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.
- (3) Use conflicts should be reduced by prohibiting or applying special conditions to uses that are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the City's shoreline.
- (4) Only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed should be allowed.
- (5) The adverse effects of shoreline modifications should be reduced and, as much as possible, shoreline modifications should be limited in number and extent.
- (6) Shoreline modifications, individually and cumulatively, should not result in a net loss of ecological functions. This should be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications.
- (7) Structural shoreline modifications should be allowed only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.

- (8) The enhancement of impaired ecological functions should be planned for where feasible and appropriate, while accommodating permitted uses.

4.2.2 Agriculture

- (1) New agricultural activities on land not meeting the definition of agricultural land, the conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities should be consistent with the environment designation and the general and specific use regulations applicable to the proposed use, and should assure no net loss of ecological functions and not have a significant adverse impact on other shoreline resources and values.

4.2.3 Aquaculture

- (1) Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. While aquaculture is not anticipated within the City's shoreline jurisdiction, some scale or form of aquaculture could be appropriate.

4.2.4 Boating facilities

- (1) Boating facilities, including, but not limited to, piers and docks, should be prohibited within the City's shoreline jurisdiction.

4.2.5 Commercial development

- (1) Preference should be given first to water-dependent commercial uses over nonwater-dependent commercial uses; and second, to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.
- (2) Public access and ecological restoration should be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate.

4.2.6 Dredging & dredge material disposal

- (1) Dredging and dredge material disposal should be done in a manner that avoids, minimizes or mitigates significant ecological impacts.
- (2) Dredging and dredge material disposal should be consistent with adopted regional interagency dredge material management plans and watershed management plans.
- (3) Uses of suitable dredge material that benefit shoreline resources are encouraged.

4.2.7 Fill & excavation

- (1) Fills and excavations should be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.
- (2) Fills waterward of the ordinary high water mark should be allowed in limited instances only.

4.2.8 Forest practices

- (1) Forest practices should be prohibited within the City's shoreline jurisdiction.

4.2.9 Industrial development

- (1) Preference should first be given to water-dependent industrial uses over nonwater-dependent industrial uses; and second, to water-related industrial uses over nonwater-oriented industrial uses.
- (2) Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated.

4.2.10 In-stream structures

- (1) The location and planning of in-stream structures should give due consideration to the full range of public interests.

4.2.11 Mining

- (1) Mining should be prohibited within the City's shoreline jurisdiction.

4.2.12 Recreational development

- (1) Shoreline recreational development should be given priority and should be primarily related to access to, enjoyment of, and use of shorelines of the state.
- (2) State-owned shorelines should be given appropriate special consideration for providing recreational activities for the public.

4.2.13 Residential development

- (1) Single-family residences are a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.

4.2.14 Shoreline habitat & natural systems enhancement projects

- (1) Shoreline habitat and natural system enhancement projects should be fostered.

- (2) Shoreline habitat and natural system enhancement projects should address legitimate restoration needs and priorities and facilitate implementation of the City's approved Shoreline Restoration Plan.

4.2.15 Shoreline stabilization

- (1) The City should regulate shoreline stabilization in order to avoid the individual and cumulative net loss of ecological functions. This should be achieved by giving preference to those types of shoreline stabilization that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline stabilization.
- (2) Structural shoreline stabilization should be allowed only where demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or where necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.

4.2.16 Transportation & parking

- (1) Safe, reasonable, and adequate circulation systems should be provided to, through or over shorelines where necessary and otherwise consistent with the City's Shoreline Master Program.
- (2) Circulation systems should include systems for pedestrian, bicycle, and public transportation where appropriate.

4.2.17 Utilities

- (1) All utility facilities should be designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.
- (2) Shoreline uses should not be allowed where the City's comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Existing utility services routed through shoreline areas should not be the sole justification for more intense development.

5 ENVIRONMENT DESIGNATIONS

5.1 High-Intensity

5.1.1 Purpose

- (1) The purpose of the High-Intensity environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

5.1.2 Designation

- (1) A High-Intensity environment designation is assigned to shoreline areas that currently support or are suitable and planned for high-intensity uses related to commerce, industry or transportation.

5.1.3 Management policies

- (1) In regulating uses in the High-Intensity environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed-use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline.
- (2) Full use of existing urban areas should be required before expansion of intensive development is allowed.
- (3) Where feasible, visual and physical public access should be required.
- (4) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.
- (5) New development should not cause a net loss of shoreline ecological functions. Where applicable, new development should include environmental cleanup and restoration of the shoreline to comply with any relevant state or federal laws.

5.2 Shoreline Residential

5.2.1 Purpose

- (1) The purpose of the Shoreline Residential environment is to accommodate residential development and appurtenant structures that are consistent with the City's Shoreline

Master Program. An additional purpose is to provide appropriate public access and recreational uses.

5.2.2 Designation

- (1) A Shoreline Residential environment designation is assigned to shoreline areas that are predominantly single-family or multifamily residential development or are planned and platted for residential development.

5.2.3 Management policies

- (1) Development in the Shoreline Residential designation should assure no net loss of shoreline ecological functions through the application of development standards.
- (2) Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities.
- (3) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

5.3 Parks & Recreation

5.3.1 Purpose

- (1) The primary purpose of the Parks and Recreation environment is to allow for public access and recreation and other compatible uses on publically owned lands, while protecting and restoring the ecological functions of open space, floodplain and other sensitive lands. A secondary purpose is to protect and restore the ecological functions of open space, floodplain and other sensitive lands in public ownership where public access and recreation and other compatible uses would be inappropriate, or such lands in private ownership that should not be more intensively developed.

5.3.2 Designation

- (1) A Parks and Recreation environment designation is assigned to publically owned shoreline areas that are appropriate or planned for public access and recreation development that is compatible with maintaining or restoring the ecological functions of the area.
- (2) A Parks and Recreation environment designation may also be assigned to shoreline areas in public or private ownership that are appropriate and planned for development that is compatible with maintaining or restoring the ecological functions of the area, if any of the following characteristics apply:
 - A. They are suitable for water-related or water-enjoyment uses;

- B. They are open space, floodplain or other sensitive areas that should not be more intensively developed;
- C. They have potential for ecological restoration;
- D. They retain important ecological functions, even though partially developed; or
- E. They have the potential for development that is compatible with ecological restoration.

5.3.3 Management policies

- (1) On publically owned lands, public access and recreation uses should be the primary allowed uses. Preference should be given to public access and recreation uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly or over the long term. Public access and recreation uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
- (2) On privately owned lands, uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
- (3) Water-oriented uses should be given priority over nonwater-oriented uses.

5.4 Aquatic

5.4.1 Purpose

- (1) The purpose of the Aquatic environment is to protect, restore, and manage the unique characteristics and resources of areas waterward of the ordinary high water mark.

5.4.2 Designation

- (1) An Aquatic environment designation is assigned to lands waterward of the ordinary high water mark.

5.4.3 Management policies

- (1) New over-water structures should only be allowed for water-dependent uses, public access, or ecological restoration.
- (2) The size of new overwater structures should be limited to the minimum necessary to support the structure's intended use.

- (3) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of overwater facilities should be encouraged.
- (4) Uses that adversely impact the ecological functions of critical freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in regulation 6.3(3) as necessary to assure no net loss of ecological functions.
- (5) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

6 GENERAL REGULATIONS

6.1 Archaeological & historic resources

- (1) **Applicability.** Archaeological and historical resources provisions apply to archaeological and historic resources that are recorded at the Washington State Department of Archaeology and Historic Preservation and/or by the City, or have been inadvertently uncovered.
- (2) **Known archaeological resources.** Permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.
- (3) **Uncovered archaeological resources.** Developers and property owners shall immediately stop work and notify the City, the Washington State Department of Archaeology and Historic Preservation, and affected Indian tribes if archaeological resources are uncovered during excavation.

6.2 Critical areas

- (1) **Applicability.** Critical areas include the following areas and ecosystems: wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.
- (2) **Critical areas within shoreline jurisdiction.** Critical areas within shoreline jurisdiction are regulated by the regulations contained in Appendix B of the City's Shoreline Master Program. Although the regulations in Appendix B are nearly identical to the City's general critical areas regulations, key differences exist. If there are conflicts between the regulations contained in Appendix B and the regulations contained in the rest of the City's Shoreline Master Program, those that are the most protective of shoreline ecological functions shall apply.

6.3 Environmental protection

- (1) **No net loss of ecological functions.** Individual uses and developments shall not result in a net loss of shoreline ecological functions. Individual uses and developments are required to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the City's Shoreline Master Program or other applicable regulations.
- (2) **Mitigation sequence analysis, when required.** If a proposed shoreline use or modification is entirely addressed by specific, objective standards (such as buffer distances) contained in the City's Shoreline Master Program, then the mitigation sequence analysis described in regulation 6.3(3) is not required. In the following circumstances, a project applicant must provide a mitigation sequence analysis as described in regulation 6.3(3):
 - A. If a proposed shoreline use or modification is addressed in any part by discretionary standards (such as standards requiring a particular action "if feasible" or requiring the minimization of development size) contained in the City's shoreline regulations, then the mitigation sequence analysis is required for the discretionary standard(s).
 - B. When an action requires a shoreline conditional use permit or shoreline variance permit.
 - C. When specifically required by a provision in the City's Shoreline Master Program.
- (3) **Mitigation sequence analysis.** An applicant required to complete a mitigation sequence analysis pursuant to regulation 6.3(2) must describe how the proposal will follow the below mitigation sequence. Application of the mitigation sequence must achieve no net loss of ecological functions for each new development and not have a significant adverse impact on other shoreline functions fostered by the policy of the Shoreline Management Act. Mitigation measures are listed in descending order of priority. Lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable. Mitigation in excess of that necessary to ensure that development will result in no net loss of ecological functions will not be required, but may be voluntarily performed.
 - A. Avoid the impact altogether by not taking a certain action or parts of an action;
 - B. 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;
 - C. Rectify the impact by repairing, rehabilitating, or restoring the affected environment;
 - D. Reduce or eliminate the impact over time by preservation and maintenance operations;

- E. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
 - F. Monitor the impact and the compensation projects and taking appropriate corrective measures.
- (4) **Compensatory mitigation.** When compensatory measures are appropriate pursuant to the mitigation sequence analysis described in regulation 6.3(3):
- A. Preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized.
 - B. Compensatory mitigation measures must be maintained over the life of the use or development.
 - C. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.
- (5) **Mitigation plan.** When compensatory measures are appropriate, the applicant must develop and implement a mitigation plan prepared by a qualified professional. A mitigation plan must include, at a minimum:
- A. A description of the existing shoreline environment.
 - B. A description of anticipated impacts.
 - C. A description of how the mitigation plan addresses anticipated impacts, with supporting rationale.
 - D. Drawings showing existing and proposed conditions.
 - E. Measurable performance standards for evaluating the success of the mitigation plan.
 - F. A contingency plan identifying potential courses of action if performance standards are not being met.
 - G. A five-year maintenance and monitoring program, including:
 - 1. A schedule for maintenance and monitoring.
 - 2. A schedule for the submission of monitoring reports to the City to document milestones, successes, problems, and contingency actions.
 - 3. A discussion of how monitoring data will be evaluated to determine if performance standards are being met.

- H. Financial guarantees to ensure the mitigation plan is fully implemented.

6.4 Flood hazard reduction

- (1) **Applicability.** Flood hazard reduction provisions apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and stormwater management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.
- (2) **Development in floodplains.** Development in floodplains must not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to RCW 86.12 (provided the plan has been adopted after 1994 and approved by Ecology).
- (3) **New development or uses, including subdivisions.** New development or uses in shoreline jurisdiction, including the subdivision of land, must 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 during the life of the development or use.
- (4) **Uses and activities within the channel migration zone or floodway.** The following uses and activities may be authorized where appropriate and/or necessary within the channel migration zone or floodway:
 - A. Actions that protect or restore the ecosystem-wide processes or ecological functions, including development with a primary purpose of protecting or restoring ecological functions and/or ecosystem-wide processes.
 - B. Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
 - C. Bridges, utility lines, outfalls, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of the watershed.
 - D. Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.

- E. Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
- F. Development where structures exist that prevent active channel movement and flooding.
- G. Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

(5) **Structural flood hazard reduction measures.**

- A. Structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan approved by Ecology that evaluates cumulative impacts to the watershed system, if such a plan is in effect.
- B. New structural flood hazard reduction measures in shoreline jurisdiction may be allowed only when demonstrated by a scientific and engineering analysis that they are necessary to protect existing development and that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions will be undertaken consistent with Section 6.6, Vegetation conservation.
- C. New structural flood hazard reduction measures must be placed landward of associated wetlands and applicable shoreline buffers, except for actions that increase ecological functions, such as wetland restoration; provided that such flood hazard reduction projects be authorized only if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements must be documented through a geotechnical and hydrological analysis.
- D. New structural public flood hazard reduction measures, such as dikes and levees, must dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

(6) **Removal of gravel for flood management purposes.** The removal of gravel for flood management purposes must be consistent with an adopted flood hazard reduction plan

and the City's Shoreline Master Program, and allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

6.5 Public access

- (1) **Applicability.** Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.
- (2) **Conditions when required.** Except as provided in regulations 6.5(5) and 6.5(6), shoreline substantial developments or conditional uses shall provide public access where any of the following conditions are present:
 - A. A development or use will create increased demand for public access to the shoreline.
 - B. A development or use will interfere with an existing public access way. Such interference may be caused by blocking access or by discouraging use of existing on-site or nearby access.
 - C. New non-water-oriented uses are proposed.
 - D. A use or activity will interfere with public use of lands or waters subject to the public trust doctrine.
 - E. Where a commercial or industrial use is proposed for location on land in public ownership.
- (3) **When required for public entities.** Shoreline development by public entities, state agencies, and public utility districts shall include public access measures as part of each shoreline development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment.
- (4) **When required for residential development.** New multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access. Public access shall not be required for single-family residential development of four or fewer lots.
- (5) **When not required.** Public access shall not be required where one or more of the following conditions apply:
 - A. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means.
 - B. Constitutional or other legal limitations may apply.

- C. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions.
 - D. The cost of providing the access, easement or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development.
 - E. Adverse impacts to shoreline ecological processes and functions that cannot be mitigated will result from the public access.
 - F. Significant unavoidable conflict between any access regulations and the proposed use and adjacent uses would occur and cannot be mitigated.
- (6) **Reasonable alternatives.** To meet any of the conditions in regulation 6.5(5), the applicant must first demonstrate and the City determine in its findings that all reasonable alternatives to provide public access have been exhausted, including, but not limited to:
- A. Regulating access by such means as maintaining a gate and/or limiting hours of use.
 - B. Separating uses and activities (e.g. fences, terracing, use of one-way glazings, hedges, landscaping, etc.).
 - C. Developing access at a site geographically separated from the proposal such as a street end, vista or trail system.
 - D. Sharing the cost of providing and maintaining public access between public and private entities.
- (7) **Projects that meet the criteria of regulation 6.5(6).** Projects that meet the criteria of regulation 6.5(6) may be required to either build off-site public access facilities or, if established and approved by the Shoreline Administrator, contribute to a local public access fund.
- (8) **Preparation of written findings.** When provisions for public access are required as a condition of project approval, the Shoreline Administrator shall prepare written findings demonstrating consistency with constitutional and legal practices regarding private property and the principles of nexus and proportionality.
- (9) **Dedication of land or a physical improvement.**
- A. 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. It may include interpretive centers and displays.
 - B. Minimum width of public access easements shall be at least 12 feet, unless the Shoreline Administrator determines that undue hardship to the proponent would

result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.

- (10) **Recorded via a legal instrument.** Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the Klickitat County Auditor's Office prior to the time of building permit approval, occupancy or plat approval, whichever comes first (RCW 58.17.110). Future actions by the applicant's successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.
- (11) **Location and design criteria.** Public access shall meet the following location and design criteria:
- A. A public pedestrian access walkway is required where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological processes and functions. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to the water's edge where appropriate. Fencing may be used to control damage to plants and other sensitive ecological features. Trails shall be constructed of permeable materials and limited to five feet in width to reduce impacts to ecologically sensitive resources.
 - B. Where views of the water or shoreline are available and physical access to the water's edge is not present or appropriate, a public viewing area shall be provided.
 - C. Public access shall be located adjacent to other public areas, access points and connecting trails and connected to the nearest public street.
 - D. Development over water shall be constructed as far landward as possible to reduce interference with views to the shoreline from surrounding properties.
 - E. Appropriate amenities such as benches, picnic tables and public parking sufficient to serve the users shall be provided. Public restrooms, facilities for disposal of animal waste, and other appropriate public facilities shall be required at developments that attract a substantial number of persons.
 - F. New development shall be located and designed to avoid or minimize adverse impacts to views from public property.
 - G. Intrusions on privacy shall be minimized by avoiding locations adjacent to windows and outdoor private open spaces or by screening or other separation techniques.
 - H. Public access design shall provide for the safety of users to the extent feasible.

- I. The standard state-approved logo or other locally approved signs that indicate the public's right of access and hours of access shall be constructed, installed, and maintained by the applicant or owner in conspicuous locations at public access sites.
- (12) **At time of occupancy.** Required public access sites shall be fully developed and available for public or community use at the time of occupancy of the shoreline development.
- (13) **Maintenance.** Maintenance of the public access facility over the life of the use or development shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the Klickitat County Auditor's Office.
- (14) **Shoreline street ends and public right-of-ways.** Public access provided by existing shoreline street ends and public right-of-ways shall be preserved, maintained and enhanced consistent with RCW 35.79.035 and RCW 36.87.130.
- (15) **No net loss of ecological functions.** Public access improvements shall be constructed and maintained in a manner that does not result in a net loss of shoreline ecological functions.

6.6 Vegetation conservation

- (1) **Applicability.** Vegetation conservation includes activities to protect vegetation along or near shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions apply throughout shoreline jurisdiction.
- (2) **Existing vegetation.** Vegetation conservation standards do not apply retroactively to existing legally established uses and developments. Vegetation associated with such uses and developments may be maintained.
- (3) **Shoreline buffers.** Requirements for shoreline buffers are specified in Appendix B, Table B3-1.
- (4) **Vegetation removal.**
 - A. Vegetation removal must be limited to the minimum necessary to accommodate approved shoreline development. Mitigation sequencing per regulation 6.3(3) must be applied unless specifically excluded by other shoreline provisions, so that the design and location of the structure or development minimizes short- and long-term vegetation removal. The City may approve modifications or require site plan alterations to achieve maximum vegetation retention.
 - B. Where vegetation removal conducted consistent with this section results in adverse impacts to shoreline ecological function, new developments or site alterations are required to develop and implement a mitigation plan unless specifically excluded by

other shoreline provisions. Examples of actions that may result in adverse impacts include:

1. Removal of native trees, shrubs or groundcovers;
 2. Removal of non-native trees or shrubs that overhang aquatic areas or stabilize slopes; or
 3. Removal of native or non-native trees or shrubs that disrupts an existing vegetation corridor connecting the property to other critical areas or buffers.
- (5) **Pruning of trees for views.** Selective pruning of trees for views is allowed. Selective pruning of trees for views does not include removal of understory vegetation, and must not compromise the health of the tree.
- (6) **Hazard trees.** Hazard trees may be removed if the hazard cannot be eliminated by pruning, crown thinning, or other technique that maintains some habitat function. Hazard tree removal may be mitigated without a mitigation plan by conversion of the hazard tree to a wildlife snag or the installation of a similar tree. Native tree removal in shoreline jurisdiction must be mitigated by the installation of a similar native tree at a 1:1 impact to mitigation ratio. Non-native tree removal in shoreline buffers must be mitigated by installation of a native or suitable non-native tree at a 1:1 impact to mitigation ratio. All mitigation trees shall be preferentially placed in the shoreline buffer, unless the trees provide connectivity to upland habitats or other critical areas.
- (7) **Noxious weeds.** Hand removal or spot spraying of noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is allowed.
- (8) **Aquatic weed control.** Aquatic weed control may only occur to address adverse impacts to native plant communities, fish and wildlife habitats, or existing water-dependent uses. Aquatic weed control shall occur in compliance with applicable laws and standards. Removal using mechanical methods is preferred over chemical methods.
- (9) **Mitigation plans for vegetation removal.** Mitigation plans for vegetation removal must be prepared by a qualified professional and must contain information required in regulation 6.3(5). In addition, such mitigation plans must include the following standards, as applicable.
- A. Performance standards shall require 100 percent survival in year 1, with 100 percent tree survival and 80 percent shrub and groundcover survival at the end of the monitoring period.
 - B. Tree removal in shoreline jurisdiction must be mitigated by installation of a similar native tree at a 1:1 impact to mitigation ratio. Non-native tree removal in shoreline buffers must be mitigated by installation of a native or suitable non-native tree at a

1:1 impact to mitigation ratio. All mitigation trees shall be preferentially placed in the shoreline buffer, unless the trees provide connectivity to upland habitats or other critical areas.

6.7 Water quality & quantity

- (1) **Applicability.** Water quality and quantity provisions apply to all development and uses in shoreline jurisdiction that could adversely affect water quality and quantity.
- (2) **Prevent impacts.** The design, construction and operation of shoreline uses and developments shall incorporate measures, including but not limited to best management practices, to prevent impacts to surface water and groundwater quality and quantity that would result in a net loss of shoreline ecological functions or in a significant impact to aesthetic qualities or recreational opportunities.
- (3) **Stormwater management structures.** Stormwater management structures, including but not limited to ponds, basins, and vaults, shall be located outside of shoreline jurisdiction where possible, as far from the ordinary high water mark as feasible, and shall minimize disturbance of vegetation conservation buffers.
- (4) **Materials.** All materials that may come in contact with water shall be constructed of materials, such as untreated or approved treated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals.
- (5) **Chemicals.** Pesticides, herbicides, and fertilizers must be applied in a manner that minimizes direct or indirect entrance into nearby waters. The usage of chemicals in water must be in accordance with all applicable agency standards.

7 SHORELINE USE & MODIFICATION REGULATIONS

7.1 General shoreline use & modification regulations

- (1) **Applicability.** The regulations in this section apply to all shoreline uses and modifications.
- (2) **Shoreline use and modification matrix.** Table 7-1 indicates shoreline uses and modifications that may be allowed or are prohibited in shoreline jurisdiction within each environment designation. Shoreline uses and modifications are classified in the matrix as indicated below. Uses and modifications that may be allowed according to the matrix must in all cases be consistent with all other applicable parts of the City's Shoreline Master Program in order to be authorized by the City.
 - A. Uses and modifications that may be allowed by a shoreline substantial development permit or exemption are indicated by a "P" on the matrix.

- B. Uses and modifications that may be allowed by a shoreline conditional use permit are indicated by a "C" on the matrix.
- C. Uses and modifications that are not allowed are indicated by an "X" on the matrix.
- D. Uses and modifications that are not applicable to an environment designation are indicated by an "NA" on the matrix.

Table 7-1. Shoreline use & modification matrix

	High Intensity	Shoreline Residential	Parks & Recreation	Aquatic
Agriculture	P	P	P	NA
Aquaculture	X	X	X	C
Boating facilities	X	X	X	X
Commercial development	P	X	X ¹	X
Dredging & dredge material disposal				
Dredging, for reduction of flood hazards or restoration	P	P	P	P
Dredging, other	C	C	C	C
Dredge material disposal, inside CMZ	C	C	C	C
Dredge material disposal, outside CMZ	P	P	P	NA
Fill & excavation				
Fill	P	P	P	C ²
Excavation	P	P	P	NA
Flood hazard reduction measures	C	C	C	C
Forest practices	X	X	X	X
Industrial development	P	X	X	X
In-stream structures	C ³	C ³	C ³	C ³
Mining	X	X	X	X
Recreational development	X	P	P	Same as upland designation
Residential development	C	P	P	X
Shoreline habitat & natural systems enhancement projects	P	P	P	P

	High Intensity	Shoreline Residential	Parks & Recreation	Aquatic
Shoreline stabilization				
New hard stabilization	C	C	C	C
New soft stabilization	P	P	P	P
Repair and replacement	P	P	P	P
Transportation & parking	P	P	P	P
Utilities				
Production and processing facilities	P	P	P	P
Transmission facilities	P	P	P	P
Utilities, accessory	Reviewed as part of primary use	Reviewed as part of primary use	Reviewed as part of primary use	Reviewed as part of primary use
¹ Seasonal, low-impact commercial developments such as farmers markets and vendor stalls may be allowed by a shoreline substantial development permit or exemption.				
² Fills waterward of the ordinary high water mark for ecological restoration may be allowed by a shoreline substantial development permit or exemption.				
³ Structures installed to protect or restore ecological functions, such as woody debris installed in streams, may be allowed by a shoreline substantial development permit or exemption.				

(3) **Unlisted uses.** Any new uses or modifications not explicitly listed or comparable to those included in Table 7-1 shall be reviewed through a shoreline conditional use permit.

(4) **Height limitation.**

- A. No permit shall be issued for any new or expanded building or structure of more than 35 feet above average grade level, except if approved through a shoreline variance permit.
- B. To exceed 35 feet, an applicant must apply for a shoreline variance permit, and comply with the following criteria in addition to the shoreline variance permit criteria:
 1. Overriding considerations of the public interest will be served.
 2. The view of a substantial number of residences on areas adjoining shorelines will not be obstructed.

7.2 Agriculture

- (1) **Applicability.** Agriculture provisions apply to new agricultural activities on land not meeting the definition of agricultural land, the conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities. The City's Shoreline Master Program does not require modification of or limit agricultural activities occurring on agricultural lands.
- (2) **New agricultural activities.** New agricultural activities are activities that meet the definition of agricultural activities but are proposed on land not currently in agricultural use. New agricultural activities must assure that uses and developments in support of agricultural uses are:
 - A. Consistent with the environment designation in which the land is located.
 - B. Located and designed to assure no net loss of ecological functions and to not have a significant adverse impact on other shoreline resources and values.
- (3) **Best management practices.** New agricultural activities and agricultural facilities shall employ applicable best management practices established by the US Department of Agriculture Natural Resources Conservation Service or by similar agencies.
- (4) **Nonagricultural development and conversion to nonagricultural uses.** Development on agricultural land that does not meet the definition of agricultural activities and the conversion of agricultural land to nonagricultural uses shall be consistent with the environment designation and the general and specific use regulations applicable to the proposed use, and shall not result in a net loss of ecological functions associated with the shoreline.

7.3 Aquaculture

- (1) **Where allowed.** Aquaculture is allowed as a conditional use in the Aquatic environment where it can be located, designed, constructed, and managed to avoid all of the following: a net loss of shoreline ecological functions, spreading diseases to native aquatic life, and significantly conflicting with public access.
- (2) **Best management practices.** Aquaculture facilities must identify and use best management practices to minimize impacts such as light and noise from the construction and management of the facilities.
- (3) **New aquatic species.** New aquatic species that have not been previously cultivated in Washington State shall not be introduced into City waters without prior written approval of the Director of the Washington State Department of Fish and Wildlife and the Director of the Washington State Department of Health.

- (4) **Wastes.** Aquaculture wastes shall be disposed of in a manner compliant with all applicable governmental waste disposal standards. No garbage, wastes, or debris shall be allowed to accumulate at the site of any aquaculture operation.
- (5) **Rights of treaty tribes.** The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the project proponent and the affected tribe(s) through the permit review process.

7.4 Boating facilities

- (1) **Prohibited.** Boating facilities, including, but not limited to, piers and docks, shall be prohibited within the City's shoreline jurisdiction.

7.5 Commercial development

- (1) **Use preference.** Preference shall be given first to water-dependent commercial uses over nonwater-dependent commercial uses; and second, to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.
- (2) **Appropriate design and operational elements.** Commercial uses that may be authorized as water-related or water-enjoyment uses must incorporate appropriate design and operational elements so that they meet the definition of water-related or water-enjoyment uses.
- (3) **Nonwater-oriented commercial uses, when allowed.** Nonwater-oriented commercial uses are allowed on the shoreline if consistent with one or more of the following criteria:
 - A. The use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration;
 - B. If the site is physically separated from the shoreline by another property or public right-of-way; or
 - C. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration.
- (4) **No net loss of ecological functions or significant adverse impacts.** Commercial development must not result in a net loss of shoreline ecological functions or have significant adverse impacts to other shoreline uses, resources and values such as recreation and public access.

- (5) **Public access.** Commercial development shall provide public access if required by Section 6.5, Public Access.
- (6) **Nonwater-oriented commercial uses over water.** Nonwater-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

7.6 Dredging & dredge material disposal

- (1) **Applicability.** As regulated by the City's Shoreline Master Program, dredging is the removal of bed material from below the ordinary high water mark or wetlands using other than unpowered, hand-held tools for one of the allowed dredging activities listed in regulation 7.6(3) below. Dredging and dredge material disposal provisions are not intended to cover other removals of bed material waterward of the ordinary high water mark or wetlands that are incidental to the construction of an otherwise authorized use or modification (e.g. shoreline crossings). Such in-water substrate modifications should be conducted pursuant to applicable general and specific use and modification regulations of the City's Shoreline Master Program.
- (2) **New development.** New development must be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
- (3) **Dredging, when allowed.** Dredging may be allowed for the following purposes when significant ecological impacts are minimized and mitigation is provided:
 - A. Development, expansion and maintenance of essential public facilities when there are no feasible alternatives.
 - B. Reduction of flood hazards when consistent with an approved flood hazard management plan.
 - C. Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.
- (4) **Dredging for fill material.**
 - A. Dredging waterward of the ordinary high water mark for the primary purpose of obtaining fill material shall not be allowed, except when the material is necessary for the restoration of ecological functions.
 - B. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high water mark. The project must be associated with either a Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act habitat restoration project or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project.

- (5) **Dredge material disposal, when allowed.** Dredge material disposal, both upland and in-water, may be approved, provided:
- A. The dredge material disposal complies with at least one of the following:
 - 1. The dredge material disposal has been evaluated by the US Army Corps of Engineers' Dredge Management Material Program; or
 - 2. The dredge material disposal is consistent with the guidance from the US Army Corps of Engineers/Environmental Protection Agency publication, Identifying, Planning, and Financing Beneficial Use Projects Using Dredged Material – Beneficial Use Planning Manual (EPA842-B-07-001, October 2007, or as amended).
 - B. A qualified professional demonstrates that the dredge material disposal 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, or shoreline public access.
- (6) **Avoid, minimize, and mitigate.** Dredging and dredge material disposal shall be done in a manner that avoids or minimizes significant ecological impacts, and impacts that cannot be avoided shall be mitigated in a manner that assures no net loss of shoreline ecological functions.
- A. Dredging shall be confined to the minimum area necessary to accomplish the intended purpose or use.
 - B. Dredging and dredge disposal shall be scheduled to minimize impacts to biological productivity (including, but not limited to, fish runs, spawning, and benthic productivity) and to minimize interference with fishing activities and other water-dependent uses.
- (7) **Agency approvals.** Dredging and dredge material disposal must be approved by all state and federal agencies with jurisdiction. Copies of all such approvals must be provided to the City.
- (8) **Maintenance of upland dredge material disposal sites.** Approved upland dredge disposal sites may conduct site management activities, such as regular clearing and grading, as specified in agency approval documents. Such activities will be regulated as maintenance activities under the City's Shoreline Master Program, provided there are no impacts to water quality or other ecological functions outside of the dredge material disposal area. Vegetation clearing on a dredge disposal site shall not require compensatory mitigation.

7.7 Fill & excavation

- (1) **When fills and excavations allowed, upland.** Upland fills and excavations may be allowed provided they are:
 - A. Part of an allowed shoreline use or modification.
 - B. Located outside applicable buffers, unless specifically allowed.
- (2) **When allowed, waterward of the ordinary high water mark.** Fills waterward of the ordinary high water mark shall be allowed only when necessary to support:
 - A. A water-dependent or public access use.
 - B. Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan.
 - C. Disposal of dredged material considered suitable under, and conducted in accordance with the Dredged Material Management Program of the Department of Natural Resources.
 - D. 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.
 - E. A mitigation, environmental restoration, beach nourishment or enhancement project.
- (3) **Protection of shoreline ecological functions.** Fills shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.
- (4) **Design.** All fills and excavations, except when for the purpose of shoreline restoration, must be designed:
 - A. To be the minimum size necessary to implement the allowed use or modification.
 - B. To fit the topography so that minimum alterations of natural conditions will be necessary.
 - C. To not adversely affect hydrologic conditions or increase the risk of slope failure, if applicable.
- (5) **Fill material.** Unless site characteristics dictate otherwise, fill material within surface waters or wetlands shall be sand, gravel, rock, or other clean material with a minimum potential to degrade water quality and shall be obtained from a state-authorized source.
- (6) **Temporary erosion and sediment control plan.** A temporary erosion and sediment control plan, including best management practices, shall be provided for all proposed fill

and excavation activities. Disturbed areas shall be immediately protected from erosion using mulches, hydroseed, or similar methods, and revegetated, as applicable.

- (7) **Excavation below the ordinary high water mark or in wetlands.** Excavation below the ordinary high water mark or in wetlands using other than unpowered, hand-held tools, except removals of bed material that are incidental to the construction of an otherwise authorized use or modification (e.g. shoreline stabilization measure), shall be considered dredging and be subject to the regulations in Section 7.6, Dredging and dredge material disposal.

7.8 Forest practices

- (1) **Prohibited.** New forest practices shall be prohibited within the City's shoreline jurisdiction.

7.9 Industrial development

- (1) **Use preference.** Preference shall first be given to water-dependent industrial uses over nonwater-dependent industrial uses; and second, to water-related industrial uses over nonwater-oriented industrial uses.
- (2) **Nonwater-oriented industrial development.** New nonwater-oriented industrial development is allowed on the shoreline if consistent with one or more of the following criteria:
 - A. The use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration;
 - B. If the site is physically separated from the shoreline by another property or public right-of-way; or
 - C. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and/or ecological restoration.
- (3) **No net loss of ecological functions or significant adverse impacts.** Industrial development must be located, designed, and constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.
- (4) **Public access.** Industrial development shall provide public access if required by Section 6.5, Public access.

7.10 In-stream structures

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

7.11 Mining

- (1) **Prohibited.** New mining shall be prohibited within the City's shoreline jurisdiction.

7.12 Recreational development

- (1) **Applicability.** Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public.
- (2) **Features.** Recreational uses and facilities located within shoreline jurisdiction shall include features related to access to, enjoyment of, and use of shorelines of the state.
- (3) **Consistency with environment designation and no net loss.** Public recreational developments shall be located, designed, and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

7.13 Residential development

- (1) **Applicability.** Residential development consists of single-family and multifamily development, including the creation of new residential lots through land division.
- (2) **Land division.** The creation of new residential lots through land division must:
 - A. Be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.
 - B. Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

- (3) **Access, utilities, and public services.** Access, utilities, and public services must be available and adequate to serve the development.
- (4) **Set back from steep slopes and shorelines vulnerable to erosion.** Residential development, including appurtenant structures and uses, shall be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements are not required to protect such structures and uses during the life of the development.
- (5) **Public access.** Residential development shall provide public access if required by regulation 6.5(4).
- (6) **Over-water residences.** Over-water residences, including floating homes, are prohibited.
- (7) **No net loss of shoreline ecological functions.** No net loss of shoreline ecological functions shall result from residential development.

7.14 Shoreline habitat & natural systems enhancement projects

- (1) **Applicability.** Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines. Shoreline habitat and natural systems enhancement projects may include shoreline modification actions such as modification of vegetation, removal of nonnative or invasive plants, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.
- (2) **Approved plan.** Shoreline habitat and natural system enhancement projects must be carried out in accordance with an approved shoreline restoration plan.
- (3) **Scientific and technical information and best management practices.** Shoreline restoration and enhancement projects shall be designed using the most current, accurate, and complete scientific and technical information available, and implemented using best management practices.
- (4) **Other shoreline uses, resources and values.** Shoreline habitat and natural systems must not result in substantial interference with other shoreline uses, resources and values such as recreation and public access.
- (5) **Maintenance and monitoring.** Long-term maintenance and monitoring (minimum of three years) shall be arranged by the project applicant and included in shoreline habitat and natural system enhancement project proposals.
- (6) **Relief from shift in the ordinary high water mark.** When a shoreline habitat and natural systems enhancement project causes or would cause a landward shift in the ordinary high

water mark resulting in a hardship, affected property owners are advised to consult with the City to assess whether and how relief may be granted under RCW 90.58.580.

7.15 Shoreline stabilization

- (1) **Subdivision.** Subdivision of land must be based on a geotechnical report prepared in accordance with regulation 7.15(6) to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur.
- (2) **New development.**
 - A. New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible.
 - B. New development on steep slopes shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical report prepared in accordance with regulation 7.15(6).
 - C. New development that would require shoreline stabilization that would cause significant impacts to adjacent or down-current properties and shoreline areas shall not be allowed.
- (3) **New or enlarged structural stabilization measures, when allowed.** New or enlarged structural stabilization measures shall not be allowed except as follows.
 - A. To protect existing primary structures, when all of the conditions below apply.
 1. New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, shall not be allowed unless there is conclusive evidence, documented by a geotechnical report prepared in accordance with regulation 7.15(6), that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing or shoreline erosion itself, without a geotechnical report, is not demonstration of need. The geotechnical report shall evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization. Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing primary residential structures may be allowed.
 2. The erosion control structure will not result in a net loss of shoreline ecological functions.
 - B. In support of new nonwater-dependent development, including single-family residences, when all of the conditions below apply.

1. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
 2. Nonstructural measures, such as placing the development farther from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 3. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report prepared in accordance with regulation 7.15(6). The damage must be caused by natural processes, such as currents and waves.
 4. The erosion control structure will not result in a net loss of shoreline ecological functions.
- C. In support of water-dependent development, when all of the conditions below apply.
1. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
 2. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 3. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report prepared in accordance with regulation 7.15(6).
 4. The erosion control structure will not result in a net loss of shoreline ecological functions.
- D. To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to RCW 70.105D, when all of the conditions below apply.
1. Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
 2. The erosion control structure will not result in a net loss of shoreline ecological functions.
- (4) **Replacement of existing structural stabilization measures.** For purposes of this section, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure that can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures. An existing shoreline stabilization structure may be replaced with a similar structure if in accordance with the following.

- A. There is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves.
 - B. The replacement structure must be designed, located, sized, and constructed to assure no net loss of ecological functions.
 - C. Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
- (5) **Repair and maintenance.** Repair and maintenance includes modifications to an existing shoreline stabilization measure that are designed to ensure the continued function of the measure by preventing failure of any part. Repair and maintenance of existing shoreline stabilization measures may be allowed, subject to the following provisions. While repair and maintenance of shoreline stabilization structures may meet the criteria for exemption from a shoreline substantial development permit, such activity is not exempt from the provisions of the City's Shoreline Master Program.
- A. If within a three-year time period, more than 50 percent of the length of an existing structure is removed, including its footing or bottom course of rock, prior to placement of new stabilization materials, such work will not be considered repair and maintenance and shall be considered replacement. Work that only involves the removal of material above the footing or bottom course of rock does not constitute replacement.
 - B. Any additions to or increases in the size of existing shoreline stabilization measures, including the placement of a new shoreline stabilization structure landward of a failing shoreline stabilization structure, shall be considered new structures, not maintenance or repair.
 - C. Areas of temporary disturbance within the shoreline buffer shall be expeditiously restored to their pre-project condition or better.
- (6) **Geotechnical reports.** Geotechnical reports pursuant to this section shall meet the definition of a "geotechnical report" as established in Chapter 2, Definitions, and comply with the following provision, as applicable.
- A. Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation.
- (7) **Design of structural stabilization measures.**

- A. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses. Hard armoring solutions shall not be authorized except when a geotechnical report prepared in accordance with regulation 7.15(6) confirms that there is a significant possibility that a primary structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.
- B. The size of stabilization measures shall be limited to the minimum necessary.
- C. Measures shall be used to assure no net loss of shoreline ecological functions.
- D. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high water mark.
- E. Avoid and, if that is not possible, minimize adverse impacts to sediment conveyance systems. Where sediment conveyance systems cross jurisdictional boundaries, the local governments should coordinate shoreline management efforts.
- F. Publicly financed or subsidized shoreline erosion control measures must not restrict appropriate public access to the shoreline except where such access is determined to be infeasible in accordance with regulation 6.5(5). Where feasible, ecological restoration and public access improvements shall be incorporated into projects.

7.16 Transportation & parking

- (1) **Planning, location, and design.** Transportation and parking facilities and routes must be planned, located, and designed to have the least possible adverse effect on unique or fragile shoreline features, to not result in a net loss of shoreline ecological functions, and to not adversely impact existing or planned water-dependent uses.
 - A. Where other options are available and feasible, new roads or road expansions shall not be built within shoreline jurisdiction.
 - B. Crossings shall occur as near to perpendicular with the waterbody as possible, unless an alternate path would minimize disturbance of native vegetation or result in avoidance of other critical areas such as wetlands.
- (2) **Parking facilities.** Parking facilities in shorelines are not a preferred use and are subject to the following provisions:
 - A. Parking shall be allowed only as necessary to support an authorized use.

- B. Parking shall be sited outside of shoreline jurisdiction unless no feasible alternative location exists.
- C. Parking shall be located landward of the use served, if feasible.
- D. Parking shall be planted or landscaped to provide a visual and noise buffer if adjoining dissimilar uses or scenic areas.

7.17 Utilities

- (1) **Applicability.** Utilities provisions apply to services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.
- (2) **Production and processing facilities.** Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.
- (3) **Transmission facilities.** Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.
- (4) **Existing right-of-ways and corridors.** Utilities shall be located in existing right-of-ways and corridors whenever possible.
- (5) **Crossings.** Where utility corridors must cross shoreline jurisdiction, such crossings shall take the shortest, most direct route feasible, unless such a route would result in loss of ecological function, disrupt public access to the shoreline, or obstruct visual access to the shoreline.
- (6) **Design and location.** All utility facilities shall be designed and located to assure no net loss of shoreline ecological functions.
- (7) **Post-installation.** Upon completion of utility system installation, and any maintenance project, the disturbed area shall be regraded to compatibility with the natural terrain and replanted to prevent erosion and provide appropriate vegetative cover.

8 ADMINISTRATION, PERMITS & ENFORCEMENT

8.1 Administrative responsibilities

- (1) **Shoreline Administrator.** The Shoreline Administrator for the City is the Public Works Director or his/her designee. The Shoreline Administrator is vested with the authority to:
 - A. Administrate the City's Shoreline Master Program.
 - B. Advise interested persons and prospective applicants as to the administrative procedures and related components of the City's Shoreline Master Program.
 - C. Determine applicable fees and collect fees for all necessary permits as provided in City ordinances or resolutions.
 - D. Make field inspections as needed, and prepare or require reports on shoreline permit applications.
 - E. Make administrative decisions and interpretations of the policies and regulations of the City's Shoreline Master Program and the Shoreline Management Act.
 - F. Grant or deny exemptions from shoreline substantial development permit requirements.
 - G. Grant or deny shoreline substantial development permits and time extensions to shoreline permits and their revisions.
 - H. Make written recommendations to the Planning Commission or City Council as appropriate. The Shoreline Administrator may recommend amendments to the City's Shoreline Master Program to the Planning Commission and City Council.
 - I. Issue a stop work order pursuant to the procedure set forth in WAC 173-27-270 upon a person undertaking an activity on shorelines in violation of RCW 90.58 or the City's Shoreline Master Program, and seek remedies for alleged violations of the City's Shoreline Master Program, provisions of the Shoreline Management Act, or conditions attached to a shoreline permit issued by the City.
- (2) **State Environmental Policy Act official.** The responsible State Environmental Policy Act official or his/her designee is authorized to conduct environmental review of all use and development activities subject to the City's Shoreline Master Program, pursuant to WAC 197-11 and RCW 43.21C. The responsible State Environmental Policy Act official is designated in accordance with the City's State Environmental Policy Act implementation ordinance.
- (3) **Board of Adjustment.** The Board of Adjustment shall have the authority to:
 - A. Grant or deny shoreline conditional use permits.

- B. Grant or deny shoreline variance permits.
- C. Decide on appeals of administrative decisions issued by the Shoreline Administrator.
- (4) **Planning Commission.** The Planning Commission is vested with the responsibility to review the City's Shoreline Master Program as part of regular updates required by RCW 90.58.080, and make recommendations for amendments to the City Council.
- (5) **City Council.** The City Council is vested with authority to:
 - A. Initiate an amendment to City's Shoreline Master Program according Section 8.13, Amendments.
 - B. Adopt all amendments to City's Shoreline Master Program. Amendments shall become effective 14 days from the date of Ecology's written notice of final approval.

8.2 Nonconforming uses, lots & structures

- (1) **Abatement or termination.**
 - A. A nonconforming use if changed to a conforming use may not thereafter be changed back to a nonconforming use.
 - B. A nonconforming use, when discontinued or abandoned for a period of 12 consecutive calendar months, shall not be resumed.
 - C. The land from which any nonconforming structure has been removed shall be subsequently used in conformity with the applicable regulations.
 - D. A nonconforming structure if destroyed, damaged or has incurred a loss equal to or greater than 75 percent of its assessed or appraised value shall thereafter conform to the provisions of the City's Shoreline Master Program.
 - E. A nonconforming structure which has been damaged or incurred a loss less than 75 percent shall have no more than 12 months in which to resume activity or rebuild or the nonconformance shall be considered to be terminated and shall not be resumed.
- (2) **Enlargement.**
 - A. The enlargement of a nonconforming use to any portion of an existing building, which portion was designed and built for such nonconforming use prior to the passage of the City's Shoreline Master Program may be permitted, provided no structural alterations are made.
 - B. Structures that were legally established and are used for a conforming use but which are nonconforming only with regard to dimensional standards in the City's Shoreline Master Program may be enlarged or expanded without obtaining a shoreline variance permit provided that said enlargement does not increase the extent of

nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses under the City's Shoreline Master Program.

C. Moving of a nonconforming use to contiguous lots is prohibited.

(3) **Repairs, maintenance and safety.** Repairs and maintenance work may be undertaken on a nonconforming structure to the extent that such repair and maintenance does not exceed ten percent of the assessed value of the structure within a period of 12 consecutive months. Nothing shall prevent the City from requiring repairs on any nonconforming structure to protect the public health and safety. Maintenance work and repair on a nonconforming structure shall conform to all revisions, modifications and amendments to the City building codes.

(4) **Pre-existing legal residential structures.** Notwithstanding the above regulations of this section, the following shall apply only to pre-existing legal residential structures constructed prior to the effective date of the City's Shoreline Master Program:

- A. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following shall be considered a conforming structure: setback, buffers, or yards; area; bulk; height; or density.
- B. The City shall allow redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the City's Shoreline Master Program, including requirements for no net loss of shoreline ecological functions.
- C. For purposes of this section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.
- D. Nothing in this section shall:
 - 1. Restrict the ability of the City's Shoreline Master Program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or
 - 2. Affect the application of other federal, state, or City requirements to residential structures.

8.3 Exemptions

(1) **Application and interpretation of exemptions.**

- A. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the shoreline substantial development permit process.
 - B. An exemption from the shoreline substantial development permit process is not an exemption from compliance with the Shoreline Management Act or the City's Shoreline Master Program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the provisions of the City's Shoreline Master Program and the Shoreline Management Act. A development or use that is listed as a shoreline conditional use pursuant to City's Shoreline Master Program or is an unlisted use, must obtain a shoreline conditional use permit even though the development or use does not require a shoreline substantial development permit. When a development or use is proposed that does not comply with the dimensional or performance standards of the City's Shoreline Master Program, such development or use can only be authorized by approval of a shoreline variance, unless otherwise provided in the City's Shoreline Master Program.
 - C. The burden of proof that a development or use is exempt from the permit process is on the applicant.
 - D. If any part of a proposed development is not eligible for exemption, then a shoreline substantial development permit is required for the entire proposed development.
 - E. The City may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and the City's Shoreline Master Program.
- (2) **Exempt developments.** The City shall exempt from shoreline substantial development permit requirements the shoreline developments listed in WAC 173-27-040(2); RCW 90.58.030(3)(e); RCW 90.58.140(9); RCW 90.58.147; RCW 90.58.355; and RCW 90.58.515.
- (3) **Letter of exemption.** The City shall issue a letter of exemption when required by WAC 173-27-050. Otherwise, the exemption status shall be documented in the project application file.

8.4 Exceptions

- (1) City review is not required for those projects listed either in WAC 173-27-044, "Developments not required to obtain shoreline permits or local review" or in WAC 173-27-045, "Developments not subject to the Shoreline Management Act."

Commented [DN4]: Recommended clarification from SMP Periodic Checklist 2017(c)

8.48.5 Shoreline permit application requirements

- (1) **Shoreline permit application requirements.** A complete application for a shoreline permit shall contain, as a minimum, the following information, as well as any other application requirements identified in the City's Shoreline Master Program.
- A. The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
 - B. The name, address and phone number of the applicant's representative if other than the applicant.
 - C. The name, address and phone number of the property owner, if other than the applicant.
 - D. Location of the property. This shall, at a minimum, include the property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
 - E. Identification of the name of the shoreline (waterbody) with which the site of the proposal is associated. This should be the waterbody from which jurisdiction of the Shoreline Management Act over the project is derived.
 - F. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
 - G. A general description of the property as it now exists including its physical characteristics and improvements and structures.
 - H. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
 - I. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text that shall include:
 - 1. The boundary of the parcel(s) of land upon which the development is proposed.
 - 2. The ordinary high water mark of all waterbodies located adjacent to or within the boundary of the project. This may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water

mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

3. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
 4. A delineation of all wetland areas that will be altered or used as a part of the development.
 5. A general indication of the character of vegetation found on the site.
 6. The dimensions and locations of all existing and proposed structures and improvements including but not limited to: buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
 7. Where applicable, a landscaping plan for the project.
 8. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.
 9. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.
 10. Quantity, composition and destination of any excavated or dredged material.
 11. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
 12. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
- (2) **Additional requirements for shoreline variance permit applications.** On all shoreline variance permit applications, the plans shall clearly indicate where development could occur without approval of a shoreline variance permit, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

8-58.6 Shoreline permit application notice requirements

- (1) **Applicability.** The City shall notify the public, Ecology, and other agencies with jurisdiction of applications for a shoreline permit. Notification pursuant to this section may be carried out as a part of an integrated City permit notification procedure.
- (2) **Notice of application.** The City shall provide notice of application within 14 days after the determination of completeness as provided in RCW 36.70B.070, and include the following in whatever sequence or format the City deems appropriate:
 - A. The date of application, the date of the notice of completion for the application, and the date of the notice of application.
 - B. A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested under RCW 36.70B.070, RCW 36.70B.090 and WAC 173-27-180.
 - C. The identification of other permits not included in the application, to the extent known by the City.
 - D. The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, the location where the application and any studies can be reviewed.
 - E. A statement of the public comment period, which shall be not less than 30 days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. The City may accept public comments at any time prior to the closing of the record of an open record predecision hearing, if any, or, if no open record predecision hearing is provided, prior to the decision on the project permit.
 - F. The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application.
 - G. A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency.
 - H. Any other information determined appropriate by the City.
- (3) **Open record predecision hearing.** If an open record predecision hearing, as defined in RCW 36.70B.020, is required for the requested project permit(s), the notice of application shall be provided at least 15 days prior to the open record hearing.

- (4) **Notification of general public and property owners.** The City shall give notice to the general public and property owners in the vicinity by at least one of the following methods:
- A. Mailing of the notice to the latest recorded real property owners as shown by the records of the County assessor within at least 300 feet of the boundary of the property upon which the development is proposed;
 - B. Posting of the notice in a conspicuous manner on the property upon which the project is to be undertaken; or
 - C. Any other manner deemed appropriate by the City to accomplish the objectives of reasonable notice to adjacent landowners and the public.
- (5) **Notification of individuals and organizations.** The City shall provide for timely notification of individuals and organizations that request such notice in writing.
- (6) **Notification of agencies.** The City shall provide notice to all agencies with jurisdiction per RCW 43.21C and to all other agencies that request in writing any such notice.

8-68.7 Special shoreline permit procedures for limited utility extensions & bulkheads

- (1) **Limited utility extension.** For purposes of this section, a "limited utility extension" means the extension of a utility service that:
- A. Is categorically exempt under RCW 43.21C RCW for one or more of the following: natural gas, electricity, telephone, water, or sewer;
 - B. Will serve an existing use in compliance with the City's Shoreline Master Program; and
 - C. Will not extend more than 2,500 linear feet within the shorelines of the state.
- (2) **Time periods and procedures.** An application for a shoreline substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all other applicable requirements, except that the following time periods and procedures shall be used:
- A. The public comment period shall be 20 days. The notice provided shall state the manner in which the public may obtain a copy of the City's decision on the application no later than two days following its issuance.
 - B. The City shall issue its decision to grant or deny the permit within 21 days of the last day of the comment period.

- C. If there is an appeal of the decision to grant or deny the permit to the City government legislative authority, the appeal shall be finally determined by the legislative authority within 30 days.

8.7.8 Shoreline permit review criteria

8.7.8.1 Review criteria for all development

- (1) **Consistency.** No authorization to undertake use or development on shorelines of the state shall be granted by the City unless upon review the use or development is determined to be consistent with the provisions of the Shoreline Management Act and the City's Shoreline Master Program.

8.7.8.2 Review criteria for shoreline substantial development permits

- (1) **Authorization criteria.** A shoreline substantial development permit shall be granted only when the development proposed is consistent with:
 - A. The policies and procedures of the Shoreline Management Act;
 - B. The provisions of this regulation; and
 - C. The City's Shoreline Master Program.
- (2) **Conditions.** The City may attach conditions to the approval of permits as necessary to assure consistency of the project with the Shoreline Management Act and the City's Shoreline Master Program.

8.7.8.3 Review criteria for shoreline conditional use permits

- (1) **Applicability.** The purpose of a shoreline conditional use permit is to provide a system within the City's Shoreline Master Program that allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the City or Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Shoreline Management Act and the City's Shoreline Master Program.
- (2) **Authorization criteria.** Uses which are classified or set forth in the City's Shoreline Master Program as shoreline conditional uses may be authorized provided that the applicant demonstrates all of the following:
 - A. That the proposed use is consistent with the policies of RCW 90.58.020 and the City's Shoreline Master Program;
 - B. That the proposed use will not interfere with the normal public use of public shorelines;

- C. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and the City's Shoreline Master Program;
 - D. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
 - E. That the public interest suffers no substantial detrimental effect.
- (3) **Consideration of cumulative impacts.** In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.
- (4) **Uses not classified.** Other uses which are not classified or set forth in the City's Shoreline Master Program may be authorized as shoreline conditional uses provided the applicant can demonstrate consistency with the requirements of this section.
- (5) **Prohibited uses.** Uses which are specifically prohibited by the City's Shoreline Master Program may not be authorized.

8.7.48.8.4 Review criteria for shoreline variance permits

- (1) **Applicability.** The purpose of a shoreline variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the City's Shoreline Master Program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the City's Shoreline Master Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.
- (2) **Circumstances.** Shoreline variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- (3) **Authorization criteria, landward of ordinary high water mark.** Shoreline variance permits for development and/or uses that will be located landward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

- A. That the strict application of the bulk, dimensional or performance standards set forth in the City's Shoreline Master Program precludes, or significantly interferes with, reasonable use of the property;
 - B. That the hardship described in regulation 8.7.4(3)A is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the City's Shoreline Master Program, and not, for example, from deed restrictions or the applicant's own actions;
 - C. That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and the City's Shoreline Master Program and will not cause adverse impacts to the shoreline environment;
 - D. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
 - E. That the variance requested is the minimum necessary to afford relief; and
 - F. That the public interest will suffer no substantial detrimental effect.
- (4) **Authorization criteria, waterward of ordinary high water mark.** Variance permits for development and/or uses that will be located waterward of the ordinary high water mark, as defined in RCW 90.58.030(2)(c), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:
- A. That the strict application of the bulk, dimensional or performance standards set forth in the City's Shoreline Master Program precludes all reasonable use of the property;
 - B. That the proposal is consistent with the criteria established under regulation 8.7.4(3)(B) through regulation 8.7.4(3)(F); and
 - C. That the public rights of navigation and use of the shorelines will not be adversely affected.
- (5) **Consideration of cumulative impacts.** In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if shoreline variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the shoreline variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.
- (6) **Variances from use.** Variances from the use regulations of the City's Shoreline Master Program are prohibited.

~~8.88.9~~ Filing with Ecology

- (1) **Submittal upon final decision.** All applications for a permit or a permit revision shall be submitted to Ecology upon a final decision by the City. Final decision by the City shall mean the order or ruling, whether it be an approval or denial, which is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed.
- (2) **Concurrent submittals.** When a substantial development permit and a conditional use or variance permit are required for a development, the submittal on the permits shall be made concurrently.
- (3) **Submittal requirements.** A complete submittal shall consist of the following documents and information:
 - (a) A copy of the complete application pursuant to Section 8.5, Shoreline permit application requirements;
 - (b) Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable policies and regulations of the City's Shoreline Master Program and the consistency of the project with appropriate review criteria for the type of permit(s) as established in Section 8.7, Shoreline permit review criteria;
 - (c) The final decision of the City;
 - (d) The permit data sheet required by WAC 173-27-190; and
 - (e) Where applicable, the City shall also file the applicable documents required by chapter 43.21C RCW, the State Environmental Policy Act, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under chapter 43.21C RCW.
- (4) **Project modification during City review.** When the project has been modified in the course of the City review process, plans or text shall be provided to Ecology that clearly indicate the final approved plan.
- (5) **Incomplete submittals.** Submittal of substantial development permits, conditional use permits, variances, rescissions and revisions is complete when all of the documents required pursuant to regulation 8.8(3) and regulation 8.8(4) have been received by Ecology. 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 so notify the City and the applicant in writing. Ecology will not act on conditional use permit or variance submittal until the material requested in writing is submitted to Ecology.

- (8) **Notice of "date of filing."** Ecology shall provide a written notice to the City and the applicant of the "date of filing."
- (9) **Transmittal of decision.** Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with Ecology and the attorney general.
- (10) **Appeals.** When a permit has been appealed pursuant to RCW 90.58.180, upon conclusion of all review proceedings, a copy of the final order shall be provided by the City to Ecology. When the project has been modified in the course of the review proceeding, plans or text shall be provided to the City, consistent with the provisions of WAC 173-27-180, that clearly indicate the final approved plan and the City shall reissue the permit accordingly and submit a copy of the reissued permit and supporting documents consistent with regulation (3) to Ecology for completion of the file on the permit. The purpose of this provision is to assure that City and Ecology files on the permit are complete and accurate and not to provide a new opportunity for appeal of the permit.

8-98.10 Time requirements of shoreline permits

- (1) **Applicability.** The time requirements of this section shall apply to all shoreline permits authorized by the City's Shoreline Master Program.
- (2) **Different time limits.** Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the provisions of City's Shoreline Master Program, the City may adopt different time limits from those set forth in regulation 8.9(3) and regulation 8.9(4) as a part of action on a substantial development permit.
- (3) **Commencement.** Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of the shoreline permit. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the shoreline permit and to Ecology.
- (4) **Termination.** Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the shoreline permit and to Ecology.
- (5) **Effective date.** The effective date of a substantial development permit shall be the date of receipt as provided in RCW 90.58.140(6). The permit time periods in regulation 8.9(3) and

regulation 8.9(4) do not include the time during which a use or activity was not actually pursued due to pending administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

- (6) **Revisions.** Revisions to permits may be authorized after original permit authorization has expired, provided that this procedure shall not be used to extend the original permit time requirements or to authorize shoreline substantial development after the time limits of the original permit.
- (7) **Notification to Ecology.** The City shall notify Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended shall require a new permit application.

8.108.11 Shoreline permit revisions

- (1) **Applicability.** A permit revision is required whenever an applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the City's Shoreline Master Program and/or the policies and provisions of RCW 90.58. Changes that are not substantive in effect do not require approval of a revision.
- (2) **Description of proposed changes.** When an applicant seeks to revise a permit, the City shall request from the applicant detailed plans and text describing the proposed changes.
- (3) **Approval of revisions.** If the City determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the City's Shoreline Master Program and the Shoreline Management Act, the City may approve a revision. If the revision, or the sum of the revision and any previously approved revisions, are not within the scope and intent of the original permit, the City shall require that the applicant apply for a new permit.
 - A. "Within the scope and intent of the original permit" means all of the following:
 - 1. No additional over water construction is involved except that pier, dock, or float construction may be increased by 500 square feet or ten percent from the provisions of the original permit, whichever is less;
 - 2. Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;

3. The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the City's Shoreline Master Program except as authorized under a shoreline variance granted as the original permit or a part thereof;
 4. Additional or revised landscaping is consistent with any conditions attached to the original permit and with the City's Shoreline Master Program;
 5. The use authorized pursuant to the original permit is not changed; and
 6. No adverse environmental impact will be caused by the project revision.
- (4) **Revisions after original permit authorization has expired.** Revisions to permits may be authorized after original permit authorization has expired under RCW 90.58.143. The purpose of such revisions shall be limited to authorization of changes that are consistent with this section and that would not require a permit for the development or change proposed under the terms of RCW 90.58, this regulation and the City's Shoreline Master Program. If the proposed change constitutes substantial development then a new permit is required. Provided, this regulation shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.
- (5) **Filing and notification.** The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with Ecology. In addition, the City shall notify parties of record of their action.
- (6) **Revisions to shoreline conditional use permits and shoreline variance permits.** If the revision to the original permit involves a shoreline conditional use permit or shoreline variance permit, the City shall submit the revision to Ecology for approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this regulation. Ecology shall render and transmit to the City and the applicant its final decision within 15 days of the date of Ecology's receipt of the submittal from the City. The City shall notify parties of record of Ecology's final decision.
- (7) **Effective date.** The revised permit is effective immediately upon final decision by the City or, when appropriate under regulation 8.10(6), upon final action by Ecology.
- (8) **Appeals.** Appeals shall be in accordance with RCW 90.58.180 and shall be filed within 21 days from the date of receipt of the City's action by Ecology or, when appropriate under regulation 8.10(6), the date Ecology's final decision is transmitted to the City and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of regulation 8.10(3)(A) of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful

in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

8.118.12 Requests for review of final permit decisions

- (1) **Requests for review.** All requests for review of any final permit decisions under RCW 90.58 and WAC 173-27 are governed by the procedures established in RCW 90.58.180 and WAC 461-08.

8.128.13 Enforcement

- (1) **Noncompliance.** Noncompliance with any section of the City's Shoreline Master Program may result in enforcement actions. The Shoreline Administrator, as administrator of the City's Shoreline Master Program, is authorized to enforce all of the provisions of the City's Shoreline Master Program. The Shoreline Administrator may request the assistance of the police department and/or building department, and in such instances they shall have full powers pursuant to the Goldendale Municipal Code and other chapters to enforce the City's Shoreline Master Program. Any person or entity violating the provisions of the City's Shoreline Master Program is punishable pursuant to the procedures set forth in WAC 173-27 Part II, Shoreline Management Act Enforcement; the Goldendale Municipal Code; and Chapter 7.80 RCW.
- (2) **Citizen complaints.** Citizen complaints may be submitted to code enforcement. The complaint shall be submitted on violation/complaint forms provided by the code enforcement officer. The violation/complaint forms shall include sufficient factual information on which to substantiate the complaint, and shall reference the sections of the code which have been violated. The form should be accompanied by any available, relevant evidence, such as photographs of the violation, maps and/or reports.

8.138.14 Amendments

- (1) **Process.** Amendments to the City's Shoreline Master Program shall be processed according to the procedures prescribed in WAC 173-26-100.

8.148.15 Shoreline activity tracking

- (1) **Documentation of City shoreline project review actions.** The City shall document all project review actions in shoreline jurisdiction, including shoreline substantial development permits, shoreline conditional use permits, shoreline variance permits and shoreline exemptions.

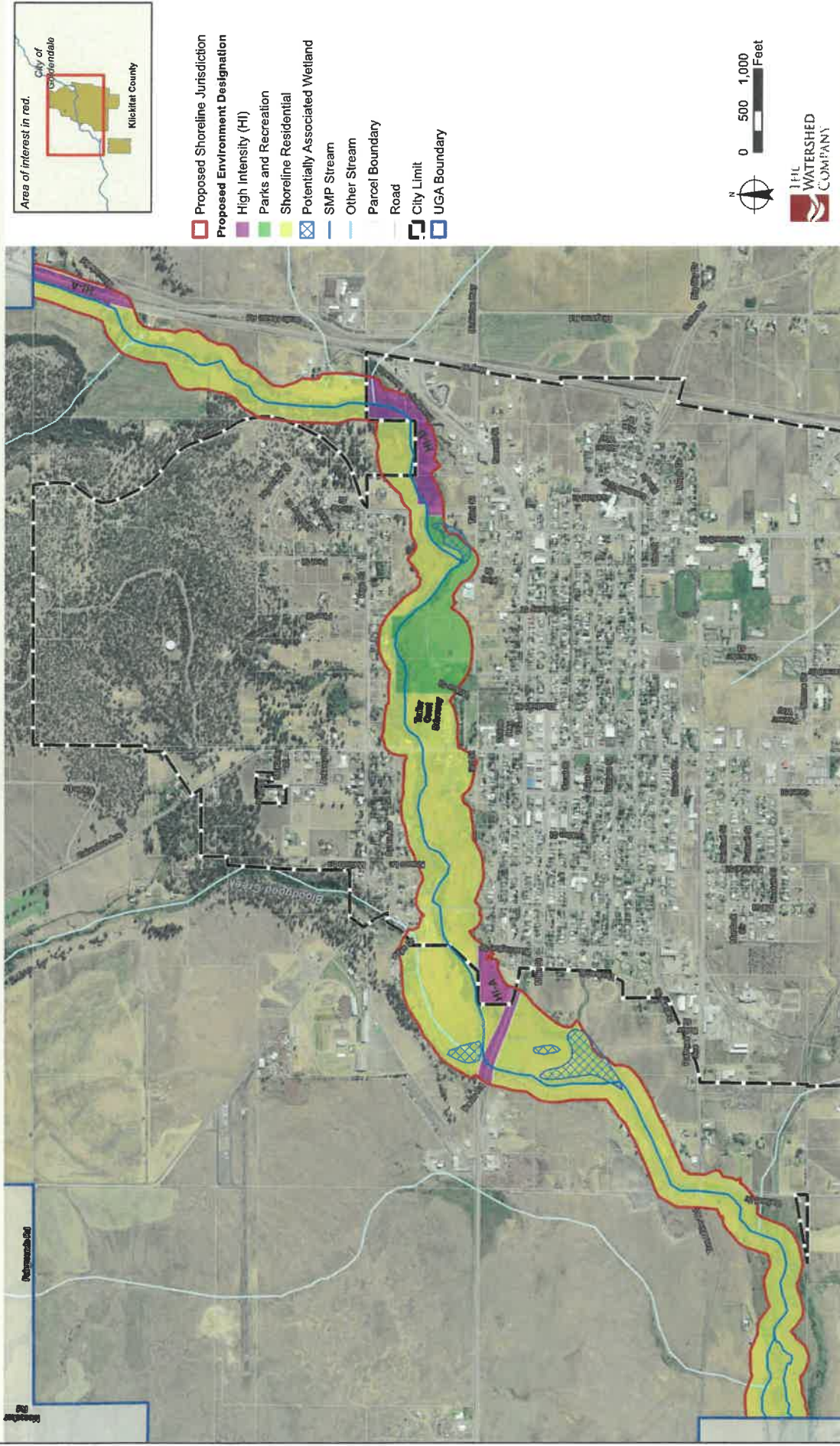
- (2) **Periodic evaluation.** The City shall conduct a review of the City's Shoreline Master Program once every eight years, or as required by RCW 90.58.080. Using the information collected per regulation 8.14(1), the City shall evaluate the cumulative effects of authorized development on shoreline conditions.

8.158.16 Annexation

- (1) **Annexation of shoreline areas.** City annexation of shoreline areas are subject to the requirements of WAC 173-26-150 and WAC 173-26-160.
- (2) **Predesignation.** The City has predesignated environments on shorelines located outside of its existing incorporated boundaries but within its urban growth area. The shoreline environment designations for predesignated areas and all other components of the City's Shoreline Master Program shall take effect concurrent with annexation.

City of Goldendale

SHORELINES MAP



All features depicted on this map are approximate. They have not been formally delineated or surveyed and are intended for planning purposes only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map.

Print Date: 4/17/2015

APPENDIX B: SHORELINE CRITICAL AREAS REGULATIONS

TABLE OF CONTENTS

1	GENERAL PROVISIONS	1
1.1	Purpose	1
1.2	Applicability.....	1
1.3	Nonconforming uses and structures.....	2
1.4	Violations and penalties	2
1.5	Appeals.....	3
1.6	Liability.....	3
1.7	Reasonable use.....	3
1.8	Process for critical areas review.....	3
1.9	Critical areas checklist.....	4
1.10	Alternative to prescriptive buffers.....	4
1.11	Variances	4
2	WETLANDS.....	5
2.1	Purpose	5
2.2	Designation.....	5
2.3	Wetland classification.....	6
2.4	Regulated activities.....	7
2.5	Wetland buffers.....	8
2.6	Wetland mitigation.....	<u>1211</u>
3	FISH AND WILDLIFE HABITAT CONSERVATION AREAS	<u>1413</u>
3.1	Purpose	<u>1413</u>
3.2	Classification and designation	<u>1413</u>
3.3	Performance standards.....	<u>1514</u>
3.4	Fish and wildlife mitigation	<u>1817</u>
4	GEOLOGICALLY HAZARDOUS AREAS.....	<u>1918</u>
4.1	Purpose	<u>1918</u>
4.2	Classification and designation	<u>2018</u>
4.3	Performance standards.....	<u>2119</u>
4.4	Submittal requirements.....	<u>2120</u>
4.5	Development standards	<u>2221</u>
4.6	Development design	<u>2321</u>
5	AQUIFER RECHARGE AREAS.....	<u>2422</u>
5.1	Purpose	<u>2422</u>
5.2	Classification and designation	<u>2422</u>
5.3	Performance standards.....	<u>2423</u>
6	FREQUENTLY FLOODED AREAS	<u>2725</u>

6.1 Purpose	<u>2725</u>
6.2 Classification and designation	<u>2726</u>
6.3 Performance standards.....	<u>2826</u>

1 GENERAL PROVISIONS

1.1 Purpose

- (1) The city council finds that aquifer recharge areas, frequently flooded areas, geologically hazardous areas, wetlands, and fish and wildlife habitat conservation areas constitute critical areas that are of special concern to the city.
- (2) The following regulations are established pursuant to the critical areas requirements of Chapter 36.70 RCW, Growth Management Act. Use and improper use of areas defined by the state of Washington as critical to the public health, safety and welfare can result in increased local government costs. Sprawl and unwise development in areas susceptible to natural hazards may lead to inefficient use of limited public resources, jeopardize environmental resource functions and values, subject persons and property to unsafe conditions, and affect the perceived quality of life.
- (3) Some of these areas are critical because of the hazard they present to public health and safety; others are critical because of the values they represent to the public welfare (e.g., wetland and fish and wildlife habitat protection, control of floodwaters, preservation of water quality, preservation of open space). There are qualitative differences between and among critical areas. Not all critical areas are important for the same reasons; in some cases, the risk posed to the public by use or development of a critical area can be mitigated or reduced with proper engineering or design. In all cases, the current rights of landowners need to be weighed in comparison to the benefit/risk to public health, safety and welfare.

1.2 Applicability

- (1) These provisions apply to all activities, unless exempted, in the incorporated areas of the city of Goldendale, Washington; they are, in effect, an overlay on existing land use regulations. Classifying, inventorying, and designating lands or areas does not imply a change in a landowner's right to use his/her land under current law. However, development permits may be conditioned or denied to ensure that the proposed action is consistent with this Master Program, as well as current ordinances. This section applies to all permits or land use approvals issued by the city.
- (2) Compliance with the provisions of this section does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, Hydraulic Project Approval, Army Corps of Engineers Section 404 permits, National Pollutant Discharge Elimination System permits, Endangered Species Act compliance, etc.). The applicant is responsible for complying with these requirements, apart from the process established in this Master Program.

- (3) If an applicant has already performed a critical areas review under other laws for other permitting agencies, the city will not require duplicate review but will consider whether the review previously taken, including mitigation conditions and any buffer requirements imposed, is satisfactory to comply with this Appendix B.
- (4) The city will utilize, in managing its critical areas, the most current, accurate, and complete scientific and technical information available as suggested in agency guidelines prepared by the Department of Ecology, Department of Fish and Wildlife, and other state agencies.

1.3 Nonconforming uses and structures

In addition to the requirements of Section 8.2 in the main body of the SMP, any regulated activity or use which was approved prior to the passage of this SMP and to which substantial resources have been committed pursuant to such approval but which do not conform to this SMP may be continued subject to the following:

- (1) No activity or use shall be permitted to expand, change, enlarge or alter in any way the extent of its current nonconforming operations without a permit issued pursuant to the provisions of this Master Program.
- (2) If any nonconforming activity or use, excluding intermittent agricultural activities, is discontinued for a period of twelve months, any resumption of the activity or use shall conform to the provisions of this Master Program.
- (3) If any nonconforming activity or use is destroyed by human activities or natural processes, it shall not be resumed again unless it conforms to the provisions of this Master Program.
- (4) Activities or uses that are or become nuisances shall not be allowed to continue as nonconforming activities or uses.

1.4 Violations and penalties

- (1) Noncompliance with any section of this Appendix B may result in enforcement actions. The Shoreline Administrator, as administrator of this Master Program, is authorized to enforce all of the provisions of this Appendix B. The Shoreline Administrator may request the assistance of the police department and/or building department, and in such instances they shall have full powers pursuant to the Goldendale Municipal Code and other chapters to enforce this Appendix B. Any person or entity violating the provisions of this Master Program, including this Appendix B, is punishable pursuant to the procedures set forth in Section 8.11 of the body of the SMP, the Goldendale Municipal Code, and Chapter 7.80 RCW.
- (2) Citizen complaints may be submitted to code enforcement. The complaint shall be submitted on violation/complaint forms provided by the code enforcement officer. The

violation/complaint forms shall include sufficient factual information on which to substantiate the complaint, and shall reference the sections of the code which have been violated. The form should be accompanied by any available, relevant evidence, such as photographs of the violation, maps and/or reports.

1.5 Appeals

- (1) If a critical areas review is associated with a city shoreline permit, any appeal issues associated with critical areas review must be incorporated into a timely appeal of that permit, in accordance with the administrative appeal remedies outlined in Chapter 8 of the main body of the SMP and available through the city municipal code.
- (2) If critical areas review is not associated with another city shoreline permit, then appeals of the final review decision may be filed by the applicant with the board of adjustment within fourteen calendar days of the date a final decision on critical areas code compliance is issued.

1.6 Liability

This Appendix B does not imply that land outside of a critical area or use permitted within such areas will be free from exposure or damage by natural disasters. This Appendix B shall not create liability on the part of the city or any officer or employee thereof for any damages that result from reliance on this Appendix B or administrative decision lawfully made hereunder. Upon issuance of a permit, the permit holder is solely responsible to comply with other local, state and federal laws.

1.7 Reasonable use

If the application of this section would deny all reasonable use of the property, applicants may pursue a Shoreline Variance consistent with Section 1.10 below and Chapter 8, Administration, Permits & Enforcement, of the body of the SMP.

1.8 Process for critical areas review

Critical areas review is required for permits or land use approvals issued by the city and for certain grading/clearing activity. When review is triggered because a land use approval or development permit is required, the review procedures of the other permit(s) or approval(s) will apply.

1.9 Critical areas checklist

The city may utilize a critical areas checklist to assist in its application of this Appendix B. The checklist shall include a list of questions concerning the location and significance of critical areas which may be on a particular property.

1.10 Alternative to prescriptive buffers

- (1) Intent. The city recognizes that in some cases the desired or better critical area protection can be achieved through alternative approaches.
- (2) In considering an application for an alternative, it shall always be the primary intent of the city to protect the functions and values of the critical areas.
- (3) Any proposed use of the following alternative shall be supported by analysis utilizing the most current, accurate, and complete scientific and technical information available to determine and minimize the impacts of the alternative.
- (4) Habitat Management Plan. A habitat management plan (HMP) may be prepared when it can clearly be demonstrated that greater protection of the functions and values of critical areas can be achieved through the HMP than could be achieved through providing the prescribed habitat buffers. An HMP may be used as a means to protect wetland and/or fish and wildlife habitat conservation area buffers. Habitat management plans may not be used to reduce the buffers for wetlands and/or fish and wildlife habitat conservation areas.

1.11 Variances

- (1) Variances to reduce the prescribed buffers for wetlands and/or fish and wildlife habitat conservation areas may be considered where application of the standards renders compliance with these provisions an unnecessary hardship.
- (2) A shoreline variance may be granted when it can be shown that the application meets all of the criteria in Section 8.7.4 of the main body of the SMP and the following criteria:
 - A. No other practicable or reasonable alternative exists; and
 - B. A mitigation plan has been submitted and is approved for the proposed use of the critical area; and
 - C. If structures are the approved use for which the variance is applied, the structures shall be no greater than the minimum size necessary to accommodate the permitted use; and

- D. Retention of existing native or equivalent vegetation in other portions of the site is provided in order to offset habitat loss from buffer reduction; and
 - E. A HMP has been prepared, unless it is determined through the applicable review process that such a plan is unnecessary.
- (2) Pilot Projects. The city council may, by resolution, establish a site-specific pilot project in partnership with an applicant that encourages the applicant to undertake creative, nonstandard efforts that were not envisioned during the development of this section, but through which a greater conservation of critical areas will be achieved; provided, that such project will satisfy the intent of this section.

2 WETLANDS

2.1 Purpose

The purpose of this section is to provide standards for classification and designation of wetlands; and provide guidance for protecting those wetlands necessary to maintain the public health, safety, and welfare (e.g., wetlands that lend to reduction of erosion, saturation, flooding, ground and surface water pollution, recharge streams and aquifers, and provide habitat for fish and wildlife).

2.2 Designation

- (1) Approximate wetland locations shall be identified using National Wetlands Inventory maps, information furnished by the applicant (per a checklist provided by the city), and/or other information provided by qualified professionals or agencies.
- (2) Regulated Wetlands.
- A. All natural wetlands identified using the methodology of the approved federal wetland delineation manual and applicable regional supplements, in accordance with WAC 173-22-035, as revised.
 - B. Unintentionally created wetlands identified using the methodology of the approved federal wetland delineation manual and applicable regional supplements, in accordance with WAC 173-22-035, as revised.
 - C. Wetlands intentionally created from nonwetland area to mitigate conversion of other wetlands.
- (3) Nonregulated Wetlands.
- A. Created Wetlands. Wetlands created intentionally from a nonwetland site that was not required to be constructed as mitigation for adverse wetland impacts. These

may include, but are not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment ponds, farm ponds, and landscape amenities. The applicant shall bear the burden of proving that the wetland was intentionally created from a nonwetland site. Where enhancements or restorations are made to wetlands for purposes other than mitigation, the original rating shall be maintained even if the changes would otherwise result in a higher classification.

- B. Road Construction Related Wetlands. Wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. The applicant shall bear the burden of proving that the wetland meets these criteria.

2.3 Wetland classification

- (1) Wetland classification shall use the Department of Ecology's Washington State Wetland Rating System for Eastern Washington (Ecology Publication #14-06-018, or as revised and approved by Ecology), which contains the definitions and methods for determining if the criteria below are met. Rating categories shall be applied as the wetland exists at the time of an associated permit application. Wetland rating categories shall not change due to illegal modifications.
 - A. Category I wetlands are: 1) alkali wetlands; 2) wetlands with high conservation value that are identified by scientists of the Washington Natural Heritage Program/DNR; 3) bogs and calcareous fens; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well (scores between 22-27 points). These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.
 - B. Category II wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well (scores between 19-21 points). These wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection.
 - C. Category III wetlands are wetlands with a moderate level of functions (scores between 16-18 points). Wetlands scoring between 16-18 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

- D. Category IV wetlands have the lowest levels of functions (scores fewer than 16 points) and are often heavily disturbed. These are wetlands that should be replaceable, and in some cases may be improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected
- (2) If a proposal is located within three hundred feet of a wetland, the applicant shall provide the following reports prior to development authorization:
- A. Wetland boundary delineation/survey;
 - B. Wetland rating; and
 - C. Wetland mitigation plan if the proposed development will encroach upon a wetland or its buffer.
- (3) If it is determined that a proposed development is not within three hundred feet of a wetland, then the proposed development will not be reviewed for impacts to wetlands under this section.

2.4 Regulated activities

- (1) The following uses shall be regulated to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function:
- A. The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
 - B. The dumping, discharging, or filling with any material, including discharges of storm water and domestic, commercial, or industrial wastewater;
 - C. The draining, flooding, or disturbing of the water level, duration of inundation, or water table;
 - D. The placing of obstructions;
 - E. The construction, reconstruction, demolition, or expansion of any structure;
 - F. Significant vegetation removal, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules;
 - G. Other uses or development that results in an ecological impact to the physical, chemical, or biological characteristics of wetlands; or
 - H. Activities reducing the functions of wetland buffers.

2.5 Wetland buffers

- (1) An applicant shall provide the prescribed buffers in this section unless otherwise approved per these regulations or a shoreline variance is granted.
- (2) Buffers.
 - A. The standard buffer widths in Table 2-1 have been established in accordance with the most current, accurate, and complete scientific and technical information available. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Eastern Washington.
 - B. Vegetative buffers shall be measured perpendicular from the wetland boundary as surveyed in the field. The buffer for a wetland created, restored, or enhanced as compensation for approved wetland alterations shall be the same as the buffer required for the category of the created, restored, or enhanced wetland. Only fully vegetated buffers will be considered. Lawns, walkways, driveways, and other mowed or paved areas will not be considered buffers or included in buffer area calculations.
 - C. The use of the standard buffer widths requires the implementation of the measures in Table 2-2, where applicable, to minimize the impacts of the adjacent land uses. If the applicant is unable to or chooses not to apply the mitigation measures in Table 2-2 or meet the buffer descriptions listed in Section D below, the required wetland buffers listed in Table 2-3 must be used.
 - ~~D. If an applicant chooses not to apply the mitigation measures in Table 2-2, then a 33% increase in the width of all buffers is required. For example, a 75-foot buffer with the mitigation measures would be a 100-foot buffer without them.~~
 - ~~E.D.~~ The adequacy of these standard buffer widths presumes the existence of a relatively intact native vegetative community within the buffer zone that is deemed adequate to protect the identified critical area.
 1. If the vegetation is degraded, then revegetation may be considered with any adjustment to the buffer width.
 2. Where the use is being intensified, a degraded buffer may be revegetated to maintain the standard width.
 - ~~F.E.~~ No refuse shall be placed in the buffer.

Table 2-1. Standard Wetland Buffer Widths

Wetland Category	Buffer width if wetland scores 3-4 habitat points	Additional buffer width if wetland scores 5 habitat points	Additional buffer width if wetland scores 6-7 habitat points	Additional buffer width if wetland scores 8-9 habitat points
Category I: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Bogs and Wetlands of High Conservation Value	190 ft			
Category I: Alkali	150 ft			
Category II: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category II: Vernal pool	150 ft			
Category II: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category III (all)	60 ft	Add 30 ft	Add 60 ft	Add 140 ft
Category IV (all)	40 ft			

Wetland Category	Buffer width of wetland scores 3-5 habitat points	Buffer width if wetland scores 6-7 habitat points	Buffer width if wetland scores 8-9 habitat points
Category I: Based on total score	75 feet	110 feet	225 feet
Category I: Forested	75 feet	110 feet	225 feet

Category I: Bogs and Wetlands of High Conservation Value	<u>190 feet</u>	<u>225 feet</u>
Category I: Alkali	<u>150 feet</u>	
Category II: Based on total score	<u>75 feet</u>	<u>110 feet</u> <u>225 feet</u>
Category II: Vernal pool	<u>150 feet</u>	
Category II: Forested	<u>75 feet</u>	<u>120 feet</u> <u>195 feet</u>
Category III (all)	<u>60 feet</u>	<u>110 feet</u> <u>225 feet</u>
Category IV (all)	<u>40 feet</u>	

Commented [BH1]: Dan - Alkali and vernal pool wetlands are not listed in the 2018 guidance document, so is it safe to assume these buffer widths are still accurate? I tried searching the ecology website for their buffers as well and couldn't find anything.

Commented [DN2R1]: Can you verify with Nell whether this has now been removed from Ecology's buffer guidance?

Commented [BH3R1]: Will do.

Commented [BH4R1]: I know what happened - I didn't realize there was more than on Appendix. I was looking at the updates for WESTERN WA only. Got it sorted! Buffer widths/habitat scores confirmed!

Table 2-2. Required measures to minimize impacts to wetlands

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 ft of wetland • Apply integrated pest management
Stormwater runoff	<ul style="list-style-type: none"> • Retrofit stormwater detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer
Change in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns

Disturbance	Required Measures to Minimize Impacts
Pets and human disturbance	<ul style="list-style-type: none"> • Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion. • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust

Table 2-3. Required buffer widths if minimization measures not taken

Wetland Category	Buffer width of wetland scores 3-5 habitat points	Buffer width if wetland scores 6-7 habitat points	Buffer width if wetland scores 8-9 habitat points
Category I: Based on total score	100 feet	150 feet	300 feet
Category I: Forested	100 feet	150 feet	300 feet
Category I: Bogs and Wetlands of High Conservation Value	250 feet		300 feet
Category I: Alkali	150 feet		
Category II: Based on total score	100 feet	150 feet	300 feet
Category II: Vernal pool	150 feet		
Category II: Forested	100 feet	150 feet	300 feet
Category III (all)	80 feet	150 feet	300 feet
Category IV (all)	50 feet		

Commented [BH5]: Dan - Alkali and vernal pool wetlands are not listed in the 2018 guidance document, so is it safe to assume these buffer widths are still accurate? I tried searching the ecology website for their buffers as well and couldn't find anything.

Commented [DN6R5]: See above response

GE. Increased Buffer Widths. Buffer widths may be increased if the SMP Administrator finds, on a case-by-case basis and based upon the most current, accurate, and

complete scientific and technical information available, that at least one of the following applies:

1. A larger buffer is necessary to maintain viable populations of existing species, or
2. The wetlands are used by species proposed or listed by the federal government or the state as endangered, threatened, rare, sensitive or being monitored as habitat for those species or has unusual nesting or resting sites, or
3. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts, or
4. The adjacent land has minimal vegetative cover or slopes greater than 25 percent.

HG Buffer Averaging. Buffer averaging to improve wetland protection may be permitted when all of the following conditions are met:

1. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower-rated area.
2. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas report from a qualified wetland professional.
3. The total area of the buffer after averaging is equal to the area required without averaging.

HH Buffers on Mitigation Sites. All mitigation sites shall have buffers consistent with the buffer requirements of this section. Buffers shall be based on the expected or target category of the proposed wetland mitigation site.

HI Buffer Maintenance. Except as otherwise specified or allowed in accordance with this section, wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive non-native weeds is required for the duration of the monitoring period.

2.6 Wetland mitigation

(1) Mitigation of wetland losses and impacts shall be in the following descending order of preference:

- A. Complete restoration.

- B. In-kind replacement in the same functional area.
- C. In-kind replacement outside the area.
- D. Out-of-kind replacement inside the area.
- E. Out-of-kind replacement outside the area.

(2) Wetland Mitigation Plan.

- A. The wetland mitigation plan shall identify how the proposed mitigation will adequately mitigate for the loss of wetland area and function at the impact site.
- B. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication #10-06-07, November 2010).

(3) Wetland mitigation ratios shall be consistent with Table 2-3.

Table 2-3. Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
Category I: Bog, Wetlands with High Conservation Value	Not considered possible	Case by case	Case by case
Category I: Forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

- A. The standard replacement ratio may be decreased under the following circumstances:

1. Findings of special studies coordinated with agencies and/or under qualified individuals with expertise which demonstrate that no net loss of wetland function or value is attained under the decreased ratio.
2. In all cases, a minimum acreage replacement ratio of one to one shall be required.
- B. The standard replacement ratio may be increased under the following circumstances:
 1. High degree of uncertainty as to the probable success of the proposed restoration or creation;
 2. Significant period of time between destruction and replication of wetland functions;
 3. Projected losses in functional value; and/or
 4. Off-site compensation.
- (4) The applicant shall develop a plan that provides for land acquisition, construction, maintenance, and monitoring of replacement/compensatory wetlands. Mitigation shall be completed prior to wetland destruction or concurrent with development. Any restored, created, purchased, or enhanced wetland shall be maintained as a wetland in perpetuity. All wetland restoration, creation and/or enhancement projects required pursuant to this section either as a permit condition or as the result of an enforcement action must be approved by the city prior to commencement of any wetland restoration, creation or enhancement activity.

3 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

3.1 Purpose

The purpose of this section is to provide standards for classification and designation of critical fish/wildlife habitat conservation areas; and provide guidance for protecting those critical fish/wildlife habitat conservation areas necessary to maintain the public health, safety, and welfare.

3.2 Classification and designation

- (1) Critical Wildlife Habitat Conservation Areas.
 - A. Areas with which known federal or state endangered, threatened, or sensitive species have a primary association;
 - B. Habitats of local importance (this is a habitat in which a species of local importance has a primary association);

- C. Areas designated by the Washington State Department of Natural Resources as state natural area preserves and natural resource conservation areas.
- (2) Fish Habitat Conservation Areas.
- A. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat;
 - B. Waters of the state as defined in WAC Title 222;
 - C. Lakes, ponds, streams and rivers planted with game fish by a governmental or tribal entity.
- (3) Mapping.
- A. Those lands which meet the established criteria for critical fish and wildlife habitat conservation areas are to be designated as such. Critical fish and wildlife habitat conservation areas identified through the permitting process shall be mapped and shall provide guidance in the land use decision-making process. All sites which maintain critical fish/wildlife habitat conservation areas, which are not mapped, shall be subject to critical fish/wildlife habitat conservation area review.
 - B. The identification and location of habitats and species of local importance shall be based upon scientifically valid methods and studies, which may include materials submitted by the applicant, Washington State Department of Fish and Wildlife priority habitats and species database maps, or other appropriate methods and studies.
 - C. The approximate location and extent of these areas is displayed on inventory maps available at City Hall. Maps and inventory lists are guides to the general location and extent of critical areas. Critical areas not shown are presumed to exist, and are protected under all the provisions of this section. In the event that the designations shown on the maps or inventory lists conflict with the site-specific conditions, site-specific conditions shall control.

3.3 Performance standards

- (1) Wildlife and Fish Habitat Conservation Areas.
- A. Where a project is proposed within a wildlife and fish habitat conservation area, and habitat functions and values are likely to be impaired by the project, a habitat management plan will be required, unless the exception noted below is met. The limits of development and other related activities within the conservation area shall be based on the recommendations of the plan. The plan shall be prepared by a qualified professional. However, a plan is not required if the applicant places a particular emphasis on protecting a conservation area by avoiding the impact caused

by not taking a certain action(s) or part(s) of an action, or by minimizing impacts through limiting the magnitude of the action and its implementation. If complex mitigation which requires the expertise of a qualified professional is necessary, a habitat management plan will be required.

- B. Activities may be permitted within a conservation area subject to conditions designed to avoid probable, significant adverse impacts to the conservation area and to protect the functions and values of the conservation area; provided, that the city may deny a project if probable significant impacts to the conservation area cannot be avoided or if critical area function and value cannot be protected with mitigation.

(2) Fish Habitat Conservation Areas.

A. Standard Buffers.

- 1. Buffers (measured horizontally from OHWM):

Table 3-1. Standard stream buffer widths.

Water Type	Standard Buffer
Type 1 Waters	
High Intensity – A	50 feet
High Intensity – B	100 feet
All other designations	150 feet
Type 2 Waters	200 feet
Type 3 Waters	150 feet
Type 4 Waters	50 feet
Type 5 Waters and other nontyped HCAs	25 feet

- 2. Definition of "Waters." Streams are classified Type 1 to 5 for critical area protection purposes based on the water typing criteria in WAC 222-16-031, as currently enacted. Artificially created structures, ditches, canals, ponds, irrigation return ditches, and stormwater channels shall not be considered a stream for purposes of this section.
- B. Riparian vegetation in buffers shall not be removed except as specifically allowed in this section. The following uses and modification are allowed in stream buffers provided that mitigation sequencing is demonstrated, and any adverse impacts to ecological functions are mitigated.
 - 1. Water-dependent uses.

2. Accessories to water-dependent uses. Uses, developments and activities accessory to water-dependent uses should be located outside any applicable standard or reduced buffer unless at least one of the following is met:
 - a) Proximity of the proposed accessory to the water-dependent project elements is critical to the successful implementation of the facility's purpose and the elements are supportive of the water-dependent use and have no other utility;
 - b) The proposed accessory would be located in a park or on other public lands where high-intensity, water-oriented recreational development is already legally established and the accessory would not conflict with or limit opportunities for other water-oriented uses;
 - c) The accessory use, development or activity can be located upland of the water-dependent use; or
 - d) The applicant's lot/site has topographical constraints where no other location of the development is feasible (e.g., the water-dependent use or activity is located on a parcel entirely or substantially encumbered by the required buffer).

In these circumstances, uses and modifications accessory to water-dependent uses must be designed and located to minimize intrusion into the buffer. All other accessory uses, developments and activities proposed to be located in a shoreline buffer must obtain a Shoreline Variance unless otherwise allowed by other regulations in this section or in this SMP.

- 3 Water-oriented public access and recreation facilities. New development and redevelopment of water-oriented public access and recreation structures are allowed in shoreline buffers provided the applicant can demonstrate that the design applies mitigation sequencing and appropriate mitigation is provided to ensure no net loss of ecological functions. Applicants shall submit a management plan that specifically addresses compliance with Sections 4.1.3 (Environmental Protection), 4.1.6 (Shoreline Vegetation Conservation), 4.1.7 (Water Quality, Stormwater and Nonpoint Pollution), and this Appendix B (Shoreline Critical Areas Policies and Regulations). The city may review and condition the project to fully implement the policies of the Shoreline Management Act and this Master Program.
4. Temporary agricultural equipment and facilities. New agricultural equipment and facilities, excluding buildings, may be placed in a buffer if the following conditions are satisfied:

- a) Placement of the equipment and facilities must support an existing agricultural use.
 - b) The equipment and facilities may only be in the buffer on a temporary or seasonal basis, a maximum of eight (8) months in a running 12-month period.
 - c) Placement outside of a buffer is not feasible because it would be located on a property owned by another landowner or it would interfere with another agricultural or authorized use.
 - d) The location of the proposed equipment and facilities is on an already altered site, and would not result in harm to or removal of native vegetation.
 - e) Best management practices are utilized to prevent adverse impacts to water quality or other ecological functions.
5. Shoreline residential access. A private access pathway constructed of pervious materials may be installed, a maximum of four (4) feet wide, through the shoreline buffer to the OHWM. Impervious materials may be used as needed to construct a safe, tiered pathway down a slope. Raised boardwalks may also be constructed through wetland areas to reach the shoreline waterbody consistent with regulations in this section. A railing may be installed on one edge of the pathway, a maximum of 36 inches tall and of open construction. Pathways to the shoreline should take the most direct route feasible consistent with appropriate safety standards.
6. View/access corridor. A view/access corridor to the OHWM may be cleared to a width not to exceed twenty-five feet if habitat values will not be impacted and/or mitigation will be unaffected. If the functions and values of critical areas are impaired, mitigation will be imposed, such as widening the riparian buffer at the same location, or widening or enhancing the buffer at another location.
- C. Buffers shall be delineated on all permits.

3.4 Fish and wildlife mitigation

Wildlife habitat management plans shall meet the following criteria:

- (1) Plans shall be prepared by a qualified professional, at the expense of the applicant;
- (2) Relevant background information shall be documented and considered;
- (3) Critical fish/wildlife habitat conservation areas shall be delineated if applicable;

- (4) The size, scope, configuration or density of new uses and developments within a core habitat and wildlife buffer zone shall be designated to protect threatened, endangered, or sensitive wildlife species, and habitats and species of local importance. The timing and duration of uses and developments may be regulated to ensure that they do not occur during a time of year when species are sensitive to disturbance;
- (5) Developments shall be generally discouraged within critical wildlife/fish habitat conservation areas. Any development permitted shall be mitigated as outlined in Section 3.3. Development may be conditionally authorized when the critical wildlife and fish habitat conservation area is inhabited seasonally; provided the development will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns;
- (6) If rehabilitation and enhancement actions are required, they shall be documented in the wildlife management plan and shall include a map and text;
- (7) The plan shall include an analysis of the effect of the proposed use or activity upon critical wildlife and fish habitat conservation areas;
- (8) The plan shall explain how the applicant will avoid, minimize or mitigate adverse impacts to critical wildlife and fish habitat conservation areas created by the proposed use or activity. Mitigation measures within the plan may include, but are not limited to:
 - A. Establishment of buffer areas;
 - B. Preservation of critically important plants and trees;
 - C. Limitation of access to habitat area;
 - D. Seasonal restriction of construction activities;
 - E. Conservation easements;
- (9) The plan shall incorporate use of scientifically valid methods and studies in the analysis of data and field reconnaissance.

4 GEOLOGICALLY HAZARDOUS AREAS

4.1 Purpose

- (1) The purpose of this section is to provide standards for classification and designation of significant geologically hazardous areas; and provide guidance for reducing or mitigating hazards to public health and safety.

4.2 Classification and designation

- (1) All geologically hazardous areas shall be divided into one of the following risk categories: erosion, landslide, seismic, volcanic, or mine hazard areas.
 - A. Erosion. Those areas identified as having slopes in excess of fifteen percent or soils rated by the Natural Resource Conservation Service (NRCS) as having moderate to very severe erosion potential.
 - B. Landslide. Those areas identified as subject to mass movements due to their geologic, topographic, and/or hydrologic factors. Areas subject to land sliding are the following:
 1. Areas of historic failure of potentially unstable slopes;
 2. Areas with any combination of the following:
 - a) Slopes of fifteen percent or greater;
 - b) Permeable soils frequently overlying impermeable surfaces or soils;
 - c) Springs or groundwater seepage;
 3. Any slope forty percent or greater and with a vertical relief on ten plus feet, except areas composed of consolidated rock;
 4. Greater than eighty percent subject to rock fall during seismic shaking;
 5. Unstable areas resulting from stream incision, erosion, or undercutting;
 6. Any area located on an alluvial fan; or
 7. That are parallel to planes of weakness in subsurface materials such as bedding planes, fault planes, etc.
 - C. Seismic. The city of Goldendale is located within a Class Type C seismic zone, with no known active faults. All new development shall conform to the applicable provisions of the International Building Code which contain structural standards and safeguards to reduce risks from seismic activity.
 - D. Volcanic. Volcanic risk is low, although ashfall could be expected during a volcanic event.
 - E. Mines. The likelihood of the presence of underground mines within the city is believed to be remote.
- (2) Those lands which meet the established criteria for geologically hazardous areas are to be designated as such. Geologically hazardous areas identified through the permitting process shall be mapped and shall provide guidance in the land use decision-making process. All sites which maintain geologically hazardous areas, including those

geologically hazardous areas which are not mapped, shall be subject to geologically hazardous areas review so stated in this section.

4.3 Performance standards

- (1) Upon receipt of a complete development application, USGS topographic maps and NRCS soil information shall be reviewed to determine if the proposed development is in a geologically hazardous area. If the proposed site is in a geologically hazardous area, the applicant shall be responsible for securing the services of a professional engineer/geologist who shall provide information as follows:
 - A. Maximum and average on-site slopes;
 - B. Identification of groundwater seepage areas;
 - C. Any known on-site landslide activity;
 - D. Identification of any stream incision and/or erosion points;
 - E. The extent of any applicable alluvial fan; and
 - F. Recommendations for siting and design of the development to avoid risk to human life and property at the site and on adjacent properties.
- (2) Proposed developments shall be designed in accordance with the requirements of the International Building Code as written now or hereafter amended when a geologically hazardous area is found on or near the proposed development.
- (3) Development sites for new structures identified with intermittent or perennial stream-side incision or erosion points shall have all structures located a minimum of one hundred feet away from such points.
- (4) Any disturbance to erosion hazard areas will require revegetation and stabilization with native plant materials.

4.4 Submittal requirements

- (1) All Geologically Hazardous Areas and Buffers.
 - A. Indemnification. An indemnification or hold harmless agreement shall be required for all projects in geologically hazardous areas and buffers except erosion hazard areas. The form of agreement shall be approved by the city and executed prior to the commencement of construction or site alteration.
 - B. Notice. If no other public notice is required for a proposed development located in a landslide hazard area, a notice of intent to construct on a landslide hazard area shall be given.

- C. All reports or analyses required or prepared pursuant to this section shall be prepared, and shall meet the satisfaction of and be approved by the city prior to the commencement of any development activity.
 - D. Mitigation Plans. The city may determine that a mitigation plan is necessary. The mitigation plan shall propose, and the city may approve, appropriate mitigation measures, which may include, among others, removal of groundwater, vegetation management, and/or construction of bulkheads or retaining walls. No mitigation plan shall be approved that increases the risk of landslide or erosion on site or off site. Bulkheads and retaining walls may be utilized as engineering solutions where it can be demonstrated that a structure will be more safely protected than without the use of such measures, and the resulting retaining wall is the minimum size necessary to protect the structure. The mitigation plan shall be prepared by qualified professionals, which may include geotechnical engineers, hydrogeologists, arborists, and/or fisheries biologists, depending on specific circumstances and as deemed appropriate by the city.
- (2) Erosion Hazard Areas. An erosion control plan prepared by a duly licensed civil engineer shall be submitted to the city prior to the issuance of a clearing or grading permit.
- (3) Landslide Hazard Areas.
- A. Erosion Control. An erosion control plan prepared by a civil engineer shall be submitted to the city prior to the issuance of a clearing or grading permit.
 - B. The applicant shall provide a geotechnical analysis containing information specified by the city, which concludes that the development proposal meets the standards of this section.

4.5 Development standards

The city shall determine professionally acceptable levels of risk for all activities within geologically hazardous areas. The applicant shall meet the following standards for all activities:

- (1) The proposed activity shall not create a net increase in geological instability, either on or off site, which is defined as follows:
 - A. The subject parcel shall not be less stable after the planned development than before; and
 - B. The adjacent parcels shall not be less stable after the planned development than before.
- (2) The proposed activity shall not increase the risk of life safety due to geological hazards above professionally acceptable levels.

- (3) The proposed activity shall not increase the risk due to geological hazards above professionally acceptable levels for:
 - A. Property loss of any habitable structures or their necessary supporting infrastructure on site; or
 - B. Risk to any off-site structures or property of any kind.
- (4) Proposed buildings shall be constructed using appropriate engineering methods that respond to the geologic characteristics specific to the site in order to achieve the highest standard of safety feasible.

4.6 Development design

- (1) There shall be no clearing, grading, or new construction within fifty feet of the edge of all slopes that are classified as geologically hazardous areas. This fifty-foot area may be reduced only if the applicant provides expert verification by a geotechnical engineer, that demonstrates that the proposal will not increase slope instability, and that no other reasonable project alternative exists;
- (2) All development proposals shall be designed to avoid impacts to the geologically hazardous areas. The development shall be designed to minimize the footprint of building in other disturbed areas, minimize removal of vegetation, minimize topographic change, and retain open space to the maximum extent practicable;
- (3) Development design shall utilize clustering, multi-level construction, and tiered foundations to the extent feasible to minimize impervious lot coverage, slope disturbance, and changes to the natural topography;
- (4) Access shall be located in the least sensitive part of the site, and common access drives and utility corridors are required to the extent feasible;
- (5) Roads, walkways and parking areas shall be designed to parallel the natural contours to the extent feasible;
- (6) All proposed clearing and tree removal shall be marked in the field for inspection and approval prior to alteration of the site;
- (7) Cut and fill slopes shall be prepared and maintained to control against erosion and instability; and
- (8) Drainage and stormwater designs in zones of influence shall incorporate elements of low impact design, to the extent feasible, and shall be designed in such a manner that stormwater outlet discharges do not create additional impacts.

- (9) In any geologically hazardous area, new development and creation of new lots that would cause foreseeable risk from geological conditions after application of these standards during the life of the development is prohibited.

5 AQUIFER RECHARGE AREAS

5.1 Purpose

The purpose of this section is to provide standards for classification and designation of areas with a critical recharging effect on aquifers used for potable water and whose protection is necessary to public health and safety.

5.2 Classification and designation

- (1) Aquifer recharge areas that have a high susceptibility to aquifer contamination shall be designated as such on the basis of:
 - A. Land use activities which pose a threat to aquifer quality; or
 - B. Land use activities which pose a threat to community water systems; or
 - C. Aquifers with characteristics conducive to contamination.
- (2) Designated areas include wellhead protection areas, sole source aquifers, susceptible groundwater management areas, moderately or highly vulnerable areas, and moderately or highly susceptible areas. Susceptibility can be estimated using soil permeability, geologic matrix (underlying soils), infiltration rate, and depth to groundwater.
- (3) Those lands which meet the established criteria for aquifer recharge areas are to be designated as such. Aquifer recharge areas identified through the permitting process shall be mapped and shall provide guidance in the land use decision-making process. All sites which maintain aquifer recharge areas, including those aquifer recharge areas which are not mapped, shall be subject to aquifer recharge areas review as stated in this section.

5.3 Performance standards

- (1) Mitigation measures shall be utilized to minimize the risk of contamination. These will be tailored to each proposal but will be designed to ensure that development does not present a significant risk of aquifer recharge area contamination. All hazardous materials must be handled to minimize risk of leakage or accidental spills, and emergency response plans must be prepared.
- (2) The following performance standards shall apply to all regulated uses in areas designated with high susceptibility to aquifer contamination:

- A. Parcels requiring septic systems shall be subject to the minimum lot size requirement of the county health department, in order to prevent groundwater contamination;
- B. All new development activities shall comply with the requirements of the Washington State Department of Ecology, as they pertain to ground and surface water protection;
- C. The applicant shall comply with any state or federally required wellhead protection program for public water supplies;
- D. Wells shall be set back at least one hundred feet from adjacent property lines;
- E. Commercial and industrial uses which process, use, store or produce hazardous, toxic, or otherwise dangerous materials shall meet all applicable federal, state, and local regulations within any aquifer recharge area to prevent groundwater contamination; and
- F. Any application which utilizes or generates hazardous or toxic materials shall be required to comply with state and federal regulations pertaining to public health and safety.

(3) Specific Uses.

- A. Storage Tanks. All storage tanks proposed in a critical aquifer recharge area must comply with local building code requirements and must conform to the following requirements:
 - 1. Underground Tanks. All new underground storage facilities proposed for the storage of hazardous substances or hazardous wastes shall be designed and constructed in accordance with DOE requirements.
 - 2. Aboveground Tanks. All new aboveground storage facilities proposed for the storage of hazardous substances or hazardous wastes shall be designed and constructed in accordance with DOE requirements.
- B. Vehicle Repair and Servicing.
 - 1. Vehicle repair and servicing must be conducted over impermeable pads and within a covered structure capable of withstanding normally expected weather conditions. Chemicals used in the process of vehicle repair and servicing must be stored in a manner that protects them from weather and provides containment should leaks occur.
 - 2. No dry wells shall be allowed on sites used for vehicle repair and servicing. Dry wells existing on the site prior to facility establishment must be abandoned using techniques approved by the State Department of Ecology prior to commencement of the proposed activity.

- C. Use of Reclaimed Water for Surface Percolation or Direct Recharge. Water reuse projects for reclaimed water must be in accordance with the adopted water or sewer comprehensive plans that have been approved by the State Departments of Ecology and Health.
 - 1. Use of reclaimed water for surface percolation must meet the groundwater recharge criteria given in RCW 90.46.010(10) and 90.46.080(1). The State Department of Ecology may establish additional discharge limits in accordance with RCW 90.46.080(2).
 - 2. Direct injection must be in accordance with the standards developed by authority of RCW 90.46.042.
- D. State and Federal Regulations. The uses listed below shall be conditioned as necessary to protect critical aquifer recharge areas in accordance with the applicable state and federal regulations:

Activity	Regulations
Aboveground storage tanks	WAC 173-303-640
Animal feedlots	Chapters 173-216 and 173-220 WAC
Automobile washers	Chapter 173-216 WAC; WDOE WQ-R-95-56
Below-ground storage tanks	Chapter 173-360 WAC
Dangerous waste regulations	Chapter 173-360 WAC
Siting chemical treatment storage and disposal	WAC 173-303-282
Spills and discharges	WAC 173-303-145
Hazardous waste generators (boat repair, dry cleaners, furniture stripping, motor vehicle garages, printing shops, etc.)	WAC 173-303-170
Injection wells (dry wells)	Chapter 173-218 WAC; Federal 40 CFR Part 144 and 146
Junk and salvage yards	Chapter 173-303 WAC; WDOE 94-146
Oil and gas drilling	WAC 332-12-450; Chapter 173-218 WAC
On-site sewage systems (large scale)	Chapter 173-240 WAC
On-site sewage systems (<14,500 gpd)	Chapter 246-272 WAC; County Health Regulations

Activity	Regulations
Pesticide storage and use	Chapters 15.54 and 17.21 RCW
Sawmills	Chapters 173-303 and 173- 304 WAC; WDOE 95-53
Solid waste handling and recycling	Chapter 173-303 WAC
Surface mining	Chapter 332-18 WAC
Wastewater application to land surface	Chapters 173-200 and 332-216 WAC; WQDOE

6 FREQUENTLY FLOODED AREAS

6.1 Purpose

The purpose of this section is to provide standards for classification and designation of frequently flooded areas; and provide guidance for reducing or mitigating hazards to public health and safety.

6.2 Classification and designation

- (1) Frequently flooded areas shall be classified as all areas within the floodplain subject to a one percent or greater chance of flooding in a given year. All lands, shorelines, and waters which are under the jurisdiction of the city of Goldendale and which are identified as within the one-hundred-year floodplain by the Federal Emergency Management Agency are designated frequently flooded areas. Frequently flooded areas identified through the permitting process shall be mapped and shall provide guidance in the land use decision-making process. All sites which maintain frequently flooded areas, including those frequently flooded areas which are not mapped, shall be subject to frequently flooded areas review so stated in this section.
- (2) Classification for frequently flooded areas shall be consistent with the one-hundred-year floodplain designation of the Federal Emergency Management Agency and the National Flood Insurance Program. In addition, the following criteria shall be considered when designating and classifying these areas:
 - A. Flooding impact to human health, safety, and welfare and to public facilities and services;
 - B. Available documentation including federal, state, and local laws, regulations and programs, local maps, and federally subsidized flood insurance programs;

- C. The “floodplain” is defined as a channel of the stream and that portion of the adjoining area which is necessary to contain and discharge the base flood flow at build-out without any measurable increase in flood heights; and
- D. The effect of high water levels with strong winds and greater surface runoff caused by increasing impervious surfaces.

6.3 Performance standards.

Upon receipt of a complete development application, the flood information rate maps (FIRM) shall be reviewed to determine if the proposed development is in a frequently flooded area. All frequently flooded area delineations, designations, surveys, reports, studies, plans, documents, etc., shall be performed by a qualified professional or firm. If the proposed site is in a frequently flooded area, the applicant shall be responsible for securing the services of a professional engineer who shall provide information as follows:

- (1) Identification of the one-hundred-year floodplain boundary on the site plan;
- (2) Conform to the provisions of Chapter 15.48, Flood Damage Prevention; Title 17, Zoning; and the International Building Code; and
- (3) Maintain predevelopment movement (volume and velocity) of surface waters and prevent the unnatural diversion of floodwaters into otherwise flood-free areas.

AGENDA BILL: H-1

AGENDA TITLE: Washington Exclusive Right To Sell Listing
Contract with J&M Realty

DATE: February 21, 2023

ACTION REQUIRED:

ORDINANCE _____ COUNCIL INFORMATION _____ X _____

RESOLUTION _____ OTHER _____

MOTION _____ X _____

EXPLANATION:

The Administration solicited proposal from realty firms to list the Industrial Park properties for sale. Staff has reviewed the proposals and recommends awarding the listing to J&M Realty. Attached for your review is the Washington Exclusive Right To Sell Listing Contract with J&M Realty. Currently there are two parties interested in locating news businesses with the Industrial Park and wish to purchase the property. This agreement will establish the listing price for each parcel base on fair market value.

FISCAL IMPACT:

ALTERNATIVES:

STAFF RECOMMENDATION: approval

MOTION: I MOVE TO APPROVE THE WASHINGTON EXCLUSIVE RIGHT TO SELL LISTING CONTRACT WITH J&M REALTY.

PROPERTY ADDRESS: See attached. 10 lots in Goldendale CITY, STATE WA

1. AGENCY/DUAL AGENCY. SELLER authorizes BROKER's FIRM to appoint BROKER to act as SELLER's listing BROKER. It is understood and agreed that this Agreement creates an agency relationship with BROKER and BROKER's FIRM only, not with any other brokers of BROKER's FIRM, except that SELLER authorizes other brokers affiliated with BROKER's FIRM to act as subagents on SELLER's behalf as and when needed. Any broker other than BROKER who procures a prospective buyer for the Property will not be representing SELLER and may represent a buyer.

SELLER agrees that if the Property is sold to a buyer represented by one of BROKER's FIRM's brokers other than BROKER, then SELLER consents to BROKER's FIRM acting as a dual agent. SELLER further agrees that if the Property is sold to a buyer also represented by BROKER, then SELLER consents to BROKER and BROKER's FIRM acting as dual agents. SELLER acknowledges that a dual agent represents both parties to a transaction; that the parties' interest in the transaction may differ, and that a dual agent is not permitted to give advice to either party, or disclose to either party to the detriment of the other party, promote or advocate the interest of either party over the other party, or disclose to either party confidential information from or concerning the other party. SELLER agrees that different brokers affiliated with BROKER's FIRM may represent different sellers in competing transactions involving the same buyer, and that this shall not be considered action by BROKER's FIRM that is adverse or detrimental to the interests of either seller, nor shall it be considered a conflict of interest on the part of BROKER's FIRM. SELLER acknowledges receipt of the pamphlet entitled "The Law of Real Estate Agency." If BROKER's FIRM acts as dual agent, BROKER's FIRM shall be entitled to the entire commission payable under this Agreement plus any additional compensation BROKER's FIRM may have negotiated with the buyer.

2. EXCLUSIVE RIGHT TO SELL. In consideration for the services to be rendered by the BROKER designated below, the undersigned SELLER hereby grants to BROKER's FIRM designated below the exclusive right to sell the property located at the address set forth above and more particularly described on the RMLS™ Listing Data Input Form hereto attached (the "Property").

This listing is:

☒ **AN ACTIVE LISTING (ACT).** Date marketing to begin is April 1, 2023, which will be the List Date published in RMLS™. No marketing may occur before such date.

☐ **COMING SOON-NO SHOWING LISTING (CSN).** Will automatically convert to ACT on first date for showing and Date marketing to begin on _____, _____ (not more than 21 days from date of this Agreement). Property will be shown in RMLS™ as CSN status and is subject to certain marketing restrictions, as provided in the RMLS™ Rules and Regulations, including a prohibition against any showings and Internet advertising. A sign and flyer including the phrase "Coming Soon" may be placed on the Property.

☐ **EXCLUDED FROM MLS.** The Property will not be submitted to, or published in, RMLS™. The Authorization to Exclude from MLS Addendum must be completed and submitted to RMLS™.

For purposes of this Section, marketing includes, but is not limited to, placing any yard sign, social media or internet exposure, publication in RMLS™, broker tours, showings and direct marketing to any other real estate professionals or consumers. SELLER further allows BROKER's FIRM a reasonable time after termination or expiration of this Agreement to close any transaction on which earnest money, has been paid, or a promissory note for earnest money has been tendered. No extension or renewal of this Agreement shall be effective unless it is in writing signed by SELLER and authorized signatory of BROKER's FIRM.

Sellers' Initials _____

PROPERTY ADDRESS: See attached. 10 lots in Goldendale CITY, STATE WA

42 3. LIST PRICE. List Price \$ See attached spreadsheet

43 4. TERM. This Agreement is effective when fully signed by all parties, and shall terminate at 11:59 p.m. on
44 12/31, 2023.

45 5. BROKERAGE FEE. SELLER shall pay a brokerage fee as set forth in Section 8 below in an amount
46 equal to 6 % of the selling price or option exercise price of the Property or \$.
47 From the brokerage fee an amount equal to % of the selling price or option exercise price of the
48 Property or \$ will be offered to Cooperating Firm (BAC). SELLER hereby irrevocably
49 instructs the escrow agent, if any, to pay BROKER's FIRM's fee at closing out of such proceeds.

50 6. DISBURSEMENT. In the event of forfeiture of earnest money for any transaction relating to this
51 Agreement, the earnest money shall be disbursed as follows: SELLER 100 % BROKER's FIRM
52 % OR ☐ (check if applicable) to BROKER's FIRM to the extent of the brokerage fee,
53 with balance to SELLER.

54 7. INSUFFICIENT PROCEEDS. If the proceeds from the sale of the Property are insufficient to cover
55 costs at closing, SELLER acknowledges that the decision by any beneficiary or mortgagee, or its assignees,
56 to release its interest in the Property for less than the amount owed, does not automatically relieve SELLER
57 of the obligation to pay any debt or costs remaining at closing, including fees such as the BROKER's FIRM's
58 commission.

59 8. RIGHT TO COMPENSATION. In consideration for the services herein described, SELLER shall pay
60 BROKER's FIRM the brokerage fee set forth in Section 5 above if BROKER's FIRM or any cooperating
61 broker, including, but not limited to, a buyer's broker:

- 62 (a) finds a buyer ready, willing, and able to purchase the Property for the price and terms set forth in
- 63 the attached RMLS™ Listing Data Input Form or such other price and terms as SELLER may accept;
- 64 or
- 65 (b) places SELLER in contact with a person to whom SELLER sells the Property during the term of
- 66 this Agreement or within (180) days after termination of this Agreement.

67 In any event, SELLER shall pay the sum set forth in Section 5 above to BROKER's FIRM if SELLER
68 cancels the authority hereby given or if SELLER sells or agrees to sell the Property during the term of
69 this Agreement or any extension or renewal hereof. Section 8(b) above shall not apply if, following the
70 termination of this Agreement, SELLER lists the Property for sale with another duly licensed real estate
71 broker and if the application of such section(s) would result in SELLER's liability for more than one
72 brokerage fee. The term "sale" shall include any exchange or trade to which SELLER consents. In the event
73 of an exchange, trade or lease option, BROKER's FIRM is permitted to represent and receive compensation
74 from both parties.

75 9. SERVICES; AUTHORITY. BROKER will market the Property, and in connection therewith, SELLER
76 hereby authorizes BROKER and BROKER's FIRM to do the following:

- 77 (a) place a "for sale" sign on the Property and to remove all other similar signs;
- 78 (b) turn on, or leave on, all utilities serving the Property and authorize utility providers to do so in
- 79 order to show the Property, all at SELLER's expense;
- 80 (c) obtain and disclose any information pertaining to any present encumbrance on the Property; (d) if
- 81 authorized pursuant to Section 10 below, obtain a key to the Property and place such key in a lock
- 82 box on the exterior of the Property, with recognition that SELLER bears any risk of loss or damage
- 83 associated with the use of such lock box (SELLER should consult SELLER's homeowner's insurance
- 84 policy to determine coverage);

Sellers' Initials

PROPERTY ADDRESS: See attached. 10 lots in Goldendale CITY, STATE WA

- (e) have access to Property for purposes of showing it to prospective buyers at any reasonable hour;
(f) place information regarding this listing and the Property in the RMLS™;
(g) accept deposits on SELLER's behalf. BROKER's FIRM is authorized to cooperate with other brokers and to share with such other brokers any commissions or compensation payable under this Agreement; and
(h) communicate with SELLER by telephone, facsimile, e-mail, and/or other electronic means even after the term of this Agreement.

SELLER hereby authorizes RMLS™ to use, relicense, repurpose, display and otherwise deal with photos and data regarding the Property, without compensation to the SELLER. Such authority shall survive expiration or termination of this Agreement. Tenant occupancy – if tenant(s) occupies property, and authority from the tenant(s) is required for BROKER and BROKER's FIRM to do any of the items listed in Section 9, SELLER shall obtain such authority from tenant(s).

10. LOCKBOX. SELLER ☐ does ☒ does not (check one) authorize BROKER's FIRM to place a lockbox on the Property.

11. INTERNET. SELLER ☒ does ☐ does not (check one) authorize BROKER's FIRM to advertise the Property on the Internet.

12. INDEMNITY. SELLER shall defend, indemnify, and hold harmless BROKER, BROKER's FIRM, and any cooperating broker(s) from any liability, claims, damages, causes of action or suits arising out of, or relating to, any breach of the representations and warranties set forth herein or in any agreement for the sale of the Property, and from the failure to disclose any material information to BROKER or BROKER's FIRM relating to the Property.

13. ATTORNEYS' FEES. If BROKER's FIRM or any cooperating broker refers this Agreement to an attorney for collection of the compensation due hereunder, SELLER shall pay the costs and reasonable attorneys' fees of BROKER's FIRM or any cooperating broker regardless of whether mediation is conducted or arbitration or litigation is filed. If mediation is conducted or if arbitration or litigation is filed in connection with any dispute relating to this Agreement, the prevailing party shall be entitled to its attorneys' fees and costs in connection with such mediation, arbitration or litigation, and in any appeal therefrom and enforcement thereof.

14. DISPUTE RESOLUTION. SELLER and BROKER, and BROKER's FIRM, if any, agree that all claims, controversies or disputes, including those for rescission (collectively, "Claims"), relating directly or indirectly to this Agreement, shall be resolved in accordance with the procedures set forth herein which shall expressly survive closing. Provided, however, the following matters shall not constitute Claims:

- (a) any proceeding to collect, interpret or enforce any mortgage, trust deed, land sale contract or recorded construction lien;
(b) a forcible entry and detainer action;
(c) any dispute between REALTORS® which is subject to the Professional Standards Arbitration provisions of the National Association of REALTORS®.

The filing of a notice of pending action ("*lis pendens*") or the application to any court for the issuance of any provisional process or similar remedy described in the Washington or Federal Rules of Civil Procedure shall not constitute a waiver of the right or duty to use the procedures specified below.

If SELLER was represented in this transaction by a licensee who was then a member of the National Association of REALTORS®, all claims shall be submitted to mediation in accordance with the procedures

PROPERTY ADDRESS: See attached. 10 lots in Goldendale CITY, STATE WA

127 of the Home Seller/Home Buyer Dispute Resolution System of the National Association of REALTORS® or
128 other organization-adopted mediation program (collectively the "System"). Provided, however, if the System
129 is not then available through the licensees' Association of REALTORS®, then SELLER, BROKER, and
130 BROKER's FIRM shall not be required to engage in mediation.

131 All claims that have not been resolved by mediation, or otherwise, shall be submitted to final and binding
132 private arbitration in accordance with Washington laws. Filing for arbitration shall be treated the same as
133 filing in court for purposes of meeting any applicable statutes of limitation or for purposes of filing a *lis*
134 *pendens*. SELLER, BROKER, and BROKER's FIRM may use any professional arbitration company which
135 provides such service to the county where the Property is located, as selected by the party first filing for
136 arbitration. Provided, however, if no arbitration company has available services when the Claim arose, then
137 SELLER, BROKER, and BROKER's FIRM shall not be required to participate in arbitration.

138 **15. COMPLIANCE WITH LAW.** SELLER shall comply with all laws relating to the Property and the
139 sale thereof, including without limitation, the obligation to offer the Property for sale to any person without
140 regard to race, color, religion, gender, disability, marital status, familial status, sexual orientation, gender
141 identity, legal source of income, domestic violence victim, military status or national origin.

142 **16. REAL PROPERTY TRANSFER DISCLOSURE STATEMENT.** Unless SELLER is exempt under
143 RCW 64.06, SELLER shall provide to BROKER as soon as reasonably practicable a completed and signed
144 Real Property Transfer Disclosure Statement. SELLER will complete the Real Property Transfer Disclosure
145 Statement, and represents to BROKER that it will be accurate based upon SELLER's personal knowledge
146 and information, and that neither BROKER nor anyone in BROKER's FIRM has made any statement,
147 representation, warranty, investigation, test or other inquiry into the accuracy or adequacy of SELLER's
148 disclosures. SELLER shall defend, indemnify, and hold harmless BROKER and BROKER's FIRM from any
149 and all claims arising out of such Real Property Transfer Disclosure Statement, including any claims that the
150 information provided by SELLER may be false or misleading.

151 **17. REQUIRED DETECTORS.** Before closing of any transaction, SELLER will install an approved
152 smoke detector and approved carbon monoxide detector(s) in the building(s) located on the Property, as
153 required by law.

154 **18. SELLER'S REPRESENTATIONS AND WARRANTIES.** SELLER hereby agrees and warrants to
155 BROKER and BROKER's FIRM:

- 156 (a) that the undersigned SELLER has full authority to enter into this Agreement and to convey
- 157 marketable title to the Property to a buyer;
- 158 (b) the information on the attached Listing Data Input Form is correct and complete;
- 159 (c) as of the date(s) of the closing of the sale of the Property and transfer of possession, all aspects of
- 160 the Property will be in substantially their present condition and free of material defects, except as
- 161 disclosed in the sale agreement or Real Property Transfer Disclosure Statement; and
- 162 (d) SELLER acknowledges that it is a violation of RCW 9.73.030 to intercept or record conversations
- 163 of persons in the Property without first obtaining their consent.

PROPERTY ADDRESS: See attached. 10 lots in Goldendale CITY, STATE WA

164 19. FIRPTA. In general, the sale or other disposition of a U.S. real property interest by a foreign person is
165 subject to income tax withholding under the Foreign Investment in Real Property Tax Act of 1980
166 (FIRPTA). A "foreign person" includes a non-resident alien individual, foreign corporation, foreign
167 partnership, foreign trust and foreign estate. If FIRPTA applies, the buyer or other qualified substitute may
168 be legally required to withhold this tax at closing. In order to avoid closing delays, SELLER is requested to
169 initial one of the two statements:

170 _____/_____ SELLER warrants and represents to BROKER and
171 BROKER's FIRM that SELLER is not a foreign person under FIRPTA.

172 _____/_____ SELLER is a foreign person under FIRPTA.

173 20. NO DISTRESSED HOME CONVEYANCE. BROKER, BROKER's FIRM and SELLER will not
174 enter into a "distressed home conveyance" within the meaning of RCW 61.34.020, *et seq.*, without executing
175 a separate written agreement and otherwise complying with Washington law with respect to such conveyance.

176 21. ADDITIONAL PROVISIONS.
177 SEE ATTACHED SPREADSHEET WITH LOT INFO & PRICING.
178 _____
179 _____

180 22. MODIFICATION. No provision of this Agreement, including, without limitation, the amount of the
181 brokerage fee set forth in Section 5, may be modified except in writing signed by SELLER and by authorized
182 signatory of BROKER's FIRM.

BROKER (printed) MICHELLE WATSON

BROKER Signature _____

Date of BROKER'S Signature 2-15-23

Phone (509) 250-1339

Email jandmrealtyinc@gmail.com

BROKER'S License # 23594

BROKER's FIRM (printed) J&M REALTY INC.

BROKER's FIRM's Assumed Name _____

(If applicable)
Address 626 SAXTON RD.

Address _____

City GOLDENDALE

State WA

Zip 98620

Phone (509) 250-1339

Email jandmrealtyinc@gmail.com

BROKERAGE License # 3699

Sellers' Initials _____

PROPERTY ADDRESS: See attached. 10 lots in Goldendale CITY, STATE WA**SELLER(S):**SELLER (printed) CITY OF GOLDENDALE

SELLER Signature _____

Date of SELLER'S Signature _____

Address 1103 S. COLUMBUS AVE.

Address _____

City GOLDENDALEState WAZip 98620

Phone (w) _____

Phone (h) _____

Email _____

SELLER (printed) _____

SELLER Signature _____

Date of SELLER'S Signature _____

Address _____

Address _____

City _____

State _____

Zip _____

Phone (w) _____

Phone (h) _____

Email _____

If legal representative or attorney-in-fact state capacity and name of real party in interest

Name _____

Capacity _____

On Behalf of _____

CITY OF GOLDENDALE PROPERTY LISTINGS with J&M REALTY INC.

ADVERTISING

<u>LOT #</u>	<u>PARCEL #</u>	<u>ADDRESS</u>	<u>ABBREVIATED LEGAL DESCRIPTION</u>	<u>ACREAGE</u>	<u>Proposed price</u>
A	4162063030100	INDUSTRIAL WAY	LOT 1 BLK 3 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.56	
B	4162063030200	INDUSTRIAL WAY	LOT 2 BLK 3 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.97	
C	4162063030300	INDUSTRIAL WAY	LOT 3 BLK 3 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.44	
2	4162063020200	EASEMENT ACROSS LOT 7	LOT 2 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SESE 20-4-16	2.50	
3	4162063020300	S. KLICKITAT ST.	LOT 3 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.50	
4	4162063020400	S. KLICKITAT ST.	LOT 4 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.50	
5	4162063020500	S. WASHINGTON ST.	LOT 5 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.50	
7	4162063020700	INDUSTRIAL WAY	LOT 7 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SESE 20-4-16	1.76	
8	4162063020800	INDUSTRIAL WAY	LOT 8 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	1.85	
9	4162063020900	INDUSTRIAL WAY	LOT 9 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.44	
10	4162063021000	INDUSTRIAL WAY	LOT 10 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.45	

AGREED LISTING CONTRACT:

AUTHORIZED SIGNER

AUTHORIZED SIGNER

AUTHORIZED SIGNER

AUTHORIZED SIGNER

CITY OF GOLDENDALE PROPERTY LISTINGS with J&M REALTY INC.

ADVERTISING

LOT #	PARCEL #	ADDRESS	ABBREVIATED LEGAL DESCRIPTION	ACREAGE	Proposed price
A	4162063030100	INDUSTRIAL WAY	LOT 1 BLK 3 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.56	59,900 *
B	4162063030200	INDUSTRIAL WAY	LOT 2 BLK 3 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.97	59,900 *
C	4162063030300	INDUSTRIAL WAY	LOT 3 BLK 3 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.44	59,900 *
2	4162063020200	EASEMENT ACROSS LOT 7	LOT 2 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SESE 20-4-16	2.50	79,900**
3	4162063020300	S. KLIKITAT ST.	LOT 3 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.50	79,900**
4	4162063020400	S. KLIKITAT ST.	LOT 4 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.50	79,900**
5	4162063020500	S. WASHINGTON ST.	LOT 5 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.50	89,900
7	4162063020700	INDUSTRIAL WAY	LOT 7 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SESE 20-4-16	1.76	99,900
8	4162063020800	INDUSTRIAL WAY	LOT 8 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	1.85	99,900
9	4162063020900	INDUSTRIAL WAY	LOT 9 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.44	99,900
10	4162063021000	INDUSTRIAL WAY	LOT 10 BLK 2 PHASE 2 GOLDENDALE INDUSTRIAL PARK SWSE 20-4-16	2.45	not available

*Poor access. Pricing dependent upon if a buyer puts in a culvert or the City will make that improvement.

** No road access currently

Pricing is to the best of our ability & knowledge given the limited comparable data for industrial lots. We are open to suggestion if you have other ideas.
Pricing can be started higher with price reductions, but difficult to raise them after the fact.
Pricing can also be dependent upon agreed improvements or the need of them still, as well as any other amenities/attractions the city may offer for incentive. Please call or email with questions. I am happy to come to a meeting to visit with the group as well.

AGREED LISTING CONTRACT:

AUTHORIZED SIGNER

AUTHORIZED SIGNER

AUTHORIZED SIGNER

AUTHORIZED SIGNER

AGENDA BILL: H-2

AGENDA TITLE: AGRICULTURAL USE AGREEMENT
BETWEEN THE CITY OF GOLDENDALE
WASHINGTON AND CHRIS B. SIEBERT

DATE: February 21, 2023

ACTION REQUIRED:

ORDINANCE _____ COUNCIL INFORMATION _____ X _____

RESOLUTION _____ OTHER _____

MOTION _____ X _____

EXPLANATION:

The previous agricultural lease agreement expired on December 31, 2022. Staff posted notice and solicited bids. Chris Siebert submitted the highest offer to lease the property at \$4,004.00 annually.

FISCAL IMPACT:

ALTERNATIVES:

STAFF RECOMMENDATION: Recommends Approval

MOTION:

I MOVE TO APPROVE THE AGRICULTURAL USE AGREEMENT BETWEEN THE CITY OF GOLDENDALE, WASHINGTON, AND CHRIS B. SIEBERT.

**AGRICULTURAL USE AGREEMENT
BETWEEN THE CITY OF GOLDENDALE, WASHINGTON
AND
CHRIS B. SIEBERT**

THIS AGRICULTURAL USE AGREEMENT (hereinafter "Agreement") is made and entered into by and between the City of Goldendale, Washington, a municipal corporation (hereinafter the "City"), and Chris B. Siebert (hereinafter "tenant").

WHEREAS, Tenant desires to use a portion of real property owned by the City, consisting of approximately one hundred forty three (143) acres (the "property") located generally between Wing Road and Crafton Road and south of Horseshoe Bend Road in Klickitat County, Washington, for agricultural purposes.

WHEREAS, the City is willing to grant an agricultural use agreement to Tenant to use the property for agricultural purposes in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms and conditions set forth herein, it is agreed by and between the City and Tenant as follows:

1. Agricultural Use.

Tenant may use and maintain the property solely for purposes related to agriculture as more specifically set forth herein. The City will endeavor to limit its impact on agriculture uses and will communicate with Tenant to coordinate ways to mitigate the impact. If the City performs operations that will impact the crop the City shall provide Tenant with a 14-day notice. Tenant's use of the property hereunder shall be subordinate to any specific needs of the City.

Any financial loss sustained by Tenant due to City impact of the crop shall be presented to the Public Works Director within 10 days of occurrence. After review of Tenant's claim, the City will determine the validity of the claim for responsibility, liability, and financial loss. The City will negotiate any reimbursable financial loss with Tenant. However, the validity, liability, and whether or not the City has any financial responsibility for reimbursement shall be the sole decision of the City, and that decision shall be final.

In addition to the right to cut and remove crops, Tenant shall also have the right to graze livestock on the property during the term of this agreement; provided, that Tenant may not allow grazing on the property until he has received notice from the City that appropriate security fencing has been installed; and provided, further, that Tenant shall be fully responsible for any and all damage of whatsoever kind may be caused, directly or indirectly, due to the presence, activities, or other conduct of livestock on the property. In no event shall Tenant graze livestock on the property prior to the erection of a five strand barb wired fence around the Catholic Church Cemetery to protect their fence from damage. In addition, a electric fencing

sufficient to prevent livestock from rubbing against, damaging, or harming all fencing as may be installed by the City or currently exists shall be protected by a fully functioning electric fence; provided, that the cost of said electric livestock fencing shall be the responsibility of Tenant and not the City.

Tenant shall be entitled to make reasonable use of that certain existing barn located on the property for uses consistent with the purpose of this agreement; provided, that Tenant shall be responsible for any damage, reasonable wear and tear excepted, caused to the barn as a result of Tenant's use thereof. Likewise, should the city use or store equipment in that certain existing barn located on the property; provided, that City shall be responsible for any damage, reasonable wear and tear excepted, caused to the barn as a result of City's use thereof.

With respect to any of Tenant's obligations herein, whether performed personally by Tenant or by any other person, the same shall be undertaken at all times in a reasonable, prudent, and husbandlike manner, including but not limited to with respect to the use of pesticides, the carrying capacity of the property for grazing purposes, animal waste management, and the disposal of weeds on the property before the same go to seed.

2. **Term of Agreement.** The term of this Agreement shall commence upon full execution hereof by the parties and shall remain in effect until terminated by either party in accordance with this Agreement, subject to the provisions of paragraph 3 regarding future negotiations of cash consideration payments from Tenant to the City.

3. **Costs; Payment.** All of the costs of labor, materials, seed, harvesting, transportation, irrigation, costs of getting crops to market, the furnishing of all farm equipment, and all other expenses connected with the growing and harvesting of crops on the property, or grazing of livestock, shall be the responsibility of Tenant, who shall pay for the same as they may fall due. As consideration for Tenant's services hereunder, Tenant shall be entitled to receive any crops from the property and shall be entitled to graze livestock as set forth herein.

As further consideration for this use agreement, and not as rent, Tenant agrees to pay the sum of FOUR THOUSAND FOUR AND NO/100THS DOLLARS (\$4,004.00) for the use of the property beginning March 1, 2023, to December 31, 2027. The City shall invoice the Tenant annually on November 1st of each year. Payments shall be due December 1 of each year of the agreement. If the Tenant fails to make his payment by December 1st, the Tenant shall be charged a \$150.00 late fee. If the Tenant fails to make his payment within 60 days of the due date the agreement become void, and the Tenant must immediately vacate the lease property. Failure on the part of the City to provide an invoice does not alleviate Tenant's responsibility to fulfill his obligations as a party of the agreement and shall be subject to late fees and/or voidance of this agreement as specified above. Payments shall increase by 2% annually.

The City shall have no liability or responsibility for quality of crops produced from the property with respect to marketability, saleability, or fitness for any particular purpose. The City disclaims any and all warranties, whether express or implied, including the implied warranty of merchantability, regarding any such crops or the suitability of such crops as livestock graze. Tenant agrees to hold the City harmless from any and all ill effects and/or injuries caused to

him or anyone else dealing with, allowing grazing upon, or harvesting crops from, the property.

4. **Surrender of Property.** Tenant agrees that at the expiration of this Agreement, Tenant will quit and surrender the property to the City in as good a state and condition as when received by Tenant or as improved thereafter. This agreement shall not be subject to any applicable statutory provisions pertaining to holding over of agricultural lands.

5. **Right to Inspect Records and Property.**

a. **Right to Inspect Records.** Representatives of the City shall have the right at all reasonable times to inspect all records, documents and other written and/or electronic materials prepared, maintained or stored by Tenant relative to activities under this Agreement.

b. **Right to Inspect Property.** Representatives of the City shall have the right to enter upon and inspect the subject property at any time during the term of this Agreement.

c. **Third Party Request to Inspect:** Upon a request by a third party to inspect the subject property at anytime during the term of this agreement, Tenant shall be given reasonable notification and have the opportunity to accompany the parties during the scheduled inspection.

6. **Status of Tenant.** Tenant and the City understand and expressly agree that Tenant is an independent contractor with regard to any and all activities conducted/performed pursuant to this Agreement. No officer, employee, volunteer, and/or agent of Tenant shall act on behalf of or represent him or herself as an agent or representative of the City. No officer, employee, volunteer, and/or agent of Tenant shall make any statement in the name of or on behalf of the City. Tenant, as an independent contractor, assumes the entire responsibility for all activities conducted/performed by Tenant and any of his officers, employees, volunteers, and/or agents pursuant to this Agreement. Tenant and his officers, employees, volunteers, agents and/or subcontractors shall make no claim of City employment nor shall claim against the City any related employment benefits, social security, and/or retirement benefits. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership or agency, or tenancy between Tenant and the City.

7. **Taxes and Assessments.** Tenant shall be solely responsible for compensating his officers, employees, agents, and/or subcontractors and for paying all related taxes, deductions, and assessments, including but not limited to, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, including any leasehold excise tax, Tenant shall pay his pro-rata proportionate share of the same before it becomes due.

8. **Compliance With Law.** Tenant shall conduct all activities under and pursuant to this Agreement in full compliance with any and all applicable laws, rules, and regulations adopted

or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise.

9. **Debts and Liens.** Tenant shall not permit/allow any lien to attach to the City's property as a result of Tenant's activities conducted under this Agreement. Tenant shall not permit/allow any debt to be imposed on the City as a result of Tenant's activities conducted under this Agreement. In the event of any such lien and/or debt, Tenant shall immediately take all necessary steps to have the City legally released from said lien and/or debt.

10. **Compliance With Environmental Laws.**

a. Tenant represents, warrants and agrees that he will conduct all activities under and pursuant to this Agreement in compliance with all applicable environmental laws. As used in this Agreement, "Environmental Laws" means all federal, state and local environmental laws, rules, regulations, ordinances, judicial or administrative decrees, orders, decisions, authorizations or permits, including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 1101, et seq., the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 2601, et seq., the Oil Pollution Control Act, 33 U.S.C. § 2701, et seq., and any Washington or other comparable local, state, or federal regulation, statute, ordinance and/or law pertaining to the environment or natural resources.

b. Toxic or hazardous substances are not allowed on the subject property without the express written permission of the City and under such terms and conditions as may be specified by City. For the purposes of this Agreement, "Hazardous Substances," shall include all those substances identified as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., and the Washington Model Toxic Control Act, RCW 70.105D et seq.

c. Tenant agrees to cooperate in any environmental investigations conducted by the City or independent third parties where there is evidence of contamination on the subject property, or where the City is directed to conduct such audit by an agency or agencies having jurisdiction. Tenant shall reimburse the City for Tenant's pro-rata proportionate share of the cost of such investigations, where the need for said investigation is determined to be caused by Tenant's activities. Tenant shall provide the City with notice of any inspections of the subject property, notices of violations, and orders to clean up contamination. In the event that Tenant fails to take remedial measures as duly directed by a state, federal, or local regulatory agency within ninety (90) days of such notice, the City may elect to perform such work, and Tenant covenants and agrees to reimburse the City for all direct and indirect costs associated with the City's work where said contamination is determined to have resulted from Tenant's activities.

d. For the purposes of this Agreement, "Costs" shall include, but not be limited to, all response costs, disposal fees, investigatory costs, monitoring costs, civil or criminal penalties, and attorney fees and other litigation costs incurred in complying with state or federal environmental laws, which shall include, but not be limited to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Clean Water Act, 33 U.S.C. § 1251; the Clean Air Act,

42 U.S.C. § 7401; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901; and the Washington Model Toxic Control Act, RCW 70.105D et seq.

e. Tenant agrees to defend, indemnify and hold the City, its officers, elected officials, agents, and employees harmless from and against any and all claims, causes of action, demands and liability including, but not limited to, any costs, liabilities, damages, expenses, assessments, penalties, fines, losses, judgments and attorneys' fees associated with the removal or remediation of any Hazardous Substances that have been released, or otherwise come to be located on the subject property, including those that may have migrated from the subject property through water or soil to other properties, but only to the extent that the same are caused by or result from Tenant. Tenant further agrees to retain, defend, indemnify and hold the City, its officers, elected officials, agents, and employees harmless from any and all liability arising from the offsite disposal, handling, treatment, storage, or transportation of any such Hazardous Substances removed from the subject property, but only to the extent that the same is caused by or results from Tenant.

f. Under no circumstances shall Tenant have any liability or indemnification obligation due to hazardous substances, including municipal biosolids, introduced onto the property by the City. If the City of Goldendale shall need to dispose of bio solids upon any area that Tenant is currently utilizing for crop purposes, the City shall provide a 14-day notice to Tenant for removal of the impacted crops. In the event that municipal biosolids are introduced onto the property by the City and such action renders any crop growing thereon unsaleable in Tenant's ordinary course of business, then Tenant's cash consideration payment shall be waived.

g. The provisions of this section shall survive the termination or expiration of this Agreement.

11. General Indemnification and Hold Harmless. Tenant agrees to protect, defend, indemnify, and hold harmless the City, its officers, elected officials, agents, and employees from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) caused by or occurring by reason of any negligent act and/or omission of Tenant, his officials, officers, employees, agents, and/or volunteers arising out of or in connection with the activities of Tenant, including but not limited to any personal injury and/or property damage claim, demand, lawsuit or other proceeding brought by any one or more of Tenant's officials, officers, employees, agents, and/or volunteers against the City. The provisions of this section shall survive the termination or expiration of this Agreement

12. Liability Insurance. On or before the date this Agreement is fully executed by the parties, Tenant shall provide the City with a certificate of insurance as proof of liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) combined single limit bodily injury and property damage. The certificate shall be in a form acceptable to the City and shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect (any statement in the certificate to the effect of "this certificate is issued as a matter of information only and confers no right upon the certificate holder" shall be deleted). Said policy shall be in effect for the duration of this

Agreement. The policy shall name the City, its elected officials, officers, agents, and employees as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice (any language in the clause to the effect of "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall be crossed out and initialed by the insurance agent). The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

13. **No Insurance provided by the City.** It is understood the City does not maintain liability insurance for Tenant and/or his officials, officers, agents, employees and volunteers.

14. **Assignment.** This Agreement, or any interest herein, or claim hereunder, shall not be assigned or transferred in whole or in part by Tenant to any other person or entity without the prior written consent of the City. In the event that such prior written consent to an assignment is granted, then the assignee shall assume all duties, obligations, and liabilities of Tenant herein.

15. **Waiver of Breach.** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any Agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such covenant, condition or right.

16. **Severability.** If any portion of this Agreement is changed per mutual agreement or any portion is held invalid, the remainder of the Agreement shall remain in full force and effect.

17. **Termination of Agreement.**

a. **Termination of Agreement With or Without Cause.** Either party may terminate this Agreement, with or without cause, by giving the other party written notice of termination thirty (30) calendar days prior to the effective date of termination.

b. **Immediate Termination of Agreement.** In the event that the City determines that Tenant is using the subject property in violation of the use restrictions specified herein, the City has the right to immediately terminate this Agreement with no advance notice to Tenant and to take immediate possession of the property.

18. **Survival.** Any provision of this Agreement which imposes an obligation after termination or expiration of this Agreement shall survive the term or expiration of this Agreement and shall be binding on the parties to this Agreement.

19. **Notices.** Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand delivered to the parties to their addresses as follows:

TO CITY:

City of Goldendale
1103 S. Columbus

Goldendale, WA 98620

TO TENANT:

Chris B. Siebert
19 Gregg Drive
Goldendale, WA 98620

or to such other addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand delivered. Such notices shall be deemed effective when mailed or hand delivered at the addresses specified above.

20. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

21. **Venue; Attorney's fees.** The venue for any action to enforce or interpret this Agreement shall lie in the Superior Court of Washington for Klickitat County, Washington. The prevailing party in any such dispute shall be entitled to recover reasonable attorney's fees as well as its costs, disbursements, and other sums incurred therein, from the non-prevailing party, all of which the non-prevailing party agrees to pay.

22. **Integration.** This written document constitutes the entire Agreement between the City and Tenant and supersedes any and all previous written and/or oral agreements between the parties. There are no other oral or written agreements between the parties as to the matters covered herein. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

CITY OF GOLDENDALE

CHRIS SIEBERT

By: _____
Michael A. Canon, Mayor

Date: _____

Date: _____

ATTEST:

City Clerk

