APPENDIX C

SHORELINE CRITICAL AREA REGULATIONS

I. REGULATION OF CRITICAL AREAS

A. APPLICABILITY

1. For the purposes of the Shoreline Master Program, "Shoreline Critical Areas," include regulated wetlands, shorelands, native growth protection areas, and fish and wildlife habitat conservation areas located within the Shoreline Management Zone (SMZ).
2. All proposed development activities in regulated critical areas and associated buffers located within the SMZ shall comply with the requirements of the Shoreline Master Plan (SMP) which include critical area regulations.
3. For wetlands and their buffers located outside of or not abutting the SMZ, see MVMC 15.40.090, "Wetlands," as amended by Ordinance 3509, dated December 1, 2010.
4. For fish and wildlife habitat conservation areas located outside of or not abutting the SMZ, see MVMC 15.40.080, "Fish and Wildlife Habitat Conservation Areas," as amended by Ordinance 3509, dated December 1, 2010.
5. Expansion or alteration of existing uses in proximity to jurisdictional critical areas and associated buffers within the SMZ shall also comply with the requirements of these regulations.
6. Any person seeking to determine whether a proposed development activity or land area is subject to these regulations may request a determination from the Director of the Community and Economic Development Department.

B. DEVELOPMENT PERMIT REQUIRED

Prior to any alteration of a property containing or adjacent to critical areas in or adjacent to the SMZ, the property owner or designee must obtain a development permit, consistent with the requirements of the SMP.

1. No separate critical areas permit is required for a development proposal that requires a development permit(s).
2. Permitted activities under Section C (below): The Director shall determine whether to grant or deny a separate permit based upon compliance with applicable standards and regulations of the SMP.
3. If a Notice of Application is required for a development permit associated with a permitted activity in section C.4, the notice shall describe the critical area-related activity.

C. ACTIVITIES EXEMPT FROM SUBSTANTIAL SHORELINE DEVELOPMENT PERMIT REQUIREMENTS

1. Section III B. (1) of the SMP lists activities exempt from shoreline substantial development permits but may require a shoreline exemption ("exemption certificate"). Except in the case of public emergencies, existing and ongoing agricultural activities, and existing structures, surfaces, and activities, all activities in subsection '4' of this section, require that a letter of administrative approval ("letter of approval") be obtained from the Director prior to construction or initiation of activities. When appropriate, a letter of approval may act as an exemption certificate.

2. Development activities provided with a letter of approval may intrude into the critical area and associated buffer, subject to listed conditions, related permits, and in conformance with other provisions of the MVMC.

3. In determining whether to issue a letter of approval for activities listed in subsection '4' of this section, the Director shall find that:

   a. The activity is not prohibited by this or any other chapter of the MVMC or state or federal law or regulation;

   b. The activity will be conducted using best management practices as determined by the City, using applicable federal and state agency requirements, or scientific principles;

   c. Where wetland or habitat disturbance has occurred in accordance with an activity pursuant to a letter of approval, restoration of affected ecosystem functions shall be required within the relevant waters / wetlands system / habitat in accordance with the guidelines established in the Critical Area Ordinance (CAO) Guidebook; and,

   d. The Director shall require a mitigation plan where permitted activity under a letter of approval is determined to have a potentially material negative effect on wetland system or habitat function, to assure such functions are adequately restored within the critical area.

4. The following activities are permitted in critical areas and associated buffers, subject to listed criteria:

   a. Natural resource / habitat conservation or preservation: Conservation or preservation of soil, water, vegetation, fish and other wildlife. This includes any wetland or habitat restoration or other mitigation activities that have been approved by the City.

   b. Minor site investigative work: Work necessary for land use submittals, such as surveys, soil logs, percolation tests, and other related activities, where such activities do not require construction of new roads or significant amounts of excavation. In every case, impacts to the critical area and associated buffer shall be minimized and disturbed areas shall be immediately restored.

c. Dead or diseased trees: Removal of dead, terminally diseased, damaged, or hazard trees that have been certified as such by a forester, registered landscape architect, or certified arborist, selection of whom to be approved by the City based on the type of information required, or the City prior to their removal. Such hazard trees shall be retained as large woody debris in the SMZ or in wetlands where feasible.

d. Operation, maintenance, or repair: Operation, maintenance, or repair of dikes, levees, or drainage systems. Repair of existing structures, infrastructure improvements, utilities, and public or private roads, if the activity does not further alter or increase the impact to or encroach further within the critical area and associated buffer.

e. Routine vegetation management and removal of non-native invasive vegetation or weeds listed by Skagit County or other government agency, for public and private utilities, road rights-of-way and easements, and parks.

f. Modification to existing structures: Structural modification of, addition to, or replacement of an existing legally constructed structure that does not further alter or increase the impact to the critical area. Replacement shall be consistent with the Chapter 17.102 MVMC, "Nonconforming Buildings or Uses," and subject the procedural requirements in Chapter 14.05 MVMC.

g. Activities within the improved right-of-way: Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or a City-authorized private roadway, except those activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased storm water; exempt activities are subject to retention and replanting of native vegetation, where feasible, along the right-of-way improvement and resulting disturbance.

h. Emergency activities: Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a timeframe too short to allow for compliance with the requirements of these regulations, provided that the following criteria are met at the time of or following the immediate emergency action:

    i. Time limits: The emergency shall be limited in duration to the time required to complete the authorized emergency activity; provided, that no emergency permit be granted for a period exceeding ninety (90) days except as specified in subsection (ii).

ii. Restoration required: Require, within the ninety (90) day period, the restoration of or mitigation for any critical area or associated buffer altered as a result of the emergency activity (when not storm-related damage), except that if more than ninety (90) days from the issuance of the emergency permit is required to complete restoration, the emergency permit may be extended to complete this restoration. For the purposes of this paragraph, "restoration" means returning the affected area to its state prior to the performance of the emergency activity.

iii. Expiration of emergency authorization: The emergency exemption authorization may be terminated at any time without process upon a determination by the Director that the action was not or is no longer necessary to protect human health or the environment.

iv. Notice of the emergency action shall be given to the City within 10 days of the end of the emergency condition (e.g. flood waters have receded to non-flood conditions).

i. Existing structures, surfaces and activities where lawfully constructed and maintained in accordance with all other laws in effect as of the date of adoption of these regulations.

II. GENERAL PERFORMANCE STANDARDS

A. PERFORMANCE STANDARDS

Following are general performance standards that shall be applied in addition to the performance standards found within the SMP.

B. PROTECTION OF WETLANDS

Development within wetlands shall be avoided, and alterations prohibited unless permitted in accordance with the requirements of these regulations and other SMP provisions.

C. PROTECTION OF FISH AND WILDLIFE HABITAT AREAS

Development within fish and wildlife habitat areas and associated buffers shall be avoided, and alterations prohibited unless permitted in accordance with the requirements of these regulations and other SMP provisions.

D. ALLOWED ALTERATIONS

Critical areas and associated buffers may be altered by authorized, permitted or exempt activities as indicated herein, or through approval of a shoreline variance if applicable.

E. LAND DIVISIONS AND LAND USE PERMITS

All proposed divisions of land and land uses (including, but not limited to long and short subdivisions, conditional use permits, special use permits, site plan reviews, and binding site plans) that include critical areas shall comply with the following procedures and development standards:

1. The open water area shall not be included when calculating the maximum density or minimum lot area;
2. The subdivision of land in wetlands is subject to the following:
   a. Land that is located wholly within a wetland may not be subdivided.
   b. Land that is located partially within a wetland may be subdivided; provided, that an accessible and contiguous portion of each new lot is located outside of the wetland.
   c. Access roads and utilities serving the proposed subdivision may be permitted within the wetland only if the City determines that no other feasible alternative exists and when consistent with these regulations.
3. After preliminary approval and prior to final land division approval, the Director may require the common boundary between a wetland and the adjacent lands be identified using permanent signs. In lieu of signs, alternative methods of wetland identification may be approved when such methods are determined by the Director to provide adequate protection to the wetland.

F. ROAD/STREET REPAIR AND CONSTRUCTION

Any private or public road or street expansion or construction that is allowed in a critical area or its buffer shall comply with the following minimum development standards:

1. No other reasonable or feasible alternative exists and the road or street crossing serves multiple properties whenever possible;
2. Expansion or construction of any private or public road shall only be allowed when adverse impacts can be avoided;
3. Public and private roads should provide for other purposes, such as utility crossings, pedestrian or bicycle trails, viewing points, etc.;
4. Public trails across private property should be within recorded easements;
5. The road or street construction is the minimum necessary, as required by the Department of Public Works, and shall comply with City engineering standards; and,
6. Construction time limits shall be determined in consultation with the Washington Department of Fish and Wildlife and/or the Department of Ecology as appropriate, in order to avoid adverse impacts to habitat areas.

G. UTILITIES

Placement of utilities within designated critical areas and associated buffers may be allowed pursuant to the following standards:

1. Utilities maintenance activities involving no material change in size or function shall be allowed within a critical area and associated buffer, subject to best management practices;

2. Construction of utilities may be permitted in critical areas or associated buffer, only when no feasible or reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation, and maintenance, as outlined below;
3. Construction of sewer lines may be permitted in critical areas or associated buffer when the applicant demonstrates it is necessary to meet state and/or local health requirements, there are no other feasible alternatives available, and construction meets the requirements of this section. Joint use of a sewer utility corridor by other utilities may be allowed;
4. New utility corridors shall not be allowed in critical areas or associated buffers with known locations of federal or state-listed endangered, threatened, or sensitive species, heron rookeries, or nesting sites of raptors that are listed as state candidate species, except in those circumstances where an approved Habitat Management Plan (HMP) indicates that the utility corridor will not significantly impact the habitat area;
5. New utility corridor construction and maintenance shall protect critical areas and their buffers by the following:
    a. New utility facilities, improvements, or upgrades to existing utility facilities should take place within existing improved rights-of-way or existing impervious surfaces so that they do not increase the amount of impervious surfaces within the critical area and buffer;
    b. New utility corridors shall be aligned when possible to avoid cutting or root damage to trees greater than 12 inches in diameter at breast height (dbh, 4-1/2 feet) measured on the uphill side;
    c. New utility corridors shall be re-vegetated with appropriate native or similar vegetation at not less than preconstruction vegetation densities or greater, immediately upon completion of construction, or as soon thereafter as possible, based on seasonal growing constraints. The utility shall ensure that such vegetation is maintained and survives or is replaced as necessary; and,
    d. Any additional corridor access for maintenance shall be provided wherever possible at specific points rather than by parallel roads. If parallel roads are necessary, they shall be of a minimum width, but no greater than 15 feet and shall be contiguous to the location of the utility corridor on the side away from the critical area.
6. Utility corridor maintenance shall include the following measure to protect critical areas: Utility towers should be painted with brush, pad, or roller and should not be sandblasted or spray-painted, nor should lead-based paints be used.

H. PESTICIDES, FERTILIZERS AND HERBICIDES

No pesticides, herbicides, or fertilizers may be used in critical areas, except those approved by the Environmental Protection Agency and approved under a Department of Ecology water quality modification permit for use in critical areas and associated buffers. Where approved, herbicides must be applied by a licensed applicator in accordance with the safe application practices on the label.

III. NATIVE GROWTH PROTECTION AREAS

A. APPLICABILITY

1. A Native Growth Protection Area shall be instituted when determined through permit review to be necessary to protect wetlands, consistent with Section IV, "Wetlands," below.
2. A Native Growth Protection Areas may be required for protection of habitat conservation areas consistent with Section V, "Fish and Wildlife Habitat Conservation Areas," below.

B. STANDARDS

1. Trees and ground cover shall be retained in designated Native Growth Protection Areas.
2. Activities allowed in Native Growth Protection Areas shall be consistent with applicable critical area regulations.
3. The City may require enhancement of Native Growth Protection Areas to improve functions and values of critical areas.

C. METHOD OF CREATION

1. Native Growth Protection Areas may be established by one of the following methods, or alternative approved by the Director, to reliably achieve the required protection:
    a. Conservation Easement: The permit holder shall, subject to the City's approval, convey to the City or other public or nonprofit entity specified by the City, a recorded easement for the protection of the critical area.
    b. Protective Easement: The permit holder shall establish and record a permanent and irrevocable easement on the property title of a parcel or tract of land containing a critical area when the easement has been created as a condition of a permit. Such protective easement shall be held by the current and future property owner, shall run with the land, and shall prohibit development, alteration, or disturbance within the easement except for purposes of habitat enhancement as part of an enhancement project that has received prior written approval from the City or from another agency with jurisdiction over such activity.

c. Tract and Deed Restriction: The permit holder shall establish and record a permanent and irrevocable deed restriction on the property title of any wetland management tract or tracts created as a condition of a permit. Such deed restriction(s) shall prohibit development, alteration, or disturbance within the tract except for purposes of habitat enhancement as part of an enhancement project that has received prior written approval from the City or from another agency with jurisdiction over such activity. A covenant shall be placed on the tract restricting its separate sale. Each abutting lot owner or the homeowners' association shall have an undivided interest in the tract.

2. Fencing: The City may require permanent fencing of the Native Growth Protection Area containing critical areas when the Director determines there is a substantial likelihood of adverse impact through intrusion, and such fencing will not adversely impact habitat connectivity.

3. Signage required: The common boundary between a Native Growth Protection Area and the abutting land must be permanently identified. One sign shall be posted per lot, or every 150 feet, or as determined by the Director. Suggested wording is as follows: "Protection of this natural area is in your care. Alteration or disturbance is prohibited by law."

4. Responsibility for maintenance: Responsibility for maintaining the Native Growth Protection Area easements or tracts shall be held by a homeowners' association, abutting lot owners, the permit applicant or designee, or other appropriate entity as approved by the City.

5. Maintenance covenant and note required: The following note shall appear on the face of all plats, short plats, planned unit developments, or other approved site plans containing separate Native Growth Protection Area easements or tracts, and shall also be recorded as a covenant running with the land on the title of record for all affected lots on the title:

> "MAINTENANCE RESPONSIBILITY: All owners of lots created by or benefiting from this City action abutting or including a native growth protection area easement [tract] are responsible for maintenance and protection of the easement [tract]. Maintenance includes ensuring that no alterations occur within the tract and that all vegetation remains undisturbed unless the express written authorization of the City has been received in advance."

6. Marking During Construction: The location of the outer extent of the critical areas not to be disturbed pursuant to an approved permit, shall be marked with barrier fencing, approved by the Community and Economic Development Department and easily visible in the field, to prevent unnecessary disturbance by individuals and equipment during the development or construction of the approved activity.

D. PERMANENT SIGNS AND FENCING

1. Permanent Signs

   a. As a condition of any permit or authorization issued pursuant to these regulations, the Director may require the applicant to install permanent signs along the boundary of critical area and associated buffer not to be disturbed.

   b. Permanent signs shall be made of an enamel-coated metal face and attached to a metal post, or another non-treated material of equal durability. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity. The sign shall be worded as follows, or with alternative language approved by the Director, and will identify the critical area:

Protected Critical Area
Do Not Disturb
Contact City of Mount Vernon
Department of Community & Economic Development
Regarding Uses and Restrictions

2. Fencing

   a. The Director shall determine if fencing is necessary to protect the functions and values of the critical area. If found to be necessary, any permit or authorization issued pursuant to these regulations shall be conditioned to require the applicant to install a permanent fence at the edge of the critical area when fencing will prevent future impacts to the critical area.

   b. Fencing installed as part of a proposed activity shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the critical area and associated buffer.

E. DISCRETIONARY – BUILDING OR DEVELOPMENT SETBACKS

The Director may require an additional building or activity setback from a critical area to ensure adequate protection of the wetland during construction and on-going maintenance of the activity. A requirement for an additional setback shall be based on the findings of a critical report or a peer review required for the activity based upon a unique impact of the project or need of the adjoining critical area not otherwise protected by this regulation.

F. MITIGATION MONITORING

A monitoring program shall be implemented to determine the success of mitigation projects required under these regulations. The monitoring program shall determine if the original goals and objectives are being met. The City reserves the right to select the consultant, at the applicant's expense, to perform the required monitoring. Monitoring shall be undertaken pursuant to the guidelines in section MVMC 15.40.120.H.

G. CRITICAL AREA DEVELOPMENT STANDARDS

Restoration, enhancement and development activities involving critical areas regulated under this section shall generally conform to the preferred standards found in the Critical Area Ordinance (CAO) Guidebook identified in MVMC 15.40.030.F.4. These standards shall be followed unless the Director determines that a proposed alternative achieves the equivalent performance and better serves the objectives of this section.

IV. WETLAND STANDARDS

A. DESCRIPTION

1. Wetlands are those areas, designated in accordance with the "Washington State Wetland Identification and Delineation Manual" as required by RCW 36.70A.175, that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions.
2. Wetlands help to maintain water quality; store and convey stormwater and floodwater; recharge ground water; provide important fish and wildlife habitat; and serve as areas for recreation, education, scientific study and aesthetic appreciation.
3. The City's overall goal is to achieve no net loss of wetlands. This goal shall be implemented through retention and restoration of the function and value of wetlands within the City.
4. Wetlands serve to moderate runoff volume and flow rates; reduce sediment, chemical nutrient and toxic pollutants; provide shading to maintain desirable water temperatures; provide habitat for wildlife; protect wetland resources from harmful intrusion; and generally preserve the ecological integrity of the wetland area.

B. PURPOSE

The purposes of the wetland regulations are to:

1. Ensure that development activities in or affecting wetlands do not threaten public safety, cause nuisances, or destroy or degrade natural wetland functions and values;
2. Protect wetlands by regulating development activities within and around them;
3. Protect the public from costs associated with repair of downstream properties resulting from erosion and flooding due to the loss of water storage capacity provided by wetlands; and,
4. Prevent the net loss of wetland acreage and functions.

C. CLASSIFICATION AND DESIGNATION

Wetland ratings: Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system found in the "Washington State Wetland Rating System for Western Washington" (Department of Ecology Publication No. 04-06-025) or as amended. These documents contain the definitions and methods for determining if the criteria below are met.

1. Wetland Rating Categories.
   a. Category I: Category I wetlands are those that meet any of the following criteria:
      i. Represent a unique or rare wetland type;
      ii. Are more sensitive to disturbance than most wetlands;
      iii. Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime;
      iv. Are providing a high level of functions, scoring seventy (70) points or more out of one hundred (100) (DOE Wetlands Rating System, 2004);
      v. Are characterized as a national heritage wetland;
      vi. Are characterized as a bog; or
      vii. Are over one (1) acre and characterized as a mature and old-growth forested wetland.
   b. Category II: Category II wetlands are those wetlands that are not Category I wetlands and that meet any of the following criteria:
      i. Provide high levels of some functions, being difficult, though not impossible to replace; or
      ii. Perform most functions relatively well; scoring fifty-one (51) through sixty-nine (69) out of one hundred (100) points (DOE Wetlands Rating System, 2004).
   c. Category III: Category III wetlands are those wetlands that are not Category I or II wetlands, and that meet the criterion to provide moderate levels of functions, scoring between thirty (30) through fifty (50) out of one hundred (100) points (DOE Wetlands Rating System, 2004).
   d. Category IV: Category IV wetlands are those that provide low levels of functions, scoring less than thirty (30) out of one hundred (100) points (DOE Wetlands Rating System, 2004).
2. Date of Wetland Rating

   Wetland rating categories shall be applied as the wetland exists on the date of adoption of the rating system by the City, as the wetland naturally changes thereafter, or as the wetland changes in accordance with permitted activities. Wetland rating categories shall not change due to illegal modifications.

D. WETLAND REPORTS

1. Report required: Subject to the provisions of section (D)(3) below, a wetland report pursuant to the guidelines in MVMC 15.40.120.G addressing a wetland's classification and delineation shall be prepared by an applicant as follows:

a. Wetland report identifying classification: An applicant shall be required to conduct a study to determine the classification of the wetland if the subject property or project area is both within the SMZ and within 150 feet of a wetland, even if the wetland is not located on the subject property, but it is determined that alterations of the subject property are likely to impact the wetland in question or its buffer. Wetland classification shall be performed as described in MVMC 15.40.090(C), and the report shall include a completed wetland rating form. If there is a potential Category I or II wetland within 300 feet of a proposed project, the City may require an applicant to conduct a study, even if the wetland is not located on the subject property, but it is determined that alterations of the subject property are likely to impact the wetland in question or its buffer. A wetland report shall be prepared by a certified professional at the applicant's expense.

b. Wetland report identifying delineation: A wetland delineation is required for any portion of a wetland on the subject property that will be impacted by the permitted activities. For the purpose of regulation, the exact location of the wetland edge shall be determined by the wetlands specialist hired at the expense of the applicant through the performance of a field investigation using the procedures provided in the Hydrogeomorphic (HGM) manual.

2. Wetland mitigation plan required: The applicant shall be required to prepare a wetland mitigation plan per MVMC 15.40.120(H), if impacts are identified within a wetland classification or delineation report, or if a wetland buffer alteration is proposed. The approval of the wetland mitigation plan by the Director shall be based on the criteria located in MVMC 15.40.040, 15.40.080, 15.40.110, and 15.40.120(H).

3. Report waived:

a. A wetland classification or delineation report may only be waived by the Director when the applicant provides satisfactory evidence that:

i. A public road, building or other physical barrier exists between the wetland and the proposed activity;

ii. The wetland does not intrude on the site of the proposed project, and based on evidence submitted, the proposal will not result in significant adverse impacts to nearby wetlands regulated under this section; or

iii. Applicable data and analysis appropriate to the project proposed exists and an additional study is not necessary, consistent with current rating system and mitigation standards.

b. The wetland mitigation plan may only be waived by the Director when applicable data and analysis appropriate to the project proposed exists and an additional report is not necessary, consistent with current rating system and mitigation standards.

c. Period of validity for wetland reports: Reports submitted and reviewed are valid for up to five (5) years from date of study completion as approved by the City unless the Director determines that conditions have changed significantly and a new or amended study is required.

d. Independent secondary review: Peer review of the wetland report may be required by the City at the applicant's expense.

E. DEVELOPMENT STANDARDS

1. Activities may only be permitted in a wetland if the applicant can show that the proposed activity will not degrade the functions and functional performance of the wetland.
2. Activities and uses shall be prohibited in wetlands, except as provided for herein.
3. Category I wetlands: Activities and uses shall be prohibited from Category I wetlands, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of the MVMC.
4. Category II and III wetlands: With respect to activities proposed in Category II and III wetlands, the following standards shall apply:
   a. Water-dependent activities may be allowed where there are no feasible alternatives that would have a less adverse impact on the wetland, its buffers, and other wetlands.
   b. Where non-water-dependent activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that:
      i. The basic project purpose cannot reasonably be accomplished by successfully avoiding the wetland, or result in less adverse impact on a wetland on another site or sites in the general region;
      ii. All alternative designs of the project as proposed that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible; and
      iii. Full compensation for the acreage and loss functions will be provided under the terms established under sections (G)(6) and (G)(7) below.
5. Category IV wetlands: Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved wetland report and mitigation plan, if the proposed activity is the only reasonable alternative that will accomplish the applicant's objectives. Full compensation for the acreage and loss functions will be provided under the terms established under sections (G)(6) and (G)(7) below.

F. STANDARD WETLAND BUFFERS

1. Standard buffer widths: The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer should be planted to maintain the standard width. Required standard wetland buffers, based on wetland category, are as follows:

Wetland Category	Standard Buffer
I	200 ft.
II	100 ft.
III	75 ft.
IV	50 ft.

2. Measurement of wetland buffers: All buffers shall be measured horizontally from a perpendicular line established at the wetland edge as surveyed in the field. The width of the wetland buffer shall be determined according to the wetland category. 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.

3. Increased wetland buffer widths: The Director shall require increased buffer widths in accordance with the recommendations of an experienced, certified professional wetland scientist, and the best available science on a case-by-case basis when a larger buffer is necessary to protect wetland functions and values based on site-specific characteristics. This determination shall be based on one or more of the following criteria:

   a. A larger buffer is needed to protect other wetlands;

   b. The buffer or adjacent uplands has a slope greater than 15 percent or is susceptible to erosion and standard erosion-control measures will not prevent adverse impacts to the wetland;

   c. The buffer area has minimal vegetative cover. In lieu of increasing the buffer width where existing buffer vegetation is inadequate to protect the wetland functions and values, implementation of a buffer planting plan may substitute**.** Where a buffer planting plan is proposed, it shall include plant densities that are in conformance with the recommendations of the Critical Area Ordinance (CAO) Guidebook and CAO Guidebook requirements for monitoring and maintenance to ensure success.

   d. Existing buffer vegetation is considered "inadequate" and will need to be enhanced through additional native plantings and (if appropriate) removal of nonnative plants when:

      i. Nonnative or invasive plant species provide the dominant cover,

      ii. Vegetation is lacking due to disturbance and wetland resources could be adversely affected, or

iii. Enhancement plantings in the buffer could significantly improve buffer functions.

e. An increase in buffer width onsite or restoration of existing buffer required under this section shall be directed to modifications reasonably necessary to mitigate impacts created by the proposed development and roughly proportional to the scope and scale of the impacts created by the proposed development.

4. Wetland buffer width averaging: The Director may allow modification of the standard wetland buffer width in accordance with an approved wetland report and the best available science on a case-by-case basis by averaging buffer widths. Averaging of buffer widths may only be allowed where the applicant and a certified professional wetland scientist demonstrates that:

   a. No feasible site design exists without buffer averaging;

   b. It will not reduce wetland functions or functional performance;

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

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

   e. The buffer width is not reduced to less than 75 percent of the standard buffer width, applicable to Category I, II, or III wetlands or 35 feet for Category IV wetlands.

5. Buffer consistency: All mitigation sites shall have buffers consistent with the buffer requirements of these regulations.

6. Buffer maintenance: Except as otherwise specified or allowed in accordance with this title, wetland buffers shall be retained in an undisturbed or enhanced condition. Removal of invasive non-native weeds is required for the duration of the mitigation bond.

G. STANDARD MITIGATION REQUIREMENTS – WETLANDS

Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the State Department of Ecology publication "Wetland Mitigation in Washington State," 2006 (Publication Nos. 06-06-011a and 06-06-011b), or as revised.

1. Mitigation includes the following alternatives. The priority shall be as follows, but may be modified where functions and values are retained, restored, or enhanced by alternate systems:

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

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

c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

d. Reducing or eliminating the impact over time by preservation and maintenance operations.

e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

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

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

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

3. Preference of mitigation actions: Mitigation actions that require compensation by replacing, enhancing, or substitution shall occur in the following order of preference:

   a. Restoring wetlands on upland sites that were formerly wetlands.

   b. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of non-native introduced species. This should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.

   c. Enhancing significantly degraded wetlands in combination with restoration or creation. Such enhancement should be part of a mitigation package that includes replacing the impacted area and meeting appropriate ratio requirements.

4. Type and location of mitigation: Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach or sub-basin. Mitigation actions shall be conducted within the same sub-basin and on the site as the alteration, except when all of the following apply:

   a. There are no reasonable on-site or sub-basin opportunities or the on-site and sub-basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the impacts. Consideration should include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, proposed water quality improvements, potential to mitigate riparian fish and wildlife impacts (such as connectivity);

b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and,

c. Off-site locations shall be in the same sub-basin unless:

i. Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or

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

5. Mitigation timing: Mitigation and monitoring plans shall be approved prior to initiation of activities that will disturb wetlands. Mitigation shall be completed immediately following disturbance and prior to use or occupancy of the activity or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

a. The Director may authorize a one-time temporary delay, up to 120 days, in completing minor construction and landscaping when environmental conditions could produce a high probability of failure or significant construction difficulties. The delay shall not create or perpetuate hazardous conditions or environmental damage or degradation, and the delay shall not be injurious to the health, safety, and general welfare of the public.

b. The request for the temporary delay must include a written justification that documents the environmental constraints that preclude implementation of the mitigation plan. The justification must be verified and approved by the City and include a financial guarantee.

6. Mitigation Ratios:

a. Acreage replacement ratios: The following ratios shall apply to creation or restoration that is in-kind, within the same drainage basin, is the same category, is timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply in those cases. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. When credits from a certified bank are used, replacement ratios should be consistent with the requirements of the bank's certification. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Category I	6-to-1
Category II	3-to-1
Category III	2-to-1
Category IV	1.5-to-1

b. Increased replacement ratio. The Director may increase the ratios under the following circumstances:

   i. Uncertainty exists as to the probable success of the proposed restoration or creation;

   ii. A significant period of time will elapse between impact and replication of wetland functions;

   iii. Proposed mitigation, without increase, will result in a lower category wetland or reduced functions relative to the wetland being impacted; or

   iv. The impact was an unauthorized impact.

7. Wetlands Enhancement as Mitigation:

   a. Impacts to wetland functions may be mitigated by enhancement of existing significantly degraded wetlands, but must be used in conjunction with restoration and/or creation. Applicants proposing to enhance wetlands must produce a wetland report that identifies how enhancement will increase the functions of the degraded wetland and how this increase will adequately mitigate for the loss of wetland area and function at the impact site.

   b. At a minimum, enhancement acreage shall be double the acreage required for creation or restoration under subsection G.6 of this section. The ratios shall be greater than double the required acreage where the enhancement proposal would result in minimal gain in the performance of wetland functions and/or result in the reduction of other wetland functions currently being provided in the wetland.

   c. Mitigation ratios for enhancement in combination with other forms of mitigation shall range from 6:1 to 3:1 and be limited to Class III and Class IV wetlands.

   d. Any approval under subsections (b) and (c) above shall be consistent with Table 1a of “Wetland Mitigation in Washington State, Part I” (Ecology, et al., 2006)

8. Wetland Mitigation Banks:

   a. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands (but not wetland buffers) when:

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

      ii. The Director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and,

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

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

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

V. FISH AND WILDLIFE HABITAT CONSERVATION AREAS

A. DESCRIPTION AND PURPOSE:

The intent of these regulations is to protect functions and values for waters, riparian habitat, resident and anadromous fish, and wildlife conservation areas. The primary purpose of this section is to minimize development impacts to habitat conservation areas in the Shoreline Management Zone and to:

1. Protect federal and state listed habitats and species and give special attention to protection or enhancement of anadromous fish populations; and,
2. Maintain a diversity of species and habitat within the City; and,
3. Coordinate habitat protection to maintain and provide habitat connections; and,
4. Help maintain air and water quality, and control erosion.

These standards, guidelines, criteria, and requirements intended to identify, evaluate and mitigate potential impacts to habitat conservation areas within the Shoreline Management Zone and associated critical areas and to provide guidelines to enhance degraded habitat and streams where feasible. In such circumstances, impacts resulting from regulated activities may be minimized, rectified, reduced and/or compensated for, consistent with these regulations. The intent of these regulations is to manage land so as to maintain fish and wildlife species in suitable habitats according to their natural geographic distribution so that isolated sub-populations are not created and achieve no net loss in fish or wildlife habitat or stream functions. Interpretations of these regulations shall be made to conform to the requirements of WAC 365-190-080.

B. CLASSIFICATION AND DESIGNATION OF FISH AND WILDLIFE HABITAT CONSERVATION AREAS:

Classification and designation of fish and wildlife habitat conservation areas is an ongoing process; while not all of the following critical habitat conservation areas are known to exist in the SMZ, their designation here allows for future categorization for protection. The following categories shall be used for relevant development standards of this chapter.

1. Streams: All streams that meet the criteria for F, Np or Ns waters as set forth in WAC 222-16-030 of the Department of Natural Resources Water Typing System. (The City classification system is consistent with the definitions as provided in WAC 222-16-030.)
2. Class I Fish and Wildlife Conservation Areas, other than streams:
    a. Habitats and species recognized by federal or state agencies for federal and/or state-listed endangered, threatened and sensitive species that have primary association documented in maps or databases available to the City and that, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

b. Areas targeted for preservation by the federal, state, and/or local government that provide fish and wildlife habitat benefits, such as the shared strategy process for Puget Sound; and areas of primary association for anadromous fish and important waterfowl areas identified by the U.S. Fish and Wildlife Service.

c. Areas that contain habitats and species of local importance. These critical areas are identified by the City, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term. Habitats of local importance can include attributes such as comparatively high wildlife density, high wildlife species richness, significant wildlife breeding habitat, seasonal ranges or movement corridors of limited availability and/or high vulnerability. These habitats may include snag-rich mitigation sites and urban natural open spaces.

3. Class II Fish and Wildlife Conservation Areas, other than streams:

a. Habitats for state-listed candidate and monitored species documented in maps or databases available to the City, which if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

b. Habitats that have been identified through maps, databases, reports, or studies that include attributes such as comparatively high wildlife density, high wildlife species richness, significant wildlife breeding habitat, seasonal ranges or movement corridors of limited availability and/or high vulnerability. These habitats may include snag-rich mitigation sites, and urban natural open space.

4. Habitats and Species of Local Importance: The City should accept and consider nominations for habitat areas and species to be designated as locally important.

a. Habitats and species to be designated shall exhibit the following characteristics:

i. Local populations of native species are in danger of extirpation based on existing trends;

ii. Local populations of native species that are likely to become endangered; or,

iii. Local populations of native species that are vulnerable or declining.

b. The species or habitat has recreation, commercial, game, tribal, or other special value.

c. Long-term persistence of a species locally is dependent on the protection, maintenance, and/or restoration of the nominated habitat.

d. Protection by other county, state, or federal policies, laws, regulations, or non-regulatory tools is not adequate to prevent degradation of the species or habitat in the City.

e. Without protection, there is likelihood that the species or habitat will be diminished locally over the long term.

f. Areas nominated to protect a particular habitat or species must represent either high-quality native habitat or habitat that has a high potential to recover to a suitable condition and which is of limited availability, highly vulnerable to alteration, or provides landscape connectivity that contributes to the integrity of the surrounding landscape.

g. Habitats and species may be nominated for designation by any person in accordance with the process in Chapter 15.40 MVMC, Appendix A.

C. PERFORMANCE STANDARDS - GENERAL:

A designated fish and wildlife habitat conservation area with its buffer is a critical area. Regulated uses identified within designated fish and wildlife habitat conservation areas shall comply with the performance standards outlined in this section.

1. Habitat Management Plan Required: If the City determines that impacts to habitats may occur as a result of a development project, a habitat management plan (HMP) shall be required in conformance with MVMC 15.40.120.D. The project proponent may choose to complete an HMP for a site-specific analysis to better determine the impact to habitat and to determine the appropriate buffer width and associated building setbacks for the project based on the site-specific analysis. The preparation and submission of this report is the responsibility of the applicant. The report shall rely on “best available science” as defined in WAC 365-195-900 through 365-195-925 and shall be prepared by a certified professional who is a biologist with five (5) years of experience preparing reports for the relevant type of habitat. The City may retain a qualified consultant at the applicant's expense to review and confirm the applicant's reports, studies and plans. The HMP shall clearly demonstrate 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 and building setbacks. An applicant may propose to implement an HMP as a means to protect habitat buffers associated with streams and/or fish and wildlife conservation areas. Approval for an HMP shall not occur prior to the consultation with the appropriate federal or state agencies.

   a. Intent: HMPs are primarily intended as a means to restore or improve buffers that have been degraded by past activity, and should preserve, and not reduce, existing high-quality habitat buffers. While not primarily intended as a means to reduce buffers, the HMP may propose a reduction of the habitat buffer width where it is shown that the HMP will comply with the other requirements of this section.

   b. Effect of Buffers: An HMP shall provide habitat functions and values that are greater than would be provided by the prescribed habitat buffers. When habitat buffers are a component of an HMP, they shall be at least the minimum size necessary to accomplish the objectives of the HMP. The HMP may propose, but the City shall not require, a habitat buffer containing a greater area than is required by the prescribed habitat buffer.

c. Impact Mitigation: The HMP shall encompass an area large enough to provide mitigation for buffer reduction below the standard required buffers, and shall identify how the development impacts resulting from the proposed project will be mitigated as defined in section (E) below. The developer of the plan shall use the best available science in all facets of the analyses. The Washington Department of Fish and Wildlife priority habitat and species management recommendations, and/or bald eagle protection rules outlined in WAC 232-12-292, as amended, may serve as guidance for this report.

2. Endangered, Threatened, and Sensitive Species:

   a. No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a habitat management plan (HMP) consistent with a habitat report identifying BMPs consistent with management guidelines recommended by state and federal agencies where present and otherwise consistent with best available science as established in the scientific literature for similar circumstances. Such plans shall identify the source of the recommendations and the key metrics by which success of the plan is to be measured and enforced.

   b. Whenever activities are proposed adjacent to a habitat conservation area with which state or federally endangered, threatened, or sensitive species have a primary association, such area shall be protected through the application of protection measures in accordance with an HMP prepared by a certified professional and approved by the City. Approval for alteration of land adjacent to the habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.

   c. Bald eagle habitat shall be protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292). Whenever activities are proposed adjacent to a verified nest, territory, or communal roost and, activities that are adjacent to bald eagle sites within 800 feet or within one-half mile (2,640 feet) and in a shoreline foraging area shall require an approved HMP. The City shall verify the location of eagle management areas for each proposed activity. Approval of the activity shall not occur prior to approval of the HMP by the Washington Department of Fish and Wildlife.

3. Anadromous Fish:

   a. All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

      i. Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;

ii. If alternative alignment or location for the activity is not feasible, then activities shall be designed so that it will replace any affected functions and values with equivalent systems to avoid overall degradation to the functions and values of the fish habitat or other critical areas;

iii. Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques where such approaches are reasonably effective, according to an approved critical area report; and

iv. Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved habitat management plan.

b. Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream or downstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed, or otherwise adversely affect the overall lifecycle of such fish.

c. Fills, when authorized by the Shoreline Master Program, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use.

4. Wetland Habitats: All proposed activities within or adjacent to habitat conservation areas containing wetlands shall conform to the wetland development performance standards set forth above, in Section III. If non-wetlands habitat and wetlands are present at the same location, the provisions of this section or the wetlands section, whichever provides greater protection to the habitat, apply. Where a wetland is divided by a right of way or other improvement, but functions as a single system, the system shall be scored as a whole and not in pieces.

5. Buffers and Associated Building Setback Areas: The distance shall be measured from the ordinary high water mark (OHWM) or from the top of the bank where the OHWM cannot be identified.

a. Buffers shall remain undisturbed natural beach or vegetation areas except where the buffer can be enhanced to improve its functional attributes, as approved by the Director. Buffers shall be maintained along the perimeter of fish and wildlife habitat conservation areas, as listed below in Tables A and B of this section. Refuse shall not be placed in buffers. Alteration of buffer areas and building setbacks may be allowed for water-dependent and water-related activities and for other property development authorized by the Shoreline Master Program, through an HMP, shoreline exemptions, standards for existing (nonconforming) development, and shoreline variances; provided, however, in each instance mitigation shall be required to replace affected functions and values within the affected zone.

b. "Minimum building setback" is the required horizontal distance between the finished exterior wall of a structure and the edge of the critical area of the lot on which the structure is located. All portions of a structure must be located away from the critical area edge a distance equal to or greater than the minimum setback. Uses not requiring a permit defined in the City Building Code may be permitted in the setback if the Director determines that such intrusions will not adversely impact the fish and wildlife habitat conservation area and other required SMZ setbacks are adhered to, or prescribes a plan to replace affected functions and values within the affected area.

6. Habitat Conservation Area Buffers. Habitat conservation area buffers shall be shown on the development site plans or final plat maps along with the notation requirements identified in this chapter.

   a. If an existing property has a previously delineated and approved fish and wildlife habitat conservation area and associated buffer by the City, the approved conservation area and buffer may remain in effect. Redevelopment, and/or additions outside of the existing footprint shall be subject to the previously approved buffer; however, a buffer enhancement plan may be required in accordance if the habitat buffer area has become degraded or is currently not functioning or if the habitat area and/or buffer may be negatively affected by proposed new development. If, according to the buffer enhancement plan, additional buffer mitigation is not sufficient to protect the habitat, the City may require larger buffers where it is necessary to protect habitat functions based on site-specific characteristics.

7. Class I Fish and Wildlife Conservation Areas: All development as described within this chapter or within 200 feet of designated Class I wildlife conservation areas shall adhere to the following standards:

   a. All sites with known locations of Class I fish and wildlife conservation areas or sites within 200 feet to known locations of Class I fish and wildlife conservation areas will require, for all development permits, the submittal and approval of a habitat management plan (HMP) as specified in section C.1 above. In the case of bald eagles, an approved bald eagle management plan by the Washington State Department of Fish and Wildlife, meeting the requirements and guidelines of the bald eagle protection rules (WAC 232-12-292), as now or hereafter amended shall satisfy the requirements for an HMP. The requirement for an HMP shall be determined during the State Environmental Policy Act (SEPA) environmental review on the project. No project falling within a Class I fish and wildlife habitat conservation area shall be exempt from SEPA-compliant environmental review.

   b. All new development within 200 feet of habitat elements within which Class I fish and wildlife have a critical habitat may require the submittal of an HMP as specified in section C.1 above. The requirement for an HMP shall be determined during the SEPA-compliant environmental review of the project.

8. Class II Fish and Wildlife Conservation Area: All new development within Class II fish and wildlife conservation areas may require the submittal of an HMP as specified in section C.1 above if the Director determines that the activity is within a critical distance of a protected species for an activity which the species has a primary association. An HMP shall consider measures to retain and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of native vegetation. The requirement for an HMP shall be determined during the SEPA/critical areas review on the project. No project falling within a Class II fish and wildlife habitat conservation area shall be exempt from SEPA review.

Table A, Wildlife Habitat Conservation Areas	
Class I	All developments within 200 ft. of a designated Class I wildlife habitat conservation area shall have buffer widths determined by a mandatory wildlife habitat management plan.
Class II	All development within a Class II wildlife habitat conservation area shall have the buffer widths be determined by the SEPA/critical area review on the project and may require a habitat management plan.

9. Other Allowed Uses in Fish and Wildlife Habitat Conservation Areas: Other activities may be allowed using the standard for a Category II wetland buffer.

D. PERFORMANCE STANDARDS – STREAMS:

1. The purposes of the stream regulations are to:
   a. Protect riparian habitat to provide bank and channel stability; sustained water supply; flood storage; recruitment of woody debris; leaf litter; nutrients; sediment and pollutant filtering; shade; shelter; and other functions that are important to both fish and wildlife; and,
   b. Prevent the loss of riparian acreage and functions and strive to achieve properly functioning conditions within a given stream segment where feasible; and,
   c. Designate and protect aquatic habitat for salmonid species; and,
   d. Give special attention to the protection or enhancement of anadromous fish.
2. Stream Studies:
   a. When Standard Stream Study Is Required: Subject to the provisions below, the applicant or project sponsors for activities requiring City approval shall be required to conduct a Standard Stream Study per MVMC 15.40.120(E) if a site contains a regulated stream or the project area is within 200 feet of a stream even if the stream is not located on the subject property. Such a report shall be prepared by a certified professional at the applicant's expense.

b. When Supplemental Stream Study is Required: The applicant shall be required to conduct a Supplemental Stream Study per MVMC 15.40.120(F) if a site contains a stream or riparian management zone and alterations of the stream or alterations to management zones are proposed, either administratively or via a variance request. Such a report shall be prepared by a certified professional at the applicant's expense.

c. When Stream Mitigation Plan is Required: The applicant shall be required to conduct a Stream Mitigation Plan per MVMC 15.40.120(H) if impacts are identified within a Supplemental Stream Study. Such a report shall be prepared by a certified professional at the applicant's expense. The approval of the Mitigation Plan by the Director shall be based on the criteria located in MVMC 15.40.040, .080, .110, and .120.

d. Studies Waived:

   i. Standard Stream Study: May only be waived by the Director when the applicant provides satisfactory evidence that:

      (a) A public road, building or other long-term barrier exists between the stream and the proposed development activity; or,

      (b) The stream or riparian management zone does not intrude on the applicant’s property, and based on evidence submitted, the proposal will not result in significant adverse impacts to nearby streams regulated under this Chapter; or ,

      (c) Applicable data and analysis appropriate to the project proposed exists and an additional study is not necessary.

   ii. Supplemental Stream Study or Stream Mitigation Plan: May only be waived by the Director when applicable data and analysis appropriate to the project proposed exists and an additional report is not necessary.

e. Period of Validity for Stream Studies: Studies submitted and reviewed are valid for up to five (5) years from date of study completion as approved by the City, unless the Director determines that conditions have changed significantly and a new or amended study is required.

3. Stream Buffer Measurement. Streams shall be classified according to the stream type system as provided in WAC 222-16-031, Interim water typing system. Stream buffer areas are defined by these classifications, as shown in Table B of this section. Buffers shall be measured from the ordinary high water mark (OHWM) or from the top of the bank when the OHWM cannot be identified. The buffer width shall be increased to include streamside wetlands, which provide overflow storage for stormwater, feed water back to the stream during low flows, or provide shelter and food for fish. In braided channels, the OHWM or top of bank shall be defined so as to include the entire stream feature.

Table B, Water Type Standard Buffer Widths			
Water Types	Attributes	Minimum Building Setback	Buffer Width Standard
F	Fish habitat waters	15 feet beyond buffer	150 feet
Np	Year-round, non-fish habitat	15 feet beyond buffer	50 feet
Ns	Seasonal, non-fish habitat	15 feet beyond buffer	35 feet

4. Buffer Conditions. Where existing buffer area plantings provide minimal vegetative cover and cannot meet the City's water quality standards or provide habitat functions (per the requirements of the Departments of Ecology and Fish and Wildlife), buffer enhancement shall be required. An increase in buffer width onsite or restoration of existing buffer required under this section shall be directed to modifications reasonably necessary to mitigate impacts created by the proposed development and roughly proportional to the scope and scale of the impacts created by the proposed development. Where buffer enhancement is required, a plan shall be prepared that includes plant densities that are in conformance with the recommendations in the CAO Guidebook. Monitoring and maintenance of plants shall be required in accordance with 15.40.120(H), Mitigation and Monitoring Plans. Existing buffer vegetation is considered "inadequate" and will require enhancement through additional native plantings and removal of nonnative plants when:

   a. Nonnative or invasive plant species provide the dominant cover;

   b. Vegetation is lacking due to disturbance and marine, stream, or habitat resources could be adversely affected; or,

   c. Enhancement plantings in the buffer could significantly improve buffer functions.

5. Buffer Averaging. Buffer widths may be modified by averaging, as long as the total area contained within the buffer after averaging is no less than the required buffer prior to averaging, and as set forth below. A buffer enhancement plan shall be required for any request for buffer averaging. The enhancement plan shall be similar to a mitigation plan, and include provisions for mitigation monitoring and contingency plans. Buffer width averaging shall be allowed only where the applicant demonstrates, through a report prepared by a qualified biologist or habitat specialist with five years experience, that:

   a. Buffer averaging is necessary to avoid a hardship caused by circumstances related to the property;

   b. The habitat contains variations in sensitivity due to existing physical characteristics, or the buffer varies in characteristics and it would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

c. Lower intensity land uses would be located adjacent to areas where the buffer width is reduced;

d. The widest portion of the buffer shall be the area where the habitat is most sensitive;

e. Buffer width averaging will not adversely impact fish and wildlife habitat conservation areas; and,

f. The buffer width may be reduced by 35 percent of the standard buffer, but not less than 35 feet unless provided for by a habitat management plan.

6. Buffer Reduction. Buffers and associated building setbacks may be reduced where the applicant demonstrates through an approved HMP, relying on best available science and prepared by a qualified specialist with five years experience, that through buffer enhancement the smaller buffer would provide equal or better protection than the larger buffer. Enhancement techniques can include, but are not limited to:

   a. Planting of native trees or shrubs, increasing the diversity of plant cover types, replacing exotic species with native species, or reestablishing fish areas adjacent to a marine shoreline or stream where one currently does not exist will result in improved function of the fish habitat;

   b. Fish barrier removal to restore accessibility to resident or anadromous fish;

   c. Fish habitat enhancement using log structures incorporated as part of a fish habitat enhancement plan;

   d. Stream and/or retention/detention pond improvements:

      i. Removal or modification of existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities, or

      ii. Upgrade of retention/detention facilities or other drainage facilities beyond required levels to provide a more naturalized habitat.

   e. Removal of existing bulkheads to improve fish spawning and habitat areas;

   f. Daylighting a stream that was previously culverted or piped, or daylighting box culverts or trestles.

E. STANDARD MITIGATION REQUIREMENTS AND CRITERIA:

1. The applicant shall avoid all impacts that degrade the functions and values of a critical area or areas. Unless otherwise provided herein, if alteration to the critical area is unavoidable, all adverse impacts to or from critical areas and buffers resulting from a development proposal or alteration shall be mitigated using the best available science in accordance with an approved habitat management plan and SEPA documents, so as to result in no net loss of critical area functions and values.

2. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

3. Mitigation shall not be implemented until after the City's approval of an HMP that includes a mitigation plan and mitigation shall be in accordance with the provisions of the approved HMP.
4. Mitigation Sequencing: Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:
    a. Avoiding the impact altogether by not taking a certain action or parts of an action;
    b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
    c. Rectifying the impact to habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;
    d. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
    e. Compensating for the impact to habitat conservation areas by replacing, enhancing, or providing substitute resources or environments;
    f. Monitoring the hazard or other required mitigation and taking remedial action when necessary; and,
    g. Mitigation for individual actions may include a combination of the above measures.
5. Mitigation Plan: Mitigation Plans required under this section shall be prepared in conformance to the guidelines in Chapter 15.40.120(H).
6. Innovative Mitigation:
    a. The City may encourage, facilitate, and approve innovative mitigation projects that are based on the best available science. Advance mitigation or mitigation banking are examples of alternative mitigation projects allowed under the provisions of this section wherein a group of one or more applicants or an organization with demonstrated capability may undertake a mitigation project together if it is demonstrated that all of the following circumstances exist:
        i. Creation or enhancement of a larger system of critical areas and open space is preferable to the preservation of many individual habitat areas;
        ii. The group or organization demonstrates the organizational and fiscal capability to act cooperatively;
        iii. The group or organization demonstrates that long-term management of the habitat area will be provided; and,
        iv. There is a clear potential for success of the proposed mitigation at the identified mitigation site.

APPENDIX D

RESOURCES

This Shoreline Master Program (SMP) relies substantially on existing information that has been developed since the year 2000. Information has been collected from a variety of sources including City plans and studies, Skagit River watershed plans and studies from DOE and local planning groups, private plans, and aerial photographs. Following is a list of the primary sources used in this inventory and characterization, and a brief description of the information provided.

- **River Basin Analysis of the Skagit and Samish Basins: Tools for Salmon Habitat Restoration and Protection**

  This February 2000 study was undertaken by the Skagit Watershed Council to meet two major objectives: 1) identify where and to what extent the landscape processes that form and sustain salmon habitat are degraded in the Skagit and Samish River basins; and 2) identify specific actions to restore and protect salmon habitat in these basins, focusing on efforts to address the causes of habitat degradation. It contains information regarding the system of levees and ecosystem functions provided by the river and associated floodplains.

- **Skagit River Shoreline Inventory & Restoration Plan**

  The Skagit River Shoreline Inventory & Restoration Plan, June 2003, by Graham Bunting & Associates, was part of the overall program to rehabilitate Skagit River basin habitats and increase fish production. It provides a detailed analysis of environmental conditions of the Skagit River shoreline, including shorelines within Mount Vernon's jurisdiction, particularly as those conditions may affect or relate to fish population recovery. The inventory divides the shoreline into six geographic "survey units" and rates each unit based on variables relating to physical features, biological features, and land use/man-made features.

- **Edgewater Park Restoration Project – Phase I**

  Edgewater Park is located in West Mount Vernon across the Skagit River from Downtown Mount Vernon. A restoration project was completed in 2005 at the south end of the Park that restored an historic off-channel habitat and associated riparian vegetation.

- **Skagit River Big Bend Reach Habitat Restoration Feasibility Study**

  The primary goal of this December 2004 study was to identify opportunities for improving the quality and quantity of rearing habitat available to juvenile salmon at various opportunity sites located between the Skagit River and the levees in the Big Bend Reach. The study was intended to help implement the Skagit Watershed Council's (SWC) Restoration and Protection Strategy by following the guiding principles outlined in the SWC's Strategic Approach. The study identifies several sites within Mount Vernon that may be suitable for restoration actions.

- **Biological Assessment of the Nookachamps Wetland Mitigation Bank Preserve**

  Fairbanks Environmental Services, Inc. July 2004; as Amended March 2005 and June 2006.

- **Assessment of Waters/Wetland Ecosystem Conditions & Functions**

  City of Mount Vernon, January 2007. Dr. L. C. Lee, Ph.D., PWS.

- **Lower Skagit Tributaries Riparian Vegetation Change: Analysis Results**

  Washington Department of Ecology, Publication #07-03-050, November 2007 (Revised April 2008).

- **Skagit Chinook Recovery Plan – 2005**

  Skagit River System Cooperative and Washington Department of Fish and Wildlife.

- **Draft EIS: Mount Vernon Downtown Flood Protection Alternatives**

  The Draft EIS (January 2007) was prepared to compare alternatives for permanent flood risk reduction as part of the City's Downtown and Waterfront Revitalization Master Plan. Included are discussions of land use and identification of opportunities for increasing public access to the Skagit River shoreline.

- **Final EIS: Mount Vernon Downtown Flood Protection Alternatives**

  The Final EIS (July 2007) included the preferred alternative, responses to Draft EIS comments, and proposed mitigation for potential impacts from the flood risk reduction project.

- **Mount Vernon Downtown Flood Protection Biological Assessment**

  This biological assessment was conducted under Section 7 of the Endangered Species Act (ESA), which requires federal agencies to ensure that their actions, including providing funding, do not jeopardize listed species or their habitat. The December 2007 assessment provides descriptions of the Skagit River reach immediately adjacent to Downtown Mount Vernon.

- **Master Plan: Downtown and Waterfront Master Plan Project**

  This Master Plan, completed in July 2008, is the third of three phases that commenced in 2005. It follows the preparation of an EIS (noted above) and focuses on redevelopment and flood risk reduction opportunities for the City's downtown and waterfront area. It outlines future actions, provides targets and actions for redevelopment, and contains discussions regarding land use and downtown characterization.

- **City of Mount Vernon 2005 Comprehensive Plan (as amended)**

  The City of Mount Vernon Comprehensive Plan, 2005, is the comprehensive plan for the city and contains policies and recommendations to direct public and private decisions affecting future growth and development. The purpose of a comprehensive plan is to translate community values and goals into a framework for decisions on growth and land use, housing, transportation, utilities, public facilities and services, and parks and open space. It expresses a long-range, twenty-year vision of how citizens want Mount Vernon to look and function in the future. It also provides a strategy for achieving that vision. Mount Vernon's Comprehensive Plan is revisited annually.

- **City of Mount Vernon Parks, Recreation & Open Space Plan**

  The Parks, Recreation & Open Space Plan, adopted in 2008, is based on analysis of supply, demand, and need for public and private park and recreation facilities and services within the Mount Vernon corporate limits and urban growth area. It includes goals and objectives, plan and program elements, and implementation measures. The Plan is Chapter 4 of the City of Mount Vernon Comprehensive Plan.

- **Aerial Photographs**

  City has multiple sets of high resolution aerial photographs containing oblique and orthographic images of most of Skagit County, including the main stem of the Skagit River, taken April of 2007, April of 2009, and August of 2009.

There has been little change in the conditions of the Skagit shoreline or in the level of development and land use mix in adjacent upland areas during the time these sources of information were being developed. This has been confirmed by a comparative review of the aerial photographs and discussions with staff and consultants familiar with the city's development. As a result, the assumption in this SMP is that these information sources remain valid for shoreline planning purposes.

In addition to the above-referenced sources, specific to the Skagit River and Mount Vernon, the Shoreline Master Program is based on the guidelines within Chapter 173-26 Washington Administrative Code.