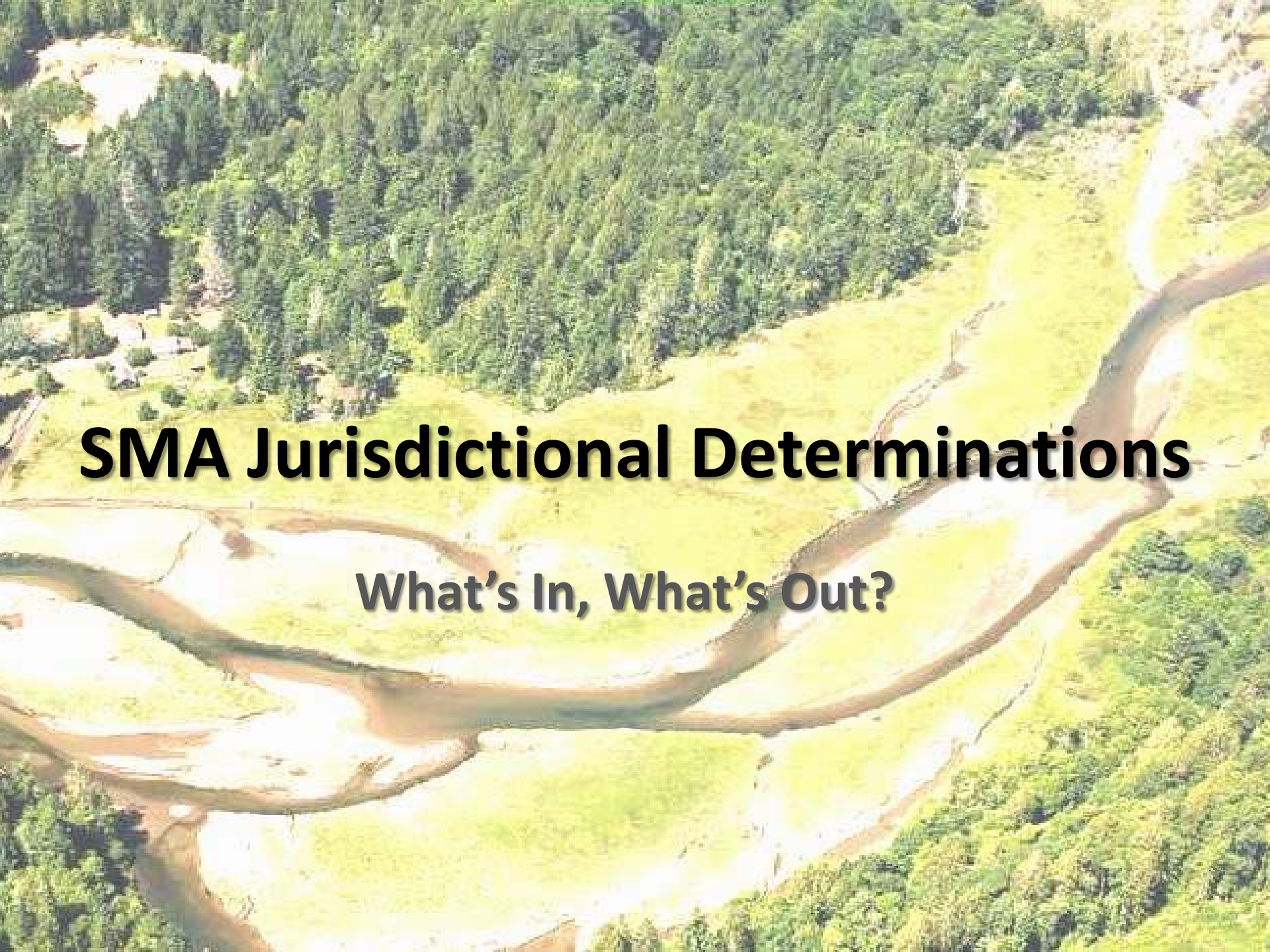


SMA Jurisdictional Determinations

What's In, What's Out?

What's In, What's Out?

SMP Handbook Updates - Chapter 5

Clarification Added for Three Topics:

- **Artificial Streams**
- **Artificial Lakes**
- **Associated Wetlands**

Chapter 5
Shoreline Jurisdiction

Phase 1, Task 1.1
Shoreline Master Program Planning Process

Introduction

The Shoreline Master Program (SMP) update process begins with identification of "shorelines of the state" and their associated "shorelands," which comprise the geographic area where the Shoreline Management Act (SMA) applies. The SMA applies to the following:

- All marine waters.
- Rivers and streams with more than 20 cubic feet per second mean annual flow (cfsmaf).
- Lakes and reservoirs greater than 20 acres in area.
- Associated wetlands.
- Shorelands adjacent to these water bodies. This is typically the area within 200 feet of the water body, although there are important exceptions explained below.

Specific larger water bodies are classified as Shorelines of Statewide Significance (*RCW 90.58.030(2)(e)*.

Updating SMA water bodies: A fundamental goal of the comprehensive SMP update is to ensure that all the water bodies meeting the statutory thresholds are included in the SMP. Some water bodies and shoreline areas that meet the thresholds for inclusion under the Act may not be included in older SMP maps and legal descriptions. Changes in shoreline jurisdiction may result from:

- New information on water-body flow and size. If your SMP has not been updated in many years, new sources of information on stream and lake size need to be applied. Ecology has updated stream flow data from the US Geologic Survey that may move SMP jurisdiction upstream (or in a few cases downstream). Evaluation of GIS-derived information may identify lakes exceeding 20 acres that were missed in the original SMP mapping.
- Naturally occurring and man-made alterations of the shoreline. For example, a river channel may have shifted, creating a change in SMA jurisdiction.
- Annexations. Past annexations involving shorelines may not be reflected in the existing SMP jurisdiction.

Considering local options for shoreland areas: The local government will decide the extent of SMP shorelands jurisdiction for three types of areas during the SMP planning process. These three areas are:

- River corridors. Local governments have the authority to define SMA jurisdiction along river corridors, within minimum and maximum areas defined in statute. The maximum SMA jurisdiction along rivers is the 100-year floodplain.

http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/index.html

90.58.030 - Definitions and concepts

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

90.58.030 - Definitions and concepts

(f) **"Shorelands"** or **"shoreland areas"** means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and **all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology**.

Artificial Streams

WAC 173-22-030 *(15)*

A "stream" is a ***naturally occurring body of periodic or continuously flowing water*** *where:(a) The mean annual flow is greater than twenty cubic feet per second; and (b)The water is contained within a channel. A* ***channel is an open conduit either naturally or artificially created.*** *This definition* ***does not include*** *artificially created irrigation, return flow, or stockwatering channels;*

Artificial Streams

The SMA does not specifically address artificial streams.

- Most rivers and streams with flows greater than 20 cfs are shorelines of the state and subject to SMA jurisdiction. Questions arise regarding artificial water bodies such as agriculture canals, power supply canals, and drainage ditches.

- In developing this guidance, Ecology considered the three fundamental policy objectives of the SMA: protection of the shoreline environment, preferred uses that are unique to or dependent on the use of state shorelines, and public access to the water.

- Some water bodies that are not water areas of the state under the SMA are still within shoreline jurisdiction because they are within 200 feet of the OHWM of an SMA water body.

Artificial Streams

Suggested criteria

Consider the following criteria when determining whether agricultural ditches, drainage ditches, power canals, and other constructed waters are SMA streams to be regulated under your SMP. If several of the criteria apply, these facilities are probably not under SMA authority, unless they are within 200 feet of an SMA water body.

- Built where no shoreline or water of the state previously existed.
- Constructed of an impervious material.
- Operates under an NPDES permit, FERC license, or similar regulations.
- Prohibits human use for recreation and gathering potable water. (Human use is restricted to people operating the facility.)
- Constructed specifically for use by farm animals.
- Constructed, operated, and maintained for a specific purpose.
- Owned and operated to meet a specific need.
- Ingress and egress to and from another water body is controlled and mechanized.
- Intent to decommission and process to do so is determined in the authorizing permit.
- Surface continuity with a natural water body is interrupted by a pipe, pump, dike, etc.

Examples

- **Goldsborough Creek, Mason County –** Portions of the creek are contained within a constructed channel, within the historic natural stream bed. This was necessary to implement the Goldsborough Creek Dam removal and restoration project. This is **still a shoreline** of the state for its entire length.

Examples

Snoqualmie River, King County

Penstock below Snoqualmie Falls is **not a shoreline** of the state because it is a constructed component of a permitted facility and contained within a pipe.

Examples

Woodland Consolidated Diking Improvement District No. 2, Cowlitz County

This ditch system is behind the dike on the Columbia River, near Woodland. The dikes and ditches were built in the early 1900s to control flooding and runoff in the Woodland area. The ditches only "flow" when water is being pumped into the Columbia River. This is not a "naturally occurring" stream and the water is discontinuous from the Columbia River. Therefore, the ditch is **not a shoreline of the state**.

Examples

Nisqually River, Thurston County

The Centralia Power Canal was built in 1929 to supply power to the City of Centralia. The water is diverted from and returned to the Nisqually River through a penstock that is more than 200 feet above the river. The canal is more than 9 miles long and is contained within a variety of constructed, concrete and earthen structures. The canal is not a "naturally occurring" stream; the water is discontinuous from the Nisqually River. Therefore, the canal is **not a shoreline of the state**.

Lakes

The SMA does specifically address artificial lakes.

- Most water areas 20 acres or greater, whether natural or artificial, including reservoirs, are shorelines of the state and subject to SMA authority. Questions arise regarding whether some artificial water areas such as gravel mine lakes, toxic waste lagoons, sewage treatment facilities and stormwater basins or ponds are within shoreline jurisdiction. Facilities such as log ponds and gravel ponds are sometimes abandoned after their useful industrial service and then become shorelines of the state.

- In developing this guidance, Ecology considered the three fundamental policy objectives of the SMA: protection of the shoreline environment, preferred uses that are unique to or dependent on the use of state shorelines, and public access to the water.

- Some water bodies that are not water areas of the state under the SMA are still within shoreline jurisdiction because they are within 200 feet of the OHWM of an SMA water body.

Lakes

Suggested criteria

Consider the following criteria when determining whether toxic waste lagoons, sewage treatment facilities, stormwater facilities, and other constructed waters are SMA water bodies to be regulated under your SMP. If several of the criteria apply, these facilities are probably not under SMA authority.

- Built where no shoreline or water of the state previously existed.
- Constructed of a man-made impervious material.
- Operates under an NPDES permit or similar regulations.
- Provides treatment of waste or storm water prior to discharge into a receiving water body.
- Prohibits human use for recreation and gathering potable water. (Human use is restricted to people operating the facility.)
- Constructed specifically for use by farm animals.
- Does not support native fish or wildlife.

Examples

Gravel and Rock Mine Lakes

Gravel mine, rock mine, coal mine and other mining lakes that are 20 acres or larger are shorelines of the state and are regulated under the SMA.

The Centralia coal mine ponds are in shoreline jurisdiction. Existing mine lakes 20 acres or greater where mining operations have ended must be included in your SMP. Shoreline environment designations, policies and regulations should be developed for these lakes.

Mines are regulated by the Washington Department of Natural Resources. DNR requirements include specific reclamation plans and design standards for the approved use after the mining operation ends. If these standards are followed, and an ecologically functional lake results, it will need the protection provided by the SMA when reclamation is complete.

Examples

Wastewater Treatment Ponds

Two industrial wastewater treatment ponds on Lady Island in the Columbia River in the City of Camas are both over 20 acres. These facilities treat up to 76 million gallons per day of wastewater from the Georgia Pacific pulp and paper mill.

Ecology has determined that the ponds **are not SMA water areas** because they meet the following criteria: Operates under an NPDES permit, provides treatment of wastewater, prohibits human use for recreation, and gathering potable water.

However, portions of the ponds are within 200 feet of the Ordinary High Water Mark of the Columbia River, so those portions are within shoreline jurisdiction.

Examples

Stormwater Treatment Ponds

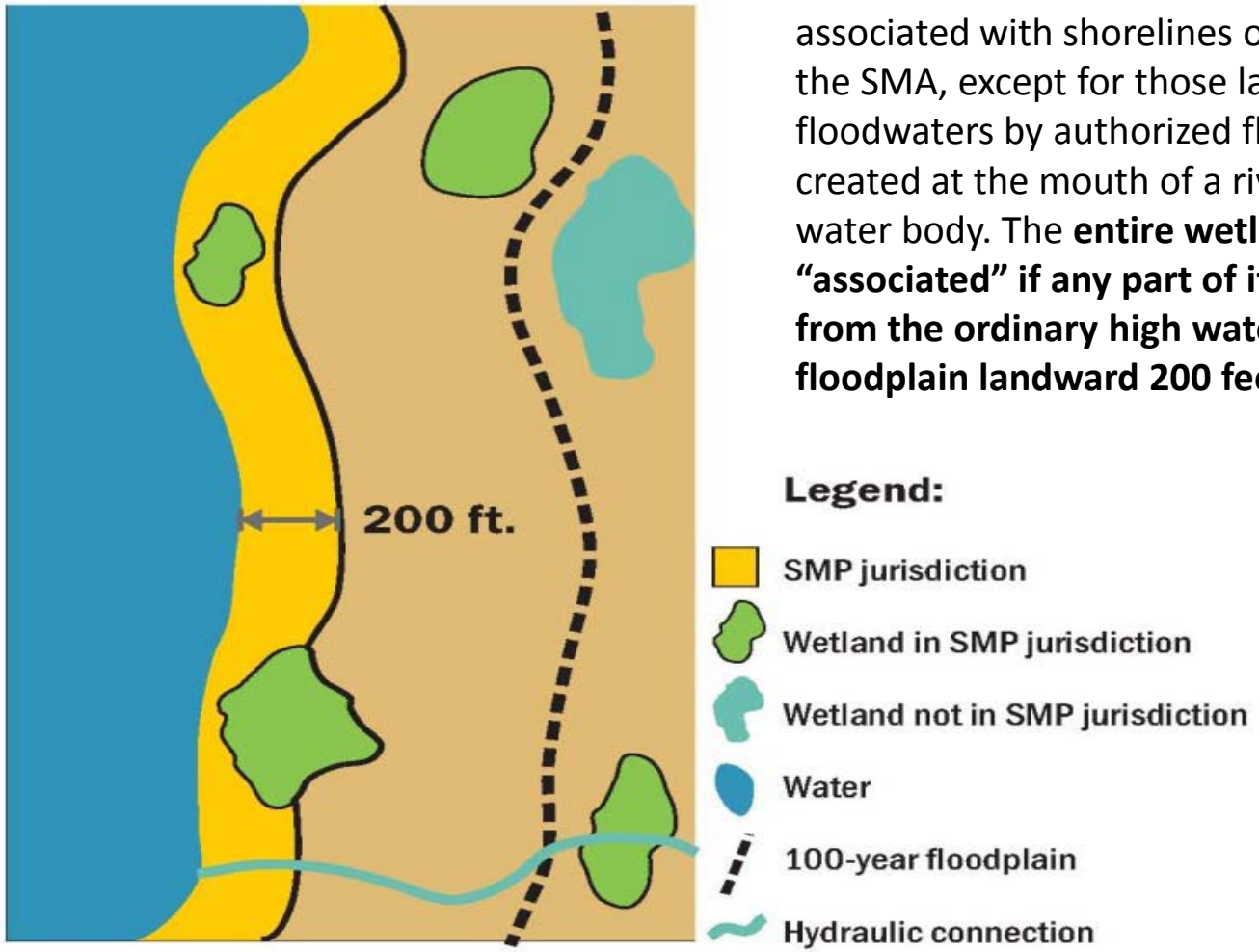
Lake Tye in the City of Monroe provides stormwater treatment, flood storage capacity and recreation. The lake was built to serve a new residential, commercial and industrial development. The 42-acre lake is within a city park and provides recreation including a swimming beach, lakeside trail, fishing and boat launch.

Ecology has determined that the ponds **are not SMA water areas** because they meet the following criteria: Operates under an NPDES permit, provides treatment of wastewater, prohibits human use for recreation, and gathering potable water.

However, portions of the ponds are within 200 feet of the Ordinary High Water Mark of the Columbia River, so those portions are within shoreline jurisdiction.

ASSOCIATED WETLANDS

"Associated wetlands" are those wetlands that are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the SMA. River deltas associated with shorelines of the state are also subject to the SMA, except for those lands protected from floodwaters by authorized flood control devices. Deltas are created at the mouth of a river where it enters a larger water body. The **entire wetland or natural river delta is "associated" if any part of it lies within the area 200 feet from the ordinary high water mark or within the floodplain landward 200 feet of the floodway.**



ASSOCIATED WETLANDS

Factors used to determine whether wetlands meet the "proximity and influence" test include but are not limited to one or more of the following:

- Periodic inundation.
- Hydraulic continuity.
- On marine waters, formation by tidally influenced geohydraulic processes, or a surface connection through a culvert or tide gate.
- On streams, the entire wetland is associated if any part is located within the 100-year floodplain of a shoreline.
- The entire wetland is associated if any part is located within 200 feet of the OHWM or floodway.

ASSOCIATED WETLANDS

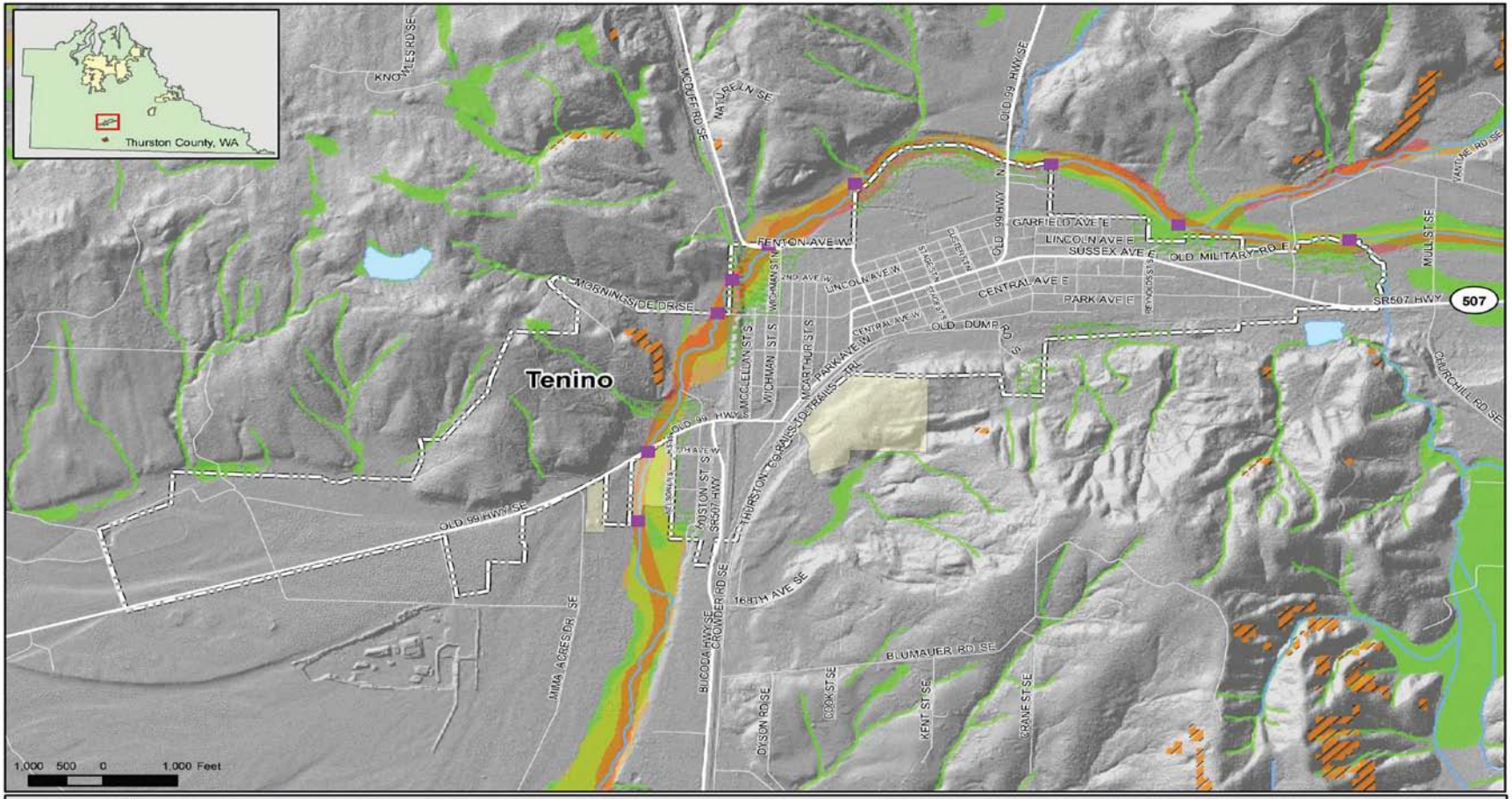


Figure 19

TRPC
Thurston Regional Planning Council

Printing Date: April 28, 2010
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Critical Areas

- Thurston County Reach Designations
- Wetland Indicators
- Wetland Indicator Buffer
- 100 Year Floodplain
- Floodways
- Steep Slopes
- City Limits
- Urban Growth Boundary

DISCLAIMER:
This map is for general planning purposes only. Thurston Regional Planning Council makes no representations as to accuracy or fitness of the information for a particular purpose.

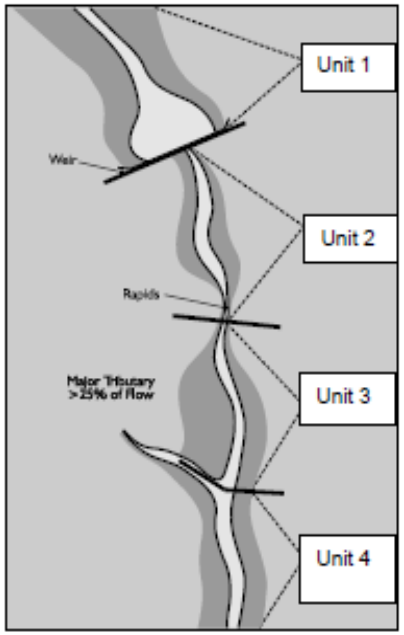
ASSOCIATED WETLANDS

- The associated wetland ends a short distance upstream from the 20cfs point, based on a determination of hydrologic continuity; i.e., there is a distinct hydrologic break in the wetland.

ASSOCIATED WETLANDS

Ecology's Wetland Rating System can be used as guidance for determining the hydrologic continuity of wetlands.

Wetlands Associated with Streams or Rivers



In western Washington, linear wetlands contiguous with a stream or river may be brok into units using criteria based on hydrologic factors or vegetation. Figure 2 presents a diagram of how wetland units might be separated along a stream corridor based on change in the water regime. Three changes in water regime are illustrated: 1) a weir or dam, a series of rapids, and 3) a tributary coming int the main stream that increases the flow significantly (generally > 25%). Figure 3 illustrates how a unit for rating can be separate when the wetland vegetation: 1) disappears ar is replaced with unvegetated bars or banks for least 50 ft along the stream, and 2) becomes narrow for at least 100 feet. A narrow band of vegetation is defined as one that is less than 30 feet in width.

Figure 2: Determining wetland units in a riverine system based on changes in water regime.

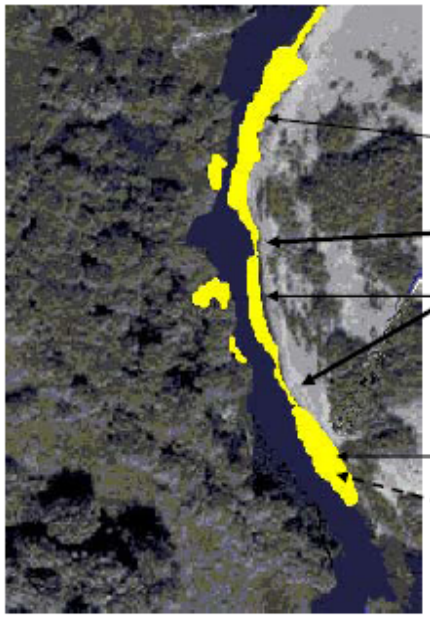


Figure3: Determining wetland units in a riverine setting based on breaks in vegetation. In this case the river is wider than 50ft., and the wetlands on either side are rated separately.

Unit 1

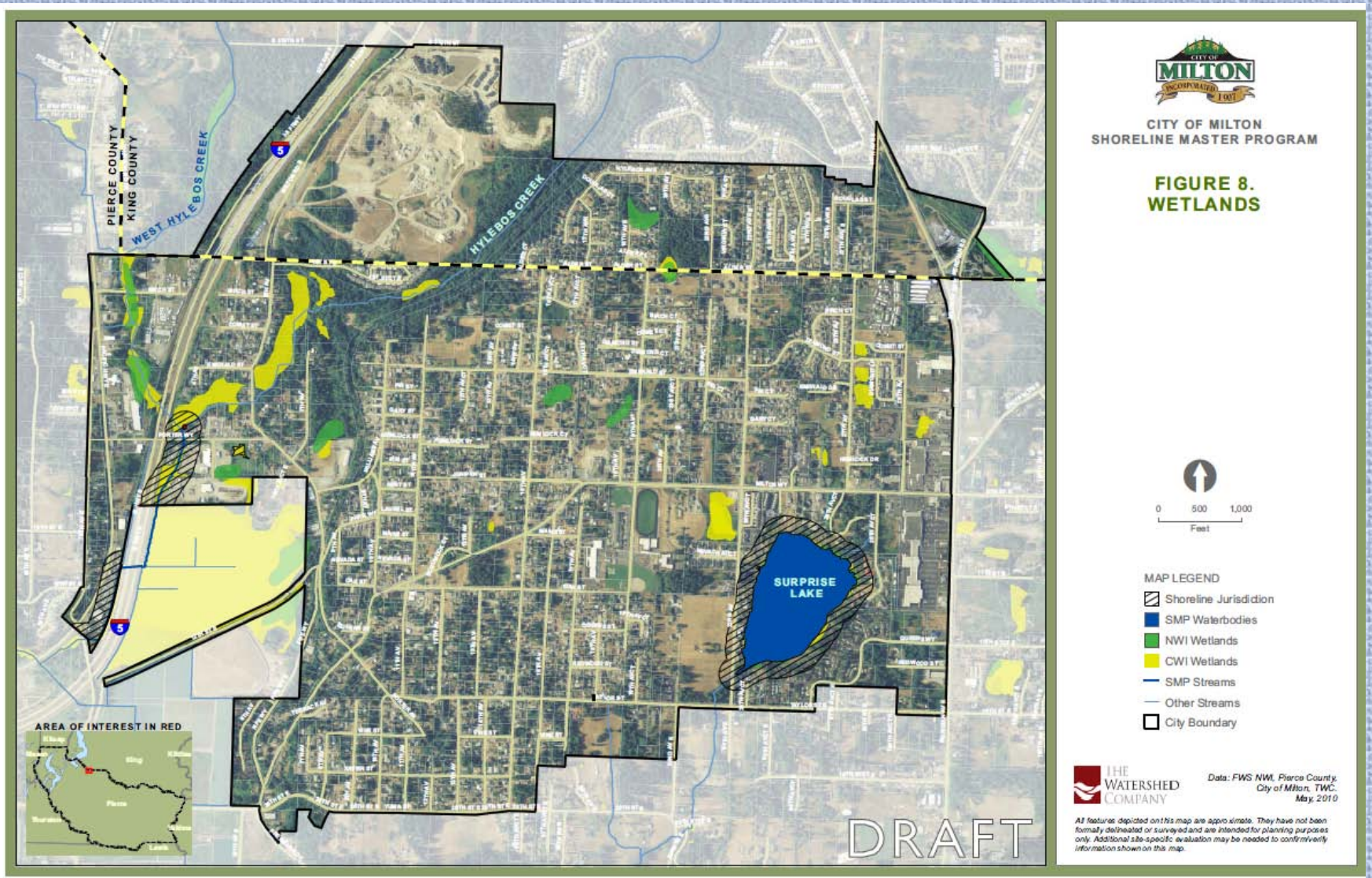
Breaks in vegetation –less than 30' wide for more than 100 ft.

Unit 2

Unit 3

Wetland vegetation

ASSOCIATED WETLANDS



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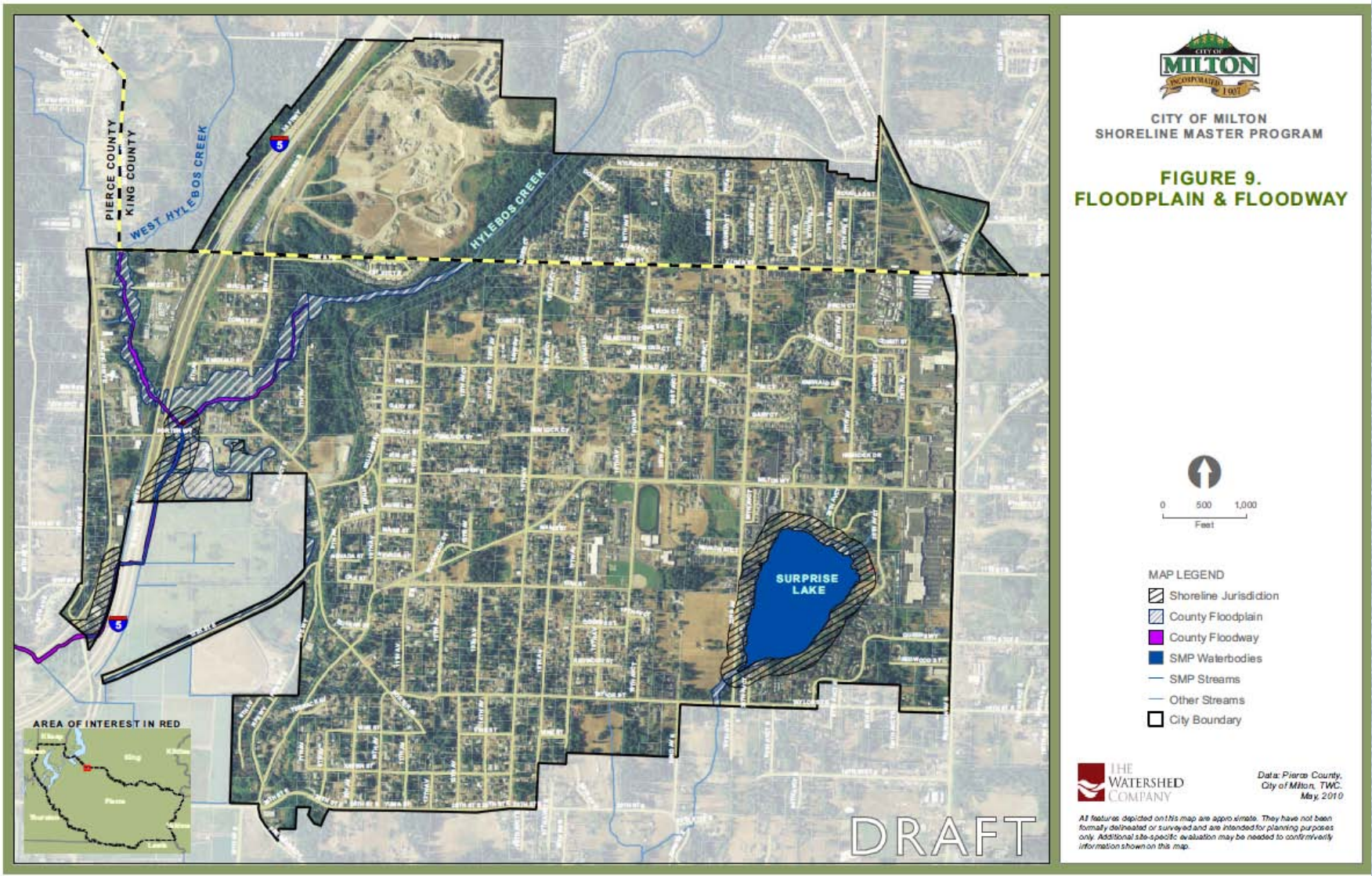

ASSOCIATED WETLANDS

If any portion of a wetland is within shoreline jurisdiction, the entire wetland is within jurisdiction and should be considered an “associated wetland.”

ASSOCIATED WETLANDS