

## Chapter 33D

SHORELINE OVERLAY DISTRICT<sup>1</sup>

## Sections:

## Article I. User's Guide and Basic Program Requirements

- 33D.010 Components of the Shoreline Master Program.  
 33D.020 Applicability—Basic requirements.  
 33D.030 Criteria for issuance of permits.

## Article II. Definitions

- 33D.040 Definitions.

## Article III. General Goals and Objectives

- 33D.050 Shoreline use element.  
 33D.060 Cultural resources element.  
 33D.070 Flood hazard reduction element.  
 33D.080 Public access element.  
 33D.090 Conservation element.

## Article IV. Shoreline Environment Designations

## Article V. Shoreline Use Policies and Regulations

- 33D.100 Uses permitted within environments and use regulations.  
 33D.110 Agricultural practices.  
 33D.120 Aquaculture.  
 33D.130 Boating facilities.  
 33D.140 Commercial development.  
 33D.150 Forest practices.  
 33D.160 Industry.  
 33D.170 In-stream structures.  
 33D.180 Log storage and rafting.  
 33D.190 Mining.  
 33D.200 Municipal watershed utilities.  
 33D.210 Parking.  
 33D.220 Recreational development.  
 33D.230 Residential development.  
 33D.240 Signs, outdoor advertising.  
 33D.250 Solid waste disposal and collection.  
 33D.260 Transportation facilities.  
 33D.270 Utilities.

1. Code reviser's note: This chapter contains only parts of the city's Shoreline Master Program. Ordinance 2600-02, adopting the Shoreline Master Program (which is included as Exhibit A to that ordinance), is available for examination and reference in the city's planning and community development department.

## Article VI. Shoreline Modification Activities

- 33D.280 General shoreline modification.  
 33D.290 Shoreline stabilization.  
 33D.300 Breakwaters.  
 33D.310 Dredging and dredge material disposal.  
 33D.320 Jetties and groins.  
 33D.330 Landfill.  
 33D.340 Piers, docks and floats.  
 33D.350 Weirs.

## Article VII. Environmentally Sensitive Areas

- 33D.360 User guide.  
 33D.370 Purpose.  
 33D.380 Applicability.  
 33D.390 Environmentally sensitive features.  
 33D.400 Exemptions, exceptions, modifications.  
 33D.410 Permitted uses.  
 33D.420 Submittal requirement—Supporting information.  
 33D.430 Geologically hazardous areas.  
 33D.440 Wetland delineation and rating.  
 33D.450 Standard wetland buffer width requirements.  
 33D.460 Avoiding wetland impacts.  
 33D.470 Lakes, ponds, constructed and created wetlands.  
 33D.480 Stream rating.  
 33D.490 Standard stream buffer requirements.  
 33D.500 Avoiding stream impacts.  
 33D.510 Areas of special flood hazard.  
 33D.520 Fish and wildlife conservation areas.  
 33D.530 Ground water discharge areas.  
 33D.540 Lot area—Lot coverage—Permitted number of dwelling units in multiple-family developments.  
 33D.550 Covenants, tracts, notice on title.  
 33D.560 Appeals.  
 33D.570 Assurance devices.  
 33D.580 Previously altered environmentally sensitive areas.  
 33D.590 Enforcement—Violation—Penalties.

## Article I. User's Guide and Basic Program Requirements

## 33D.010 Components of the Shoreline Master Program.

A. Three Components of the Shoreline Master Program. Chapter 173-26 WAC requires the city to include the following in its master program:

1. Master program policies;
2. Master program regulations;
3. Administrative provisions.

B. Contents of Everett Shoreline Master Program. The Everett Shoreline Master Program (SMP) contains the following:

1. Section 1—Community Vision and Introduction;
2. Section 2—Users' Guide and Basic Program Requirements;
3. Section 3—General Goals, Objectives, Policies and Regulations;
4. Section 4—Shoreline Environment Designations and Management Policies;
5. Section 5—Shoreline Use Policies and Regulations;
6. Section 6—Shoreline Modification Activities Policies and Regulations;
7. Section 7—Definitions;
8. Appendix A—Documents incorporated by reference, including:
  - a. Chapter 38 of this title, Nonconforming Structures, Uses and Lots;
  - b. Chapter 30 of this title, Floodplain Overlay Districts and Regulations;
  - c. Comprehensive plan goals, objectives, and policies for environmentally sensitive areas;
  - d. Sections 33D.360 through 33D.590 of this title, Environmentally Sensitive Areas, and applicable definitions in Chapter 4 of this title;
  - e. Planning Director Interpretation No. 2-2000: Interim Procedures, Endangered;
9. The Snohomish Estuary Wetland Integration Plan (SEWIP) including the SEWIP Salmon Overlay.

C. Master Program Policies. The portions of the SMP that are not shoreline use regulations or administrative provisions are incorporated as the shoreline element of the comprehensive plan. These policies shall provide guidance in the interpretation of the use regulations in this chapter.

D. Master Program Regulations.

1. The following sections of the SMP shall constitute this chapter:
  - a. Section 2;
  - b. Those provisions designated as "regulations" in Sections 3 through 6;
  - c. Figures 4.1 through 4.23;
  - d. Definitions in Section 7.

Revisions to this chapter shall be processed as Shoreline Master Program amendments.

2. In addition, the following development regulations have been incorporated by reference and included in Appendix A of the SMP:

- a. Chapter 30 of this title, Floodplain Overlay Districts and Regulations;
- b. Comprehensive plan goals, objectives, and policies for environmentally sensitive areas;

c. Sections 33D.360 through 33D.590 of this title, Environmentally Sensitive Areas, and applicable definitions in Chapter 4 of this title;

d. Planning Director Interpretation No. 2-2000: Interim Procedures, Endangered Species Act (ESA) Listing for Chinook Salmon and Bull Trout.

Generally, revisions to the development regulations in Appendix A that are intended to apply in the city's shoreline zone shall be processed as Shoreline Master Program amendments. Otherwise, the version of a development regulation in Appendix A that has been approved through Shoreline Master Program adoption process shall apply in shoreline zones. In the event the city adopts revisions to these development regulations, the city may apply regulations that offer the greatest protection of sensitive shoreline resources, even if the revised regulations are not formally incorporated into Appendix A of the SMP. The city may at its discretion process such revisions as Shoreline Master Program amendments. The intent is to update Appendix A formally at the time substantial updates to the SMP are processed.

3. In addition to the requirements of the development regulations, which have been specifically designated as shoreline regulations or incorporated by reference into the Shoreline Master Program, shoreline developments shall be subject to the following, where applicable:

a. City regulations and standards, including but not limited to zoning and related performance standards, subdivision, landscaping, stormwater management, noise, building codes, and fire codes, utility, street, parking and transportation codes.

b. State agency permits and requirements, such as water quality certifications (Department of Ecology), hydraulic project approvals (Department of Fish and Wildlife), rights-of-way on state-owned aquatic lands (Department of Natural Resources).

c. Federal agency permits, such as Corps of Engineers Section 10/404 permits for work affecting wetlands and in navigable waters.

E. Shoreline Inventory. The following inventory information shall be considered along with more detailed site-specific studies when making regulatory decisions:

The Snohomish Estuary Wetland Integration Plan (SEWIP) including the SEWIP Salmon Overlay published in March 2001. Except for specific policies adopted as regulations in Section 33D.090, the SEWIP work will serve as the primary inventory information and "best available science" for those areas included in the SEWIP study area.

F. Administrative Provisions. The following constitute the administrative provisions for the Shoreline Master Program:

1. The provisions relating to the shoreline permit processing in Title 15, Local Project Review Procedures, which provides integrated processing of all city land use permits.

2. The provisions relating to the enforcement of city permits and codes in Chapter 2.23, Land Use Hearing Examiner.

This section of this chapter provides the criteria for processing shoreline substantial development, conditional use and variance permits. The procedures for permit processing, including SEPA and public review, are in Title 15, Local Project Review Procedures.

Although revisions to Title 15 are generally not required to be processed as SMP amendments, any revision to the designation of the type of review process required for shoreline permits in Title 15 shall be processed as Shoreline Master Program amendments. (Ord. 2600-02 § 2(2.1), 2002.)

**33D.020 Applicability—Basic requirements.**

Development and use of the shorelines of Everett shall be subject to the following basic requirements:

A. Consistency. No development shall be undertaken on the shorelines of Everett except those which are consistent with the goals, policies and use regulations of Everett's Shoreline Master Program and the Shoreline Management Act.

B. Substantial Development Permit. No substantial development shall be undertaken on the shorelines of Everett without first obtaining a shoreline permit from the city. Substantial development is defined in RCW 90.58.030(3)(e). Both the definition and exemptions have changed over time and are likely to change in the future. As of September, 2000, substantial development generally includes any development of which the total cost or fair market value exceeds two thousand five hundred dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state.

C. Conditional Use Permit. Any development or use that is listed as a conditional use in the SMP or is an

unlisted use, must obtain a conditional use permit even though the development is otherwise listed as exempt.

D. Variance. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a shoreline variance.

E. Exemptions. Exemptions are set forth in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515. Exceptions include development such as normal maintenance or repair of existing structures, construction of most single-family residences, and some watershed restoration projects.

All exempt uses and developments must be consistent with the policies and provisions of the SMP and the Shoreline Management Act. The city may attach conditions of the approval of exempt development or uses as necessary to assure consistency of the project with the SMP and the Act.

F. Where provisions of the Shoreline Master Program conflict, the more restrictive provisions shall apply, unless specifically stated otherwise. (Ord. 2600-02 § 2(2.2), 2002.)

### 33D.030 Criteria for issuance of permits.

A. Criteria for Issuance of Any Shoreline Permit. A shoreline permit shall be granted only when the proposed development is consistent with:

1. The policies and procedures of the Shoreline Act of 1971, as amended;
2. Everett's Shoreline Master Program; and
3. The State Environmental Policy Act.

B. Criteria for Issuance of a Conditional Use Shoreline Permit. The conditional use provision allows greater flexibility in the implementation of the SMP by permitting the expansion of the range of uses permitted within the environments. The use regulations indicate which uses are conditional. In authorizing a conditional use, special conditions may be attached to the permit by the city or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the SMP and the Act.

Conditional use permits will be granted only after the applicant can demonstrate all of the following:

1. That the proposed use is consistent with the policies of RCW 90.58.020 and Everett's Shoreline Master Program.
2. That the use will not interfere with the normal public use of public shorelines.
3. That the use of the site and design of the project will be compatible with other authorized uses in the area and with uses planned for the area under the comprehensive plan and Shoreline Master Program.
4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located.

5. That the public interest suffers no substantial detrimental effect.

In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

Other uses which are not classified or set forth in the master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and any applicable requirements for conditional uses contained in the master program.

Uses which are listed as prohibited in the master program may not be authorized as a conditional use.

C. Criteria for Issuance of a Shoreline Variance. A variance deals with specific requirements of the master program and its objective is to grant relief from specific bulk, dimensional or performance standards when there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

1. Landward of the Ordinary High Water Mark and/or Landward of Any Wetland. Variance permits for development and/or uses that will be located landward of the ordinary high water mark and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided the applicant can demonstrate all of the following:

a. That the strict application of the bulk, dimensional or performance standards in Everett's master program precludes, or significantly interferes with, reasonable use of the property.

b. That the hardship which serves as the basis for granting of the variance is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size or natural features, and the application of the master program, and not, for example from deed restrictions or the applicant's own actions.

c. That the design of the project will be compatible with other authorized uses in the area and with uses planned for the area under the comprehensive plan and Shoreline Master Program and will not cause adverse effects to adjacent properties or the shoreline environment.

d. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area.

e. That the variance will be the minimum necessary to afford relief.

f. That the public interest will suffer no substantial detrimental effects.

2. Waterward of the Ordinary High Water Mark or Within Any Wetland. Variance permits for development and/or uses that will be located waterward of the ordinary

high water mark and/or within any wetland may be authorized provided the applicant can demonstrate all of the following:

a. That the strict application of the bulk or dimensional criteria in Everett's master program precludes all reasonable use of the property.

b. That the hardship which serves as the basis for granting of the variance is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

c. That the design of the project will be compatible with other authorized uses in the area and with uses planned for the area under the comprehensive plan and Shoreline Master Program and will not cause adverse effects to adjacent properties or the shoreline environment.

d. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area.

e. That the variance will be the minimum necessary to afford relief.

f. That the public rights of navigation and use of the shoreline will not be adversely affected by the granting of the variance.

g. That the public interest will suffer no substantial detrimental effects.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

Variations from the use regulations of this master program are prohibited. (Ord. 2600-02 § 2(2.3), 2002.)

## Article II. Definitions

### 33D.040 Definitions.

As used herein, the following words and phrases shall have the following meanings:

"Accretion" means the growth of a beach by the addition of material transported by wind and/or water. Included are such shoreforms as barrier beaches, points, and spits.

"Act" means Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended.

"Adaptive management" means the modification of management practices to address changing conditions and new knowledge. Adaptive management is an approach that incorporates monitoring and research to allow projects and activities, including projects designed to produce environmental benefits, to go forward in the face of some uncertainty regarding consequences. The key provision of adaptive management is the responsibility to change adaptively in response to new understanding or information after an action is initiated.

"Aquaculture" means the cultivation of fish, shellfish, and/or other aquatic animals or plants, including the incidental preparation of these products for human use.

"Bank full width" means the horizontal projection of bank full depth to the stream bank. Bank full depth means the elevation of the water surface of a stream flow having a return period of approximately one and one-half years measured from the line of maximum depth of the stream or thalweg. Most river channels are bordered by a relatively flat area or valley floor. When the water fills the channel completely, or is at bank full stage, this surface is level with the floodplain. The stream cuts down or builds up as climate and watershed conditions change because there is a new relation between discharge and sediment transport and storage. The channel will erode or modify its floodplain in response to changes in discharge and sediment. The former floodplain it had been constructing is thus abandoned. An abandoned floodplain is called a terrace. While a terrace is flooded on occasion, the active floodplain is frequently flooded by discharges that occur approximately every one and one-half to two years in the annual flood series.

"Base flood" means that flood that has a one percent probability of being equaled or exceeded in any given year (also referred to as the one-hundred-year flood).

"Base flood elevation" means the height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929 or other datum as specified.

"Beach enhancement" means the maintenance, restoration or enhancement of a beach to control erosion, protect/enhance existing public access/recreational areas, and/or restore or enhance aquatic habitats. Beach enhancement is usually accomplished by beach feeding, vegetation, drift sills, and other non-intrusive means. (Note that the definition does not include creation of new beach areas for public access and recreational use.)

"Breakwaters" means offshore structures aligned parallel to the shore to protect beaches, bluffs, moorages, or developed harbor areas from wave action. Breakwaters may be floating or not and may be connected to the shore or not.

"Bulkhead" means a structure erected parallel to and near the ordinary high water mark for the purpose of protecting adjacent uplands from the action of waves and currents, or to protect the perimeter of a fill.

"Channel migration zone (CMZ)" means the lateral extent of likely movement along a stream reach with evidence of active stream channel movement over the past one hundred years. Evidence of active movement can be provided from aerial photos or specific channel and valley bottom characteristics. A time frame of one hundred years was chosen because aerial photos and field evidence can be used to evaluate movement in this time frame. Also, this time span typically represents the time it takes to grow mature trees that can provide functional large woody

debris to most streams. In large meandering rivers a more detailed analysis can be conducted to relate bank erosion processes and the time required to grow trees that function as stable large woody debris.

With the exception of shorelands in or meeting the criteria for the “natural” and “rural conservancy” environments, areas separated from the active channel by legally existing artificial channel constraints that limit bank erosion and channel avulsion without hydraulic connections shall not be considered within the CMZ. All areas separated from the natural channel by legally existing structures designed to withstand the one-hundred-year flood shall not be considered within the CMZ. A tributary stream or other hydraulic connection allowing threatened or endangered species fish passage draining through a dike or other constricting structure shall be considered part of the CMZ.

“Class I beach” or “accretionary shoreline” means shorelines that have a dry, usable beach at all levels of tide. They are characterized by one or more beach dunes and a flat backshore area. On Puget Sound, the dune line is often marked by driftwood washed up by successive tides. Class I beaches are the most valuable recreational beaches on Puget Sound.

“Contiguous” means sharing a boundary or edge: touching.

“Critical saltwater habitat” means all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance, commercial and recreational shellfish beds, mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.

“Department” means the State Department of Ecology.

“Developed shorelines” means those shoreline areas that are characterized by existing development or permanent structures located within shoreline jurisdiction.

“Development” means a use, consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any state of water level.

“Dike” means an embankment to prevent flooding by a stream or other water body, often referred to as a levee.

“Director” means the director of the planning and community development department of the city of Everett.

“Dredge material” means the sand, gravel, or other earth removed from a stream, river, lake, or bay in a dredging operation.

“Dredging” means the removal of sand, gravel or other earth from a stream, river, lake, or bay for the purposes of deepening or widening a navigational channel or berthing area, deepening a recreational swimming area, or for

obtaining materials for landfill or other beneficial uses. Dredging does not include maintenance sediment removal at pipe inlets or outlets; or removal of material from man-made ponds, including backwash solids drying areas, stormwater ponds, or sewage lagoons. Excavation for the purposes of constructing utilities and other permitted structures shall not be considered dredging.

“Drift cell” or “drift sector” or “littoral cell” means a particular reach of marine shore in which littoral drift may occur without significant interruption, and which contains any and all natural sources of such drift, and also accretion shoreform(s) accreted by such drift. Each normal drift sector contains a feeding source (feeder bluff or estuary), driftway (the zone within which beach material is being transported), accretion shoreform or accretion terminals (areas where drift material accumulates, such as spit, points, or bars), and sector boundary.

“Drift sill” means a structure of rocks built into a beach as part of a natural beach protection used to preserve a beach by stopping the littoral sand drift, but which does not protrude above the finished grade of beach sediment.

“Ecological functions” means the physical, chemical, and biological processes that contribute to the proper maintenance of the aquatic and terrestrial environments that constitute the shoreline ecosystem. Ecological functions relevant to specific types of shorelines are:

1. Riverine.

a. Hydrologic processes: Maintaining a natural range of flow variability, sideflow and overflow channel functions, reducing peak flows and downstream erosion, and helping to maintain base flows.

b. Water quality: Temperature; removing excessive nutrients and toxic compounds.

c. Dynamic sediment processes: Sediment removal, stabilization, transport, deposition and providing spawning gravels.

d. Habitat for: Threatened, endangered, and priority species; aquatic and shoreline-dependent birds, invertebrates, and mammals; amphibians; and anadromous and resident native fish. Habitat functions may include, but are not limited to, shade, litter and woody debris recruitment, refugia, and food production.

e. Hyporheic functions: Water quality, water storage, vegetation base, and sediment storage.

2. Lacustrine.

a. Water quality: Removing excessive nutrients and toxic compounds and removing and/or stabilizing sediments.

b. Habitat for: Threatened, endangered, and priority species; aquatic and shoreline-dependent birds, invertebrates, and mammals; amphibians; and anadromous and resident native fish. Habitat functions may include, but are not limited to, shade, litter and woody debris recruitment, refugia, and food production.

### 3. Marine.

a. Water quality: Removing excessive nutrients and toxic compounds.

b. Dynamic sediment processes: Sediment removal, stabilization, transport, deposition, and providing spawning gravels.

c. Wave attenuation.

d. Habitat for: Threatened, endangered, and priority species; aquatic and shoreline-dependent birds, invertebrates, and mammals; amphibians; and anadromous and resident native fish. Habitat functions may include, but are not limited to, shade, litter and woody debris recruitment, refugia, and food production.

### 4. Wetlands.

a. Flood attenuation.

b. Water quality: Removing excessive sediments, nutrients and toxic compounds.

c. Ground water recharge.

d. Maintenance of base flows.

e. Nutrient filtering.

f. Habitat for: Threatened, endangered, and priority species; aquatic and shoreline-dependent birds, invertebrates, and mammals; amphibians; and anadromous and resident native fish. Habitat functions may include, but are not limited to, shade, litter and woody debris recruitment, refugia, and food production.

“Ecologically altered shoreline” means those shorelines where humans have directly or indirectly modified the vegetation or shoreline configuration in a manner that significantly influences or reduces the natural shoreline functions.

“Ecologically intact shoreline” means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In unmanaged forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies.

“Ecosystem-wide processes” means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition and specific chemical processes (e.g., flocculation) that shape landforms within a specific shoreline ecosystem and determine both the types of habitat that are present and the associated ecological functions and their processes. Ecosystem-wide processes include, but are not limited to:

1. Riverine Processes. Landform and channel erosion; sediment transport and load in channel and overbank; channel dynamics, including channel gradation and migration; and changes in channel form during flooding.

2. Lacustrine, Tidal Wave, and Current Processes. Wave erosion (including refraction), littoral drift, vertical transport, and tidal erosion and deposition.

“Erosion” means the wearing away of land surface by various natural agencies, the most important being water, in the form of seas, rivers, glacial ice, hoarfrost, and melting snow.

“Estuary” is the mouth of a river where tidal effects are evident, and where fresh water and sea water mix.

“Extreme low tide” means the lowest line on the land reached by a receding tide.

“Feasible” means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

1. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

2. The action provides a reasonable likelihood of achieving its intended purpose; and

3. The action does not physically preclude achieving the project’s primary intended legal use.

In cases where this SMP requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action’s infeasibility, the city may weigh the action’s relative public costs and public benefits, considered in the short- and long-term time frames.

Fill. See definition of “Landfill.”

“Floodway” means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetative ground cover conditions. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

“Gabion” means a structure composed of masses of rocks, rubble or masonry held tightly together usually by wire mesh so as to form blocks or walls. Gabions are sometimes used on heavy erosion areas to retard wave action or as foundations for breakwaters or jetties.

“Groin” (also referred to as a spur dike or rock weir) means a barrier type structure extending from the backshore or stream bank into a water body for the purpose of protection of a shoreline and adjacent upland by influencing the movement of water and/or deposition of material. Groins can preserve or build an accretion beach by trapping littoral sand drift on the updrift side.

“Guidelines” means those standards adopted by the department to implement the policy of the Shoreline Management Act for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.

“Harbor areas” means the area of navigable tidal waters between the inner and outer harbor lines where established in front of and within one mile of the corporate limits of an incorporated city or town by the Board of Natural Resources acting as the State Harbor Lines Commission in accordance with the provisions of the State Constitution. The right to place improvements upon this area for use of navigation and commerce may be leased from the state.

**Harbor Lines.**

1. “Outer harbor line” means a line located and established in navigable waters, per State Constitution, beyond which the state shall never sell or lease any rights whatever. This line is usually coincident with the U.S. Army Corps of Engineers pierhead line.

2. “Inner harbor line” means a line located and established in navigable tidal waters between the line of ordinary high tide and the outer harbor line, and constituting the inner boundary of the harbor area. This line is usually coincident with the U.S. Army Corps of Engineers bulkhead line.

“Hearings board” means the Shorelines Hearings Board established by the Act.

“Jetty” means a structure usually projecting out into the sea at the mouth of a river for the purpose of protecting a navigation channel, a harbor or to influence water currents and littoral drift.

“Lacustrine” means pertaining to a lake.

“Landfill” or “fill” means the addition of soil, sand, rock, gravel, sediment, earth retaining structure or other material (excluding solid waste) to an area waterward of the ordinary high water mark, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

“Letter of exemption” means a letter or other official certificate issued by the city to indicate that a proposed development is exempted from the requirement to obtain a shoreline permit as provided in WAC 173-27-050. Letters of exemption may include conditions or other provisions placed on the proposal in order to ensure consistency with the Shoreline Management Act, Chapter 173-26 WAC, and this Shoreline Master Program.

“Levee” means a natural or manmade embankment on the bank of a stream for the purpose of keeping flood waters from inundating adjacent land. Levees often have an access road along the top.

“Limited utility extension” means the extension of a utility service that:

1. Is categorically exempt under Chapter 43.21C RCW for one or more of the following: natural gas, electricity, telephone, water, or sewer;

2. Will serve an existing use; and

3. Will not extend more than two thousand five hundred linear feet within the shorelines of the state.

Littoral Drift. See “Longshore drift.”

“Local government” means city of Everett.

“Longshore drift,” “alongshore drift,” or “littoral drift” means that coastal process where sand which has been stirred into suspension by the turbulence of the breaking waves is transported along a shoreline, and deposited on a beach.

“Marine” means pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries.

“Master program” means the comprehensive use plan for a described area, and the use regulations, together with maps, diagrams, charts or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

“Mitigation” or “mitigation sequencing” means the following sequence of steps listed in order of priority, with step (1) being top priority:

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

2. 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;

3. Rectifying the impacts by repairing, rehabilitating, or restoring the affected environment;

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

5. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

6. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

When this master program requires mitigation, the mitigation sequence listed above must be followed.

“Multiple use” is management of land and water resources taking into account the many human demands on them with a view to all necessary and desirable uses; these demands change in nature and number through time.

“Navigable waters” means all bodies of water measured by government surveys unless otherwise declared by a court. Tidal water is navigable in law if in fact it is navigable though only at high tide.

“Non-water-oriented uses” means those uses that are not water-dependent, water-related, or water-enjoyment.

“Ordinary high water mark” on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence

and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that conditions exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.

“Park” means publicly owned land used for recreation and open space purposes.

“Permit” means any substantial development, variance, conditional use permit, or revision authorized under Chapter 90.58 RCW.

“Pier” means a structure generally built from the shore out over the water or floating upon the water used as a landing place for marine transport or for recreational purposes.

“Pollution of water” is contamination or other alteration of the physical, chemical, or biological properties of water, including changes in temperature, taste, color, or odor of the water, or the discharge into the water of any liquid, gaseous, radioactive, solid, or other substance that may create a nuisance or render such water detrimental or injurious to public health, safety or welfare. Broadly, water pollution means any change in water quality that impairs it for the subsequent user.

“Priority habitat” means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

1. Comparatively high fish or wildlife density;
2. Comparatively high fish or wildlife species diversity;
3. Fish spawning habitat;
4. Important wildlife habitat;
5. Important fish or wildlife seasonal ranges;
6. Important fish or wildlife movement corridors;
7. Rearing and foraging habitat;
8. Important marine mammal haul-out;
9. Refugia habitat;
10. Limited availability;
11. High vulnerability to habitat alteration;
12. Unique or dependent species; or
13. Shellfish beds.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a

consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife.

“Priority species” means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below:

1. Criterion 1—State-Listed or State Proposed Species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Department of Fish and Wildlife for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

2. Criterion 2—Vulnerable Aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or state-wide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

3. Criterion 3—Species of Recreational, Commercial, and/or Tribal Importance. Native and non-native fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

4. Criterion 4. Species listed under the Federal Endangered Species Act as either proposed, threatened, or endangered.

“Public access” means provision of physical or visual approach from upland or adjacent properties to shorelines or public waters available to the general public.

“Public shorelines” mean any shorelines owned in fee simple by any public agency.

It is a general rule that the state of Washington owns the surface of waters under the jurisdiction of the Shoreline Management Act, and therefore the public has a right to utilize the surface of such waters as long as there is no conflict with navigation.

“RCW” means Revised Code of Washington.

“Restore” means to significantly reestablish or upgrade shoreline ecological functions through measures such as revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic sediments. To restore does not necessarily imply returning the shoreline area to aboriginal, or pre-European settlement conditions.

“Revetment” means a sloped solid wall constructed of riprap or other substantial material, placed on stream banks or marine shorelines to retard bank erosion from high velocity currents or waves respectively.

“Riprap” means broken stone placed on shoulders, slopes or other such places to protect them from erosion.

“Riverine” means pertaining to a river or stream system, including associated lakes and wetlands.

“Shorelands” 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 Chapter 90.58 RCW. Any city may determine that portion of a one-hundred-year floodplain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

“Shorelines” means all the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except:

1. Shorelines of state-wide significance;
2. 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
3. Shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

“Shorelines in Everett and Everett’s urban growth area” include:

1. Silver Lake and its shorelands.
2. Lake Stickney and its shorelands.
3. Lake Chaplain Reservoir and its shorelands.
4. The portions of Woods Creek and the Sultan River within the Everett city limits and their shorelands.
5. The area of Port Gardner Bay from the Everett/Mukilteo city limit to the southern tip of Jetty Island lying between the extreme low tide and the ordinary high water mark and its shorelands.
6. That portion of Port Gardner Bay west of Jetty Island between the ordinary high water mark and extreme low tide and the portion of Jetty Island that is not a shoreline of statewide significance.

“Shoreline areas” and “shoreline jurisdiction” means all “shorelines of the state” and “shorelands” as defined in RCW 90.58.030.

“Shorelines of state-wide significance” within the city of Everett and the urban service area consist of:

1. All of the water area of Port Gardner Bay lying seaward from the line of extreme low tide, out to the city limits in mid-channel.
2. The Snohomish River and its associated shorelands from the southern city limits to the south tip of Jetty Island, including Steamboat Slough and Union Slough.

“Shorelines of the state” are the total of all “shorelines” and “shorelines of state-wide significance” within the state.

“Significant ecological impact” means an effect or consequence of a human-caused action if any of the following apply:

1. The action degrades or changes an ecological function or ecosystem-wide process to such a degree that the ecosystem can no longer perform the function at levels within its natural range of variability or that the performance of the function falls outside the range needed to maintain the integrity of other ecological processes in shoreline areas. As used in this definition, the normal range of variability does not include alterations caused by catastrophic events.

2. Scientific evidence or objective analysis indicates that the action could cause degradation or change to those ecological functions or ecosystem-wide processes described in subsection (1) of this definition under foreseeable conditions.

3. Scientific evidence indicates that the action could contribute to degradation or change to ecological functions or ecosystem-wide processes described in subsection (1) of this definition as part of cumulative impacts, due to similar actions that are occurring or are likely to occur.

Significant ecological impacts do not include impacts that are inconsequential to attaining the objectives of the act or to the protection and restoration of shoreline ecological functions or ecosystem-wide processes.

“Solid waste” means garbage, refuse, sludges, and other discarded solid materials resulting from industrial and commercial operations and from community activities. It does not include biosolids or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, or other common water pollutants.

“Stormwater” means that portion of precipitation that does not normally percolate into the ground or evaporate, but flows via overland flow, interflow, channels, or pipes into a defined.

“Substantial development” means any development of which the total cost or fair market value exceeds two thousand, five hundred dollars, or any development which materially interferes with normal public use of the water or shorelines of the state. Exceptions are set forth in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515.

“Threatened and endangered species” or “T & E species” means those native species that are listed in rule by the Washington State Department of Fish and Wildlife pursuant to RCW 77.12.020 as threatened (WAC 232-12-011) or endangered (WAC 232-12-014), or that are listed as threatened or endangered under the federal Endangered Species Act, 16 U.S.C. 1533).

“Transportation facilities of statewide significance” means the interstate highway system; interregional state principal arterials including ferry connections that serve statewide travel; regional transit systems as defined in

RCW 81.104.015; high capacity transportation systems serving regions as defined in RCW 81.104.015; intercity passenger rail services; intercity high-speed ground transportation; rail fixed guideway system, as defined in RCW 81.104.015, excluding yards and service and maintenance facilities; the freight and passenger railroad system as regulated by the Federal Railroad Administration, excluding yards and service and maintenance facilities; and in shoreline zones, and in adjacent zones where all or any portion of a development is within a shoreline designated area or zone, marine port and barge facilities and services that are related solely to marine activities affecting international and interstate trade, excluding centralized, high density concentrations of port, deep water port, and marine shipping facilities and services.

“Vessel” means ships, boats, barges, or any floating craft which are designed and used for navigation and do not interfere with normal public use of the water.

“View” means a sight (as of a landscape) regarded for its pictorial quality.

“Vista” means a distant view through or along an avenue or opening.

“WAC” means Washington Administrative Code

“Water-dependent use” means a use or portion of a use which cannot exist in a location that is not adjacent to the water but is dependent on the water by reason of the intrinsic nature of its operations. Examples of water-dependent uses include ship cargo terminal loading areas, fishing, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, hydroelectric dams, irrigation facilities, and sewer outfalls.

“Water-enjoyment use” means a recreational use, or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through the location, design and operation ensures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to:

1. Parks with activities enhanced by proximity to the water;
2. Piers and other improvements that facilitate public access to shorelines of the state;
3. Restaurants and hotels with water views and public access improvements;
4. Museums with an orientation to shoreline topics;
5. Aquariums;
6. Scientific/ecological reserves;

7. Resorts with uses open to the public and public access to the shoreline; and any combination of those uses listed above.

“Water-oriented use” means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

“Water quality” means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. When used in this SMP, the term “water quantity” refers only to development and uses regulated under the Shoreline Management Act and affecting water quantity, such as impermeable surfaces and stormwater handling practices. Water quantity, for purposes of this SMP, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

“Water-related use” means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

1. Of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

2. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Water-related uses include manufacturers of ship parts large enough that transportation becomes a significant factor in the product’s cost, professional services serving primarily water-dependent activities and storage of water-transported foods. Examples of water-related uses include the warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker, and log storage for water-borne transportation.

“Wetlands” means those areas inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Chapter 90.58 RCW) (Ord. 2736-03 § 1, 2003; Ord. 2600-02 § 2(7), 2002.)

**Article III. General Goals and Objectives**

**33D.050 Shoreline use element.**

A. Regulations.

1. All exterior lighting, including lighting of signs, shall be directed downward onto the site and away from other shoreline properties or nearby neighborhoods.

2. All shoreline development shall comply with the city's noise ordinance (Chapter 20.08), both during and after construction. The city may require the applicant to prepare noise studies to determine if a proposal is in conformance with the ordinance.

3. Warning devices on vehicles (back up beepers) are exempt from the city's noise ordinance, but are perceived as irritating by most people. When feasible, developments that abut residential zones must be designed to shield vehicle maneuvering and loading areas from residential areas by placement of buildings, berms, etc.

4. All shoreline developments shall be located, constructed and operated so as not to be a hazard to public health and safety.

5. Shoreline sites shall have a landscaping plan which is in scale and harmony with proposed structures and serves to provide some screening and buffering of the activities where this is appropriate.

6. For water-dependent uses and water-dependent portions of water-related uses located on the shoreline, the setback is zero. However, the planning director may require a setback to address environmental impacts and ensure consistency with other requirements of this SMP. (Ord. 2600-02 § 2(3.2), 2002.)

### **33D.060 Cultural resources element.**

#### **A. Regulations.**

1. All shoreline permits shall contain provisions which require developers to immediately stop work and notify the city and the Tulalip Tribes if anything of possible archaeological interest is uncovered during excavations or development and consult a professional archaeologist to inspect and evaluate the site. Failure to comply with this requirement shall be considered a violation of the shoreline permit.

2. An archaeological survey shall be required for any development that includes excavation into native soils (i.e., below any fill) unless an acceptable archaeological survey has previously been completed for the area. Archaeological survey reports and site investigation reports shall be made available to the Tulalip Tribes.

3. All permits issued for development in areas known to contain archaeological artifacts and data shall include requirements for the developer to provide for a site inspection and evaluation by a qualified archaeologist. The archaeologist report must include an analysis of the impacts of the development on the artifacts and data, and recommended mitigation measures. The report and mitigation measures must be approved by the city prior to the initiation of any development activity. Significant archaeological data or artifacts shall be reported to the State Office of Archaeology and Historic Preservation and shall be recovered before work resumes or begins on a project.

4. All development proposed for location on or adjacent to historic sites which are registered on the state or national historic register or have been recommended for such in the shoreline historic survey shall provide interpretive signs or other method of documenting the historic character of such sites.

5. Significant archaeological and historic resources shall be permanently preserved for scientific study, education and public observation. When the city determines that a site has significant archaeological, cultural, scientific or historical value based upon consultations with the State Office of Archaeology and Historic Preservation and the Tulalip Tribes, a substantial development permit shall not

be issued which would pose a threat to the site. The city may require that development be postponed in such areas to allow investigation of or public acquisition and/or retrieval and preservation of significant artifacts.

6. Archaeological sites located both in and outside the shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian Graves and Records) and Chapter 27.53 RCW (Archaeological Sites and Records) and shall comply with Chapter 25-48 WAC, as well as the provisions of this master program.

7. Access to identified historical or archaeological resources shall be designed and managed so as to give maximum protection to the resource and surrounding environment. (Ord. 2600-02 § 2(3.5), 2002.)

### **33D.070 Flood hazard reduction element.**

#### **A. Regulations.**

1. Structural flood hazard reduction activities must be in support of an allowable shoreline use that is in conformance with the provisions of this master program.

2. All development in the flood fringe and floodway overlay zones shall comply with Chapter 30 of this title, as applicable. In addition, all development located downriver from SR 529 shall be floodproofed in accordance with the provisions in Section 30.040C, as applicable.

3. Structural flood hazard reduction activities must comply with the requirements for shoreline modification activities in Section 6 of the Shoreline Master Program.

4. Structural flood hazard reduction measures shall only be permitted when nonstructural measures are not feasible. When structural flood hazard reduction measures are permitted, all impacts to the existing shoreline functions and priority species and habitats shall be mitigated to the extent feasible.

5. All new structural flood hazard reduction measures and improvements to existing structures shall include measures to restore ecological functions whenever feasible.

6. Many of the 2001 SEWIP assessment units designated Aquatic Conservancy in Section 4 of the Shoreline Master Program as well as the aquatic area west of Smith Island (AU 3.05) received high rankings partially due to high quality marsh edge and/or riparian vegetation along dikes adjacent to the aquatic areas. Where structural flood hazard reduction measures are needed to protect development inland from these dikes, when feasible, new dikes or other stabilization structures shall be constructed inland of the existing dikes, and the high quality vegetation shall be preserved and enhanced along the existing dike.

7. New structural flood hazard reduction measures shall be placed landward of the channel migration zone, except:

a. When necessary to accommodate development allowed under this Shoreline Master Program, where existing structures prevent active channel movement;

b. When necessary to accommodate actions that protect or restore ecological functions or ecosystem-wide processes, such as wetland restoration;

c. Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists;

d. Repair and maintenance of an existing legal use; provided, that such actions do not cause significant ecological impacts;

e. Development on a previously altered site where it is demonstrated that the development returns ecological functions and processes of the applicable section of the watershed or drift cell to a more natural condition;

f. Development consistent with a management plan approved by the Department of Ecology that is directed toward protecting and restoring ecological functions and ecosystem-wide processes;

g. Modifications to or additions to an existing legal use; provided, that channel migration is not further limited and that the new development includes appropriate ecological restoration;

h. Existing and ongoing agricultural practices; provided, that no new restrictions to channel movement occur; or

i. When the applicant demonstrates that no other alternative to reduce flood hazard to existing development is feasible.

8. River and stream channel direction modification, realignment and straightening shall be prohibited, unless proposed as part of an ecosystem restoration project.

9. All flood hazard reduction structures shall be constructed and maintained in a manner which does not degrade the quality of affected waters.

10. Removal of gravel for flood management purposes shall be prohibited unless associated with an ecosystem restoration project that does not result in significant ecological impacts to fish and wildlife. Note that this does not apply to dredging projects that meet the requirements of Section 33D.310. (Ord. 2600-02 § 2(3.6), 2002.)

**33D.080 Public access element.**

**A. Regulations.**

1. Public access shall be required to the extent allowed by law in the review of all shoreline substantial development and conditional use permits (including land division), except for projects which meet the following criteria:

a. Projects in the Municipal Watershed Environment.

b. Environmental remediation projects involving no proposed use of the property.

c. Projects involving only ecological enhancement and restoration, except that new dikes shall incorporate public access per Regulation 17.

d. In-water proposals with no demonstrated impact on public access or with a demonstrated increase in public

access, such as dredge material disposal at the PSSDA site and removal of existing pilings or other obstructions.

e. Projects in shoreline jurisdiction, with no waterfront, and no identified trail connections to existing or potential public access sites.

The remaining public access regulations in this section do not apply to the exceptions listed above.<sup>1</sup>

2. Public access shall be provided on-site, except for projects which meet the following criteria as determined by the planning director or hearing examiner:

a. The project is in the Deep Water Port environment.

b. The provision of public access would result in an unavoidable health or safety hazard to the public, that cannot be prevented by any practical means. The applicant must demonstrate that the health or safety hazards cannot be mitigated through the application of alternative design features or other solutions, such as regulating access by such means as maintaining a gate and/or limiting hours of use; designing separation of uses and activities (e.g., bridges, pedestrian overpasses or underpasses, fences, terracing, use of one-way glazing, hedges, landscaping, etc.).

c. The provision of public access would result in significant environmental harm, and the impact cannot be mitigated.

d. The provision of on-site public access is not practical (e.g., small or odd-shaped lots, lots where functional requirements of primary use would hinder access).

e. More meaningful access that is better than that provided by the application of the goals, objectives and policies of this plan can be provided off-site.

3. Projects which meet the criteria in Regulation 2 above must either construct off-site improvements or, if approved by the planning director, contribute to a public access fund established by the city to construct off-site public access improvements of comparable value.

4. Water-enjoyment uses and non-water-oriented uses that front on the shoreline shall provide continuous public access along the entire site's shoreline. Continuous access does not mean the access is equidistant from the OHWM or within a buffer.

5. A project proponent may participate in "public access banking" by providing public access improvements prior to the time a project is constructed.

6. Where a project is located within an area covered by an adopted public access plan, public access improvements shall be generally consistent with the adopted plan. However, the city may approve an alternative proposed by the applicant that meets the goals, objectives and policies in this SMP. Adopted public access plans include, but are not limited to, "An Urban Design Plan for Everett Harborfront," "Everett Harborfront Public Access Plan," "Ever-

1. Please note that Regulations 21 through 23 apply to all developments.

ett Central City Development Plan,” “A Pedestrian and Bicycle Access Plan for Everett’s Snohomish Riverfront,” the “Non-Motorized Transportation (Trail) Plan,” or as such shall be superseded or amended.

7. Except where clearly not feasible, public access improvements shall include construction of trails to implement the non-motorized transportation plan, or as such shall be superseded or amended.

8. Where the required public access improvements are part of an integrated system to be accomplished through a public/private effort, the city may permit the applicant to pay an amount equal to the construction cost of the required improvements in lieu of developing the improvements at the time of development. The funds from this permit will be designated by the city for a programmed capital improvement project which includes the public access improvements required by the project permit. The intent of this provision is to allow greater flexibility and cost effectiveness in creating a public access system than could be achieved if elements of the system were constructed individually.

9. Where feasible, development uses and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public’s physical access to the water and shorelines.

10. Public access provided by shoreline street ends, public utilities and public rights-of-way shall not be diminished.

11. Public access sites shall be connected directly to the nearest public street or trail.

12. Roads and railroads along public shoreline areas shall provide for safe pedestrian and bicycle circulation through the shoreline. Pedestrian circulation shall be provided to the shoreline unless the access meets the criteria in Regulation 2.

13. Public access improvements shall include provisions for persons with disabilities, where reasonably feasible.

14. Required public access improvements shall be fully developed and available for public use at the time of occupancy of the use or activity unless there are mitigating circumstances and an assurance device acceptable to the planning and community development director is in place.

15. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized land use. Said recording with the county auditor’s office shall occur at the time of permit approval. Future actions by the applicant and/or successors in interest or other parties shall not diminish the usefulness or value of the public access provided.

16. The standard state approved logo or other signs approved by the planning and community development director that indicate the public’s right of access and hours of access shall be constructed, installed and maintained by

the applicant. Signs may control or restrict public access as a condition of permit approval.

17. Public access improvements shall be designed to minimize impacts to environmentally sensitive areas, ecological functions, or ecosystem-wide processes. A biological assessment (planning director’s interpretation), and potentially a habitat management plan (Sections 33D.360 through 33D.590, Environmentally Sensitive Areas), shall be required for each project in shoreline jurisdiction. The city may require that buffers be increased based upon the results of that assessment. Mitigation of impacts shall be required as appropriate.

18. The city may require that parking facilities be provided in conjunction with required public access improvements.

19. Pedestrian access shall be required along new and reconstructed dikes, jetties and groins, except where the access would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, significant unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

20. Publicly financed or subsidized shoreline erosion control measures shall not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, or security. Public access improvements shall be incorporated into such projects except when exempted by Regulations 1 or 2 above.

21. Existing public access shall not be eliminated unless the applicant shows that there is no feasible alternative and replaces the public access at another location.<sup>1</sup>

22. The placement and design of structures on shoreline sites shall be done in a manner which is least detrimental to shoreline views and vistas. In certain instances this may be accomplished by orienting the length axis of the building and/or operation parallel to the view line. This regulation applies even if off-site public access is provided.<sup>1</sup>

23. Any building or structure within two hundred feet of the ordinary high water mark, in excess of thirty-five feet in height shall provide data showing that it will not obstruct the view of a substantial number of residences on the areas adjoining such shorelines. This regulation does not apply to cranes, utility poles or other devices required to carry on water-dependent operations. (The intent of this regulation is not to reduce the height limitation presently allowed in any multi-family zone.) This regulation applies even if off-site public access is provided.<sup>1</sup> (Ord. 2600-02 § 2(3.7), 2002.)

1. Please note that Regulations 21 through 23 apply to all developments.

**33D.090 Conservation element.****A. Regulations.**

1. All development activities shall comply with the city's environmentally sensitive area ordinance, Sections 33D.360 through 33D.590, in effect on March 21, 2001, and Planning Director Interpretation No. 2-2000, Interim Procedures, Endangered Species Act Listing for Chinook Salmon and Bull Trout, unless more stringent requirements are adopted by city council subsequent to that date.

2. All developments shall comply with other local, state and federal regulations relating to critical areas, as applicable.

3. Best available science shall be used in identifying, evaluating and mitigating impacts of development proposals. The city shall require sufficient geological, hydrological and biological studies to determine the impacts of the proposal. (See Sections 33D.360 through 33D.590 and Planning Director Interpretation No. 2-2000 in Appendix A.)

4. Area-wide and watershed-based plans adopted by city council shall be given substantial weight in determining whether impacts to wetlands and aquatic areas are adequately evaluated and compensated.

5. When analyzing proposed development on geologically hazardous areas, geotechnical reports must address stabilization required over the life of the project. The geotechnical report must address the method of conveying stormwater to the nearest established, stable drainage course, within the naturally occurring drainage (or sub-drainage) basin, by pipe or by other approved method that will not result in erosion or flooding. Sufficient information and analysis must be provided to enable the city to determine that this requirement is being met. Appropriate easements will be required if conveyance must occur across private property.

6. Existing hydrologic connections between water bodies, water courses, and associated wetlands shall be protected and maintained.

7. All developments shall mitigate impacts to water quality using best available science. Compliance with city stormwater regulations consistent with state stormwater regulations shall be required. Water quality monitoring during construction and operation may be required by the planning and community development director or hearing examiner on a project by project basis based upon specific characteristics of the proposal.

8. Projects that would cause significant ecological impacts to water quality, quantity, or flows, including impacts to aesthetic qualities or recreational opportunities, shall be prohibited.

9. Existing vegetation along the shoreline in the area designated Urban Conservancy located north and west of the railroad tracks along Port Gardner Bay shall not be removed, except to replace non-native vegetation as permitted by the planning director through a buffer manage-

ment plan or to allow construction of a permitted use when impacts to vegetation are mitigated.

10. When disposing of landslide debris along Port Gardner Bay, the railroad and other property owners shall avoid eelgrass beds.

11. As existing shoreline properties are redeveloped, impervious surfaces not needed for current or planned uses shall be removed and shoreline buffers shall be enhanced and/or restored to the buffer width required by the SMP, except as necessary to accommodate access to the water necessary for the operation of water-dependent and water-related uses and/or public access. The planning director/hearing examiner shall have the authority to require redesign of the site and structures to minimize impacts to existing aquatic and buffer vegetation and to provide for buffer enhancement.

12. Land clearing, grading, filling and alteration of natural drainage features and land forms, where permitted, shall be limited to the minimum necessary for permitted development.

13. When this master program requires mitigation, the mitigation sequence identified in Section 33D.040 shall be used.

14. Where applicable, new development shall include environmental cleanup and restoration of the shoreline in accordance with state and federal requirements.

15. Interpretive signs shall be required for new developments with public access to explain the ecological resources on the development site.

16. Fencing shall be prohibited when significant wildlife movement in wildlife corridors would be impaired.

17. Where buffers are restored or enhanced, plantings shall generally be spaced and composed to mimic native buffer communities. However, plantings shall also be designed to take into account impacts to views and scenic vistas. Measures to protect views and scenic vistas may include, but not be limited to:

- a. Grouping large trees in clusters;
- b. Selecting species that grow to heights that allow views without requiring maintenance pruning;
- c. Clustering evergreens.

18. When public access is incorporated into buffers, buffer plantings shall be preserved and/or restored to the extent practicable. However, improvements such as paved trails, non-motorized public access bridge structures, overlooks, limited grassy recreational areas, and limited areas of hardened surfaces for direct access to the water may be permitted.

19. All plantings within environmentally sensitive areas and their required buffers shall be native species or native-hybrids. The city shall encourage developers to use native species for all landscaping within one hundred feet of the shoreline, except for areas permitted for grass in conjunction with public access, recreational developments, or dike maintenance.

20. When restoring and enhancing buffers along the Snohomish River and its estuary, overhanging vegetation shall be provided along dikes and shoreline stabilization structures when feasible.

21. Buffers shall be maintained to eliminate invasive non-native species when practicable. Assurance devices shall be required for restored and enhanced buffers.

22. Minimum two-hundred-foot buffers shall be required adjacent to areas designated Aquatic Conservancy (SO AUs 2.21, 2.28, 2.30, 2.31, 2.32, 2.41, 2.44) and SO AU 3.05 on Smith Island north of 12th St. NE and on North Spencer Island (see Figure 3.9-1). A function assessment must be completed for all projects to demonstrate that these buffers result in no net loss of wetland or stream function. A wider buffer will be required when necessary to protect wetland and stream ecological functions. The buffers may be reduced in accordance with PDI 01-005 where there has been prior substantial legal alteration to the buffer and when the project applicant: (1) completes an approved function assessment, and (2) prepares an approved habitat management plan that includes buffer enhancement that would improve the functional performance of the buffer and the associated critical area. In no case shall buffers be reduced below one hundred feet, except:

a. When a significant action that restores salmonid rearing habitat is incorporated into the proposal, including actions such as reconnection of a blind tidal channel, a dike breach, or removal of fill to create tidal marsh area.

b. Public access improvements such as trails and interpretive facilities may be included in portions of the buffer when the biological assessment and habitat management plan (if required) demonstrate no significant adverse impacts or that significant adverse impacts are mitigated.

c. Buffers may be reduced to provide a reasonable use of a property as specified in Section 33D.400.B, Reasonable Use Exception.

d. Expansion of existing facilities such as SR 529 and I-5 may be allowed when mitigation is provided for buffer impacts.

The city shall ask the appropriate resource agencies to review and comment on the function assessment and management plan.



23. Where dike setbacks are proposed or required, the wetland area within the setback area (i.e., between the waterward toe of the existing dike and the waterward toe of the setback dike) shall be delineated per the state wetland delineation manual. Areas not presently functioning as wetland will be credited toward the required buffer area.

24. The buffer on the south side of the Category 1 wetland north of the Simpson development pad shall be determined by a wetland analysis per Sections 33D.450 and 33D.520 of the Everett Municipal Code. This analysis shall include a habitat management plan (HMP) and buffer enhancement plan (BEP). Buffers recommended in the wetland analysis cannot be less than one hundred feet unless significant improvements are made to the wetland and buffer functions. In no case shall the buffer be reduced below seventy-five feet, and the trail shall be relocated outside of that buffer except where it connects to the trail along the river. The buffer shall be enhanced to provide for the potential for large woody debris recruitment into the wetland; provided, however that a spur trail to the wetland may be provided in the buffer to provide views into the wetland. Associated interpretive facilities such as signs, a viewing platform, and benches may also be provided in the buffers.

25. Buffers shall not be reduced below that required by Section 33D.450.A, Standard Buffer Width, for the Urban Conservancy designated wetlands in the marshland area except when the proposal includes significant actions that would restore salmonid rearing functions, such as removing dikes, improving channel connections, and removing fill to create tidal marsh, and except where existing improvements such as the railroad effectively limit the buffers in some areas.

26. Stormwater facilities are prohibited in Category 1 stream and wetland buffers. In lower-rated wetlands and streams, stormwater management facilities are permitted only within the outer twenty-five percent of the buffer; provided, that:

a. The buffer area has been previously substantially and legally altered and is degraded as defined by PDI 01-005.

b. Native vegetation and soils at the site should be protected and low impact development techniques should be used to promote infiltration of stormwater at the source. Stormwater facilities shall be integrated into the wetland buffer as a natural drainage system. The slopes and all areas that are disturbed shall be planted with native vegetation consistent with a buffer enhancement/mitigation plan. Above ground concrete walls and structures are not permitted. Below grade structures may be permitted only if it can be shown to the satisfaction of the planning director that the use of such materials fits with the natural design of the proposed facility and does not interfere with

wildlife passages or adversely impact biological functions of the buffer or the adjacent critical area.

c. The facilities must include a buffer enhancement and management plan that would improve the functional performance of the buffer and associated critical area.

d. The location of such facilities will result in no net loss of wetland ecological functions. For Category 2, 3, and 4 wetlands and streams, the planning director may grant an exception to the outer twenty-five percent limitation when the applicant demonstrates that the project would significantly increase wetland or stream function.

27. To the extent feasible, projects shall be designed to shield environmentally sensitive areas and their buffers from high noise generating activities such as vehicle loading and maneuvering areas and loud industrial activities through site design, use of fencing and berms, etc.

28. Lighting shall be directed downward onto the site and away from environmentally sensitive areas and their buffers.

29. The buffer along Port Gardner Bay at the tank farm site shall be determined at the time redevelopment of the site is proposed. The requirements for buffer/shoreline treatment shall be determined based upon the biological assessment for the redevelopment.

30. Whenever feasible, construction staging areas shall be located outside of environmentally sensitive areas and buffers as defined in the SMP.

31. Best available science shall be used in the design and implementation of compensation and restoration projects.

32. Monitoring shall be required for all projects where compensation is required for impacts to environmentally sensitive areas, and for projects where buffer enhancement and/or restoration is required. Monitoring requirements shall be based upon the performance standards defined for the project. Provisions shall be made for contingency measures to take in case the compensation does not meet performance standards within specified time frames.

33. For all mitigation proposals incorporating buffer enhancement, a five-year set-aside shall be required to cover the costs of monitoring, maintenance, and contingencies, including fifty percent of the cost of the plantings. The applicant's biologist shall submit a letter to the city upon installation of the buffer enhancement. Monitoring reports shall be submitted at the end of years one, three, and five following installation, unless more frequent reports are required in the approval. Contingencies must be implemented based upon the findings of the monitoring. The city may release the set-aside sooner than five years if the enhancement is determined by the city to be successful.

34. Construction sites and on-going activities involved in the handling and storage of fuel, chemicals, oil and other substances with the potential for spillage into

adjacent waters shall have operational procedures to prevent and handle potential spills. In addition physical structures which would contain any potential spills shall also be provided. Procedures shall meet applicable local, state and federal requirements.

35. SEWIP Regulations. When compensatory wetland mitigation is required for development in the estuary, the applicant must comply with the following regulations unless an alternative that provides equal or greater compensation is approved by state and federal resource agencies.

a. SEWIP Salmon Overlay.

Exception for Maulsby Mudflats: The compensation ratios in Regulations 35.a.3, 6, and 7, however, will not apply to the Maulsby Mudflats due to the high natural resource value of the mudflats and the higher uncertainty of successfully mitigating impacts to this site.

Compensation ratios for development at that site will be determined at the time a development is proposed based upon specific mitigation proposals and input from appropriate state and federal agencies.

(1) Unavoidable Impacts. Unavoidable adverse impacts to tidal habitat functions that result from loss of littoral habitat functions or area in the Snohomish River Estuary (including Port Gardner) shall be compensated by restoring or enhancing historic tidal aquatic habitat functions and littoral area in the estuary.

Top priority is assigned to compensatory mitigation through tidal restoration in areas identified in the restoration plan (SO Section 6), and within the same EMU, where possible (Regulation 35.a.5). In cases where loss of function does not have an associated loss of littoral habitat area, mitigation can be provided in the form of restoration or enhancement of existing littoral habitat area, or by provision of new habitat area.

(2) Mitigation Timing. Compensatory mitigation for unavoidable adverse impacts to tidal habitat functions shall be provided, either in advance of the impact or concurrently with the actions resulting in impact. (See Regulation 35.a.7 for a definition of concurrent mitigation.) No temporal lag shall occur between the time of loss of functions to the impact and the time when at least equivalent salmonid habitat functions are provided through mitigation actions.

(3) Minimum Compensation Requirements. The minimum requirements for compensation shall be:

(A) One acre (or fraction thereof) of restored littoral habitat for each acre (or fraction thereof) of littoral habitat lost from diking, dredging, and/or filling. Littoral habitat includes all area from -10.0 ft MLLW to at least OHW (where discernible; otherwise MHHW); area of both impact and mitigation sites is extended landward to the extent of the riparian zone as defined in SO Section 2.4.

(B) One acre (or fraction thereof) of tidal or palustrine habitat for each acre (or fraction thereof) of palustrine habitat lost to development (see also Regulation 35.a.15).

(C) 1.3 IVA-acres of habitat function for the limiting taxon (chinook or coho/bull trout) for each IVA-acre lost. This thirty percent increase in function accounts for uncertainty in the habitat assessments provided by the model as described above, and is intended to ensure that the SEWIP goal of a net increase in habitat function is achieved.

Minimum acreage compensation regulations do not apply to habitat restoration and enhancement projects that are not used for compensatory mitigation. Mitigation credit for log raft storage restrictions that remove a stressor from a tideflat are only allowed as mitigation for lost habitat function, not area. Note that loss of riparian function above OHW should be scored by the model, and should be compensated.

(4) Out-of-Kind Compensation.

(A) Development impacts to tidal or tidally influenced habitats shall not be compensated for with palustrine wetland enhancement, restoration, or creation.

(B) Development impacts to palustrine wetland habitats may be compensated for with tidal habitat restoration or creation on an acre-for-acre basis. If nontidal mitigation is proposed for loss of nontidal palustrine wetlands in the SEWIP planning area, it should be reviewed to ensure that opportunities to recover tidal function would not be foreclosed. To replace palustrine wetland functions with palustrine wetland functions, the original SEWIP process and vegetated wetland model applies (City of Everett et al., 1997).

(C) The tidal habitat model shall be used to ensure that adequate replacement of salmonid habitat function is provided (i.e., it is assumed that within the regulations of SEWIP, the model will provide for replacement of habitat for salmonids, except that impacts to eelgrass will be evaluated and compensated for in accordance with WDFW mitigation policies).

(D) Out-of-kind compensation for the two watershed process-based functions identified in the tidal habitat model (e.g., LWD recruitment, feeder bluffs) shall be prohibited, except for cases where tree removal is required for maintenance of the integrity of functional dikes.

(5) Where Compensation Can Occur.

(A) Compensation for impacts to vegetated palustrine wetlands may occur within any EMU, with either created, enhanced, or restored tidal habitat. However, to replace palustrine wetland functions with palustrine wetland functions, the original SEWIP process and vegetated wetland model applies. See the 1997 SEWIP Regulations after Regulation 35.a.15 below.

(B) Compensation for impacts to tidal (i.e., anadromous fish) habitats must occur with tidal habitat creation, enhancement, or restoration, preferably within the same

EMU (SO Figure 3.1) or secondarily within the adjacent downstream EMU, with the following exceptions:

(C) Because the nature of salmonid habitat functions provided by the salmonid habitat in EMU 7 (Port Gardner shoreline) is somewhat different from those provided in EMUs upstream in the estuary, impacts in EMU 7 shall be compensated only in EMUs 4 or 7.

(D) Opportunities for habitat restoration in the highly modified habitats in EMUs 5 and 6 are limited; therefore, impacts in EMUs 5 and 6 may be compensated in EMUs 2, 3, 4, 5, or 6. Because EMUs 1, 2, and 6 have the smallest proportions of their total acreage that is salmon habitat (SO Table 4.2) within their boundaries, further reduction of habitat area and function should be avoided.

(E) Impacts in EMU 3 may be compensated in EMUs 2, 3, or 4.

(6) How Compensation Is Calculated. The SEWIP assumes that in all cases there will be no temporal loss of cumulative salmonid habitat function as calculated by the model. Where mitigation is provided in advance of project impacts (e.g., the performance standards established for year five have been met at the mitigation site), the acreage of compensation shall be calculated from the IVA function performance scores (year five) using the following ratio; provided, that a minimum compensation requirement of 1:1 acres (“no net loss”) of area is met; and provided, that the minimum functional replacement compensation requirement of Regulation 35.a.3 is met.

$\frac{\text{IVA score per acre function lost} \times \text{acres lost}}{\text{IVA score per acre function gained at mitigation site}} = \text{Acres of compensation}$
--

(7) How Compensation Is Calculated (Concurrent Mitigation). The acreage of compensation for concurrent mitigation (mitigation that is constructed but may not be fully functioning at the time impact is incurred) shall be calculated from the IVA function performance scores at the time of impact; provided, that the minimum compensation requirements of Regulation 35.a.3 are met at all times (see Table 5.1 in the Salmon Overlay for example):

$\frac{\text{IVA score per acre function lost} \times 1.3 \times (\text{acres lost})}{\text{IVA score per acre function gained (at the time of impact)}} = \text{Acres of compensation}$
--

(8) Compensation Based on Limiting Function. Under Regulations 35.a.6 and 7, the acreage needed for compensation shall be calculated separately for the chinook and coho/bull trout functions. Whichever function requires the greater acreage for compensation (i.e., which is the limiting function) will determine the required overall compensation acreage in order to ensure that the limiting function is adequately compensated for. Excess compensation

acreage for the nonlimiting function shall not be available as compensation for other habitat impacts.

(9) Use of Average Restoration Potential per Acre. An average restoration potential per acre shall be used to establish the compensation requirements in cases where several AUs are restored simultaneously (as in a compensation bank) or where several individual project impacts are to be mitigated in a single restoration project. This average is calculated by summing the potential increase in IVA-acre points and dividing by the total acreage of the site. This average shall then be used to determine the acres of compensation required according to Regulations 35.a.3 and 6 or 7.

(10) Guidelines for Developing Compensatory Mitigation Plans. Compensatory mitigation and monitoring plans (CMMPs) with applicable performance standards submitted under the SEWIP plan should follow the inter-agency “Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals” (Department of Ecology Publication No. 94-29), which is subject to amendment by the Department of Ecology and future acceptance by the city. CMMPs shall be circulated to the SSOTAC for review and comment and for adaptive management purposes as provided in Salmon Overlay Section 5.6. Applicants should consider the overall restoration objectives set forth in SO Chapter 6.

(11) Performance Criteria. Standards and performance criteria shall be established for each mitigation action as described in SO Section 5.6 and stated in the CMMP.

(12) Monitoring Requirements. Each compensation site shall be monitored over a period of up to ten years as described in SO Section 5.6.

(13) Threatened, Endangered, or Commercially Important Species. All tidal and associated riparian areas within the SEWIP planning area are designated critical habitat for chinook salmon and are likely to also constitute important habitat for coho salmon and anadromous native char. If areas in the UGA have other threatened, endangered or commercially important species, then the compensation plan shall incorporate design measures to mitigate any impacts to these species and their habitats.

(14) Projects with Impacts Outside of the Estuary Study Area. Projects with impacts outside of the SEWIP study area may be compensated for within the SEWIP study area, consistent with the SEWIP restoration and/or enhancement goals and objectives.

(15) Loss of Palustrine Wetlands. Compensation is required where existing palustrine wetlands will be converted to tidal habitat for compensatory mitigation. The acreages calculated per this regulation are set aside within the restored mitigation site and may not be considered as compensatory mitigation. However, to provide an incentive to developers to undertake tidal restoration as compensatory mitigation, while recognizing the range of functions provided by different types of isolated palus-

trine wetlands, the following ratios shall apply for wetlands, based on existing scores from the SEWIP freshwater model (SO Figure 5.1). Alternatively, a project proponent may rescore the site using that model to reflect existing conditions:

(A) Fourth quartile (highest quality)—0.75 acre for each acre lost;

(B) Third quartile (moderate quality)—0.5 acre for each acre lost;

(C) Second quartile (fair quality)—0.3 acre for each acre lost;

(D) First quartile (lowest quality)—0.1 acre for each acre lost;

(E) No compensation shall be required for vegetated freshwater wetlands lost through restoration of tidal functions, if the restoration project is not used as compensatory mitigation.

b. 1997 SEWIP Regulations (Apply to Palustrine Compensation Only). The following mitigation ratios apply only to the development footprint identified in Figure 2.3A in SEWIP.

(1a) Unavoidable Impacts. Unavoidable impacts to wetland functions in the Snohomish River Estuary shall be compensated by restoring historic wetlands in the estuary identified in the restoration plans (Table 2.1 and Chapter 5 in the 1997 SEWIP).

(1b) Where Compensation Can Occur. Compensation for impacts to vegetated palustrine wetlands may occur within the same ecological management unit or within the adjacent ecological management unit (See EMU Map, Figure 2.2 in the 1997 SEWIP).

(1c) Impacts to Palustrine Wetlands Inside the SETAC Approved Development Footprint (SEWIP Figure 2.3A). Prior to issuance of certificate of occupancy or public works permit final inspection, the applicant must submit (1) an as-built signed by the wetland biologist documenting that the wetland mitigation has been constructed per plans; and (2) performance guarantees for monitoring, maintenance, and contingency.

(1d) Impacts to Palustrine Wetland Mitigation Outside the SETAC Approved Development Footprint (SEWIP Figure 2.3A). Mitigation for impacts to palustrine wetlands outside the development footprint shall be completed concurrently or in advance of the impact to the wetland. Concurrent mitigation is defined as mitigation that has been constructed and has met the ratios established in Regulation 35.b.3a by the time impact is incurred. Advanced mitigation is mitigation that meets the five-year performance standards at the time of impact.

(2) Minimum Compensation Requirements. The minimum requirements for compensation will be one acre of restored wetland for one acre of wetland lost.

(3a) How Compensation Is Calculated. The acreage of compensation shall be calculated from the IVA function performance scores using the following ratio; provided,

that the minimum compensation requirement of Regulation 35.b.2 is met (see 1997 SEWIP Figure 2.4 for example):

IVA score per acre function lost	X (1.25) X (acres lost) =	Acres of compensation
IVA score per acre function gained		

This regulation applies when the restoration credits are less than the impact debits and the calculated “acreage of compensation” will not be less than the acreage loss; otherwise Regulation 35.b.2 should be applied. The 1.25 multiplier is included in this ratio calculation to compensate for the temporal loss of wetland functions at the impact site during the time required for the functions at the compensation site to approach the “pre-impact” level of performance.

(3b) How Compensation Is Calculated When Regulations 35.b.2 and 8 Are Met. In cases where the performance standards established for “year five” have been met (see Regulation 35.b.9), the acreage of compensation shall be calculated from the IVA function performance scores using the following ratio; provided, that the minimum compensation requirement of Regulation 35.b.2 is met:

IVA score for per acre function lost	X (acres lost) =	Acres of compensation
IVA score for per acre function gained		

This regulation is intended to provide incentive to developers for the creation of large wetland compensation banks. The 1.25 “temporal” multiplier is not included in this ratio calculation because the compensation site has demonstrated through monitoring (Regulation 35.b.8) that wetland functions are performing as proposed in the compensatory mitigation plan.

(4) Compensation Is Based on Limiting Function. Under Regulations 35.b.3a and 3b, the acreage needed for compensation shall be calculated separately for the water quality improvement and habitat groups of functions. Whichever group of functions requires the greater acreage for compensation (i.e., which is the limiting group of functions<sup>1</sup>) shall determine the required “overall compensation acreage<sup>2</sup>” in order to ensure that the limiting function is adequately compensated for. Excess compensation

1. The “limiting group of functions” shall be defined as that group of functions (e.g., water quality improvement or habitat) which exhibits the least average increase in IVA score per acre for a particular restoration site.

2. “Overall compensation acreage” shall be defined as the required acreage of compensation calculated from Regulation 35.b.3a and 35.b.3b for the limiting group of functions (e.g., either water quality improvement or habitat).

acreage<sup>1</sup> for the nonlimiting function shall not be available as compensation for other wetland impacts.

(5) When to Use Average Restoration Potential per Acre. An average restoration potential per acre shall be used to establish the compensation requirements in cases where several wetland complexes are restored simultaneously (as in a compensation bank). This average is to be calculated by summing the potential increase in IVA-acre points for each group of functions and dividing by the total acreage of the site. This average shall then be used to determine the acres of compensation required according to Regulations 35.b.2 or 3.

(6) SEWIP Restoration Plan Is a Guide for Objectives and Goals. The SEWIP restoration plan for an individual site must be used as the basis for setting the goals and objectives of any compensation proposed.

(7) Guidelines for Developing Compensatory Mitigation Plans. Compensatory mitigation plans with applicable performance standards submitted under the SEWIP plan should follow the interagency "Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals" (Department of Ecology Publication No. 94-29, 40 pp.).

(7a) Threatened, Endangered or Commercially Important Species. If areas in the development footprint have SEWIP-mapped "threatened, endangered or commercially important species," then the compensation plan shall incorporate design measures to mitigate any impacts to these species. (See 1997 SEWIP Figures 2.5 and 2.6.) SETOC will amend the plan to incorporate any new mapped areas of threatened, endangered or commercially important species. If a COE regional permit is adopted, then the amendment process must meet the requirements of that permit.

(8) Monitoring Requirements. Each compensation site shall be monitored over a period of ten years. The wetland compensation plan shall establish a set of applicable performance standards. Additionally, the compensation plan shall include a post-project assessment of the site using the IVA model to determine if the projected increase in the IVA scores (restoration potential) for the compensation site has been achieved. When the performance standards established for year five are met (which may occur during any year of the monitoring period) and the increase in IVA points projected for the compensation site has occurred, then Regulation 35.b.3b may be applied.

(9) Projects with Impacts Outside of the Estuary Study Area. Projects with impacts outside of the SEWIP study area may be compensated for within the SEWIP study area, consistent with the SEWIP restoration and/or enhancement goals and objectives.

1. "Excess compensation acreage" is when the calculated acreage of compensation for the "nonlimiting" group of functions is subtracted from the "overall compensation acreage."

36. Palustrine wetlands on Smith Island north of 12th Street, on North Spencer Island, and on the city-owned property southwest of Weyco Island (AU 256) shall be categorized per Figure 3.9-2 (based upon SEWIP wildlife function). Category 1 wetlands shall have a minimum buffer of two hundred feet. Category 2 wetlands shall have a minimum buffer of one hundred feet. Category 3 wetlands shall have a minimum buffer of fifty feet. A function assessment must be completed for all projects to demonstrate that these buffers result in no net loss of wetland and stream function. A wider buffer will be required when necessary to protect wetland and stream functions. The buffers may be reduced in accordance with PDI 01-005 where there has been prior substantial legal alteration to the buffer and when the project applicant: (1) completes an approved function assessment, and (2) prepares an approved habitat management plan that includes buffer enhancement that would improve the functional performance of the buffer and associated critical area. In no case shall the buffers be reduced by more than fifty percent, except:

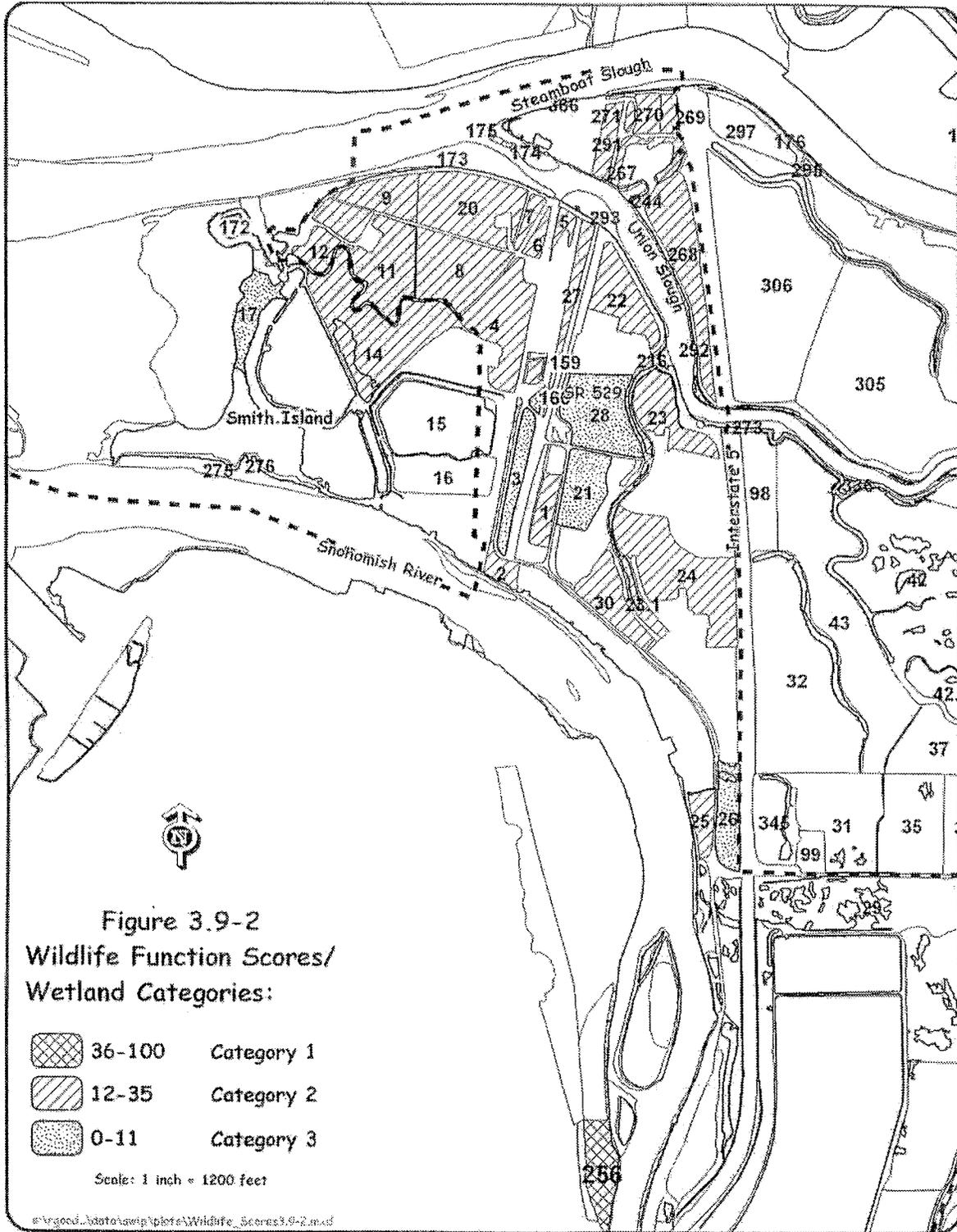
a. When a significant action that restores salmonid rearing habitat is incorporated into the proposal, including actions such as reconnection of a blind tidal channel, a dike breach, or removal of fill to create tidal marsh area.

b. Public access improvements such as trails and interpretive facilities may be included in portions of the buffer when the biological assessment and habitat management plan (if required) demonstrate no significant adverse impacts or that significant adverse impacts are mitigated.

c. Buffers may be reduced to provide a reasonable use of a property as specified in Section 33D.400.B, Reasonable Use Exception.

d. Expansion of existing facilities such as SR 529 and I-5 may be allowed when mitigation is provided for buffer impacts.

The city shall ask the appropriate resource agencies to review and comment on the function assessment and management plan.



37. In implementing Sections 33D.460.E and 33D.500.E, the city will require protective covenants for all development proposals on properties that contain environmentally sensitive areas, except where an easement is obtained for infrastructure projects and the easement does not contain required mitigation. (Ord. 2859-05 §§ 10—15, 2005; Ord. 2600-02 § 2(3.9), 2002.)

#### **Article IV. Shoreline Environment Designations**

See Figures 4.1 through 4.23 at the end of this chapter. (Ord. 2859-05 §§ 6, 7, 2005)

#### **Article V. Shoreline Use Policies and Regulations**

##### **33D.100 Uses permitted within environments and use regulations.**

Table 5.1, the Shoreline Use Table, identifies uses permitted within specific environments. The table displays whether the use is permitted outright or as a conditional use in each environment. The numbers refer to special conditions and clarifications on the following page. See Section 33D.030 for the review criteria for conditional uses.

Shoreline uses and activities not specifically identified, and for which policies and regulations have not been developed, will be evaluated as a conditional use activity. They will be required to meet the intent of the goals and objectives of Everett's Master Program, the policies of the Shoreline Management Act of 1971, as amended, and should be consistent with the management policy and character of the shoreline environment in which they are proposed to be located.

"Shoreline modification activities" are distinguished from "shoreline uses" in that they are specific construction actions taken in support of a use. Provisions for shoreline modification activities are covered in Article VI of this chapter.

Specific regulations for shoreline uses are provided in the remaining portion of this section.

Table 5.1 Shoreline Use Table

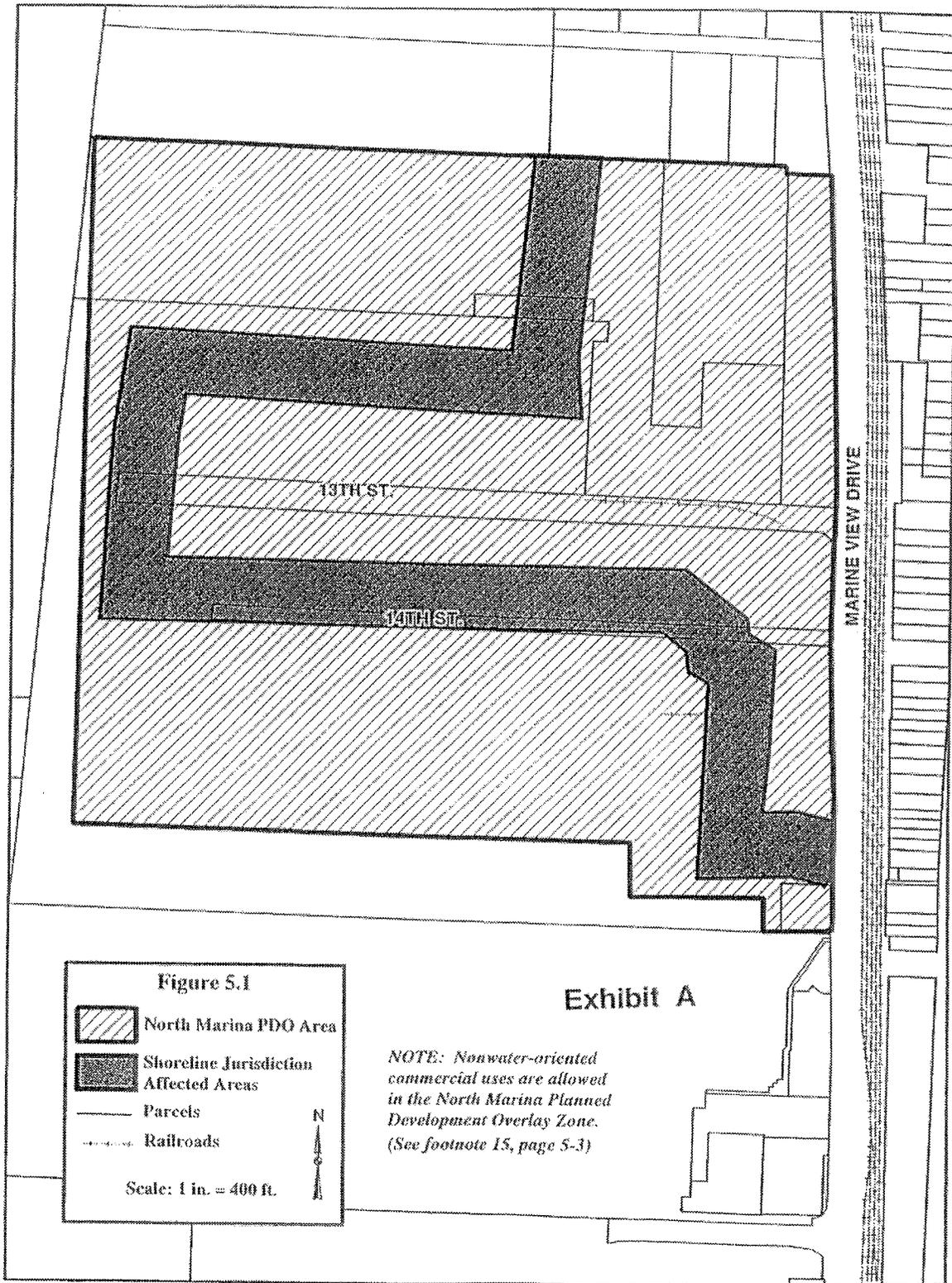
Environment Use	Deep Water Port	Maritime	Industrial	Mixed-Use Industrial	Multi-Use	Shoreline Residential	Conservancy Recreation	Conservancy	Conservancy Agriculture	Municipal Water Quality	Municipal Watershed	Aquatic	Aquatic Conservancy
Agriculture	X	X	X	P	X	X	P	X	P	P	X	X	X
Aquaculture	P	P	P	P	P	X	X	X	X	X	X	P	C
Boating Facilities	P	P	P	P	P	P	P	X	X	P	X	P	X
<b>Commercial</b>													
Water-dependent	P	P	P	P	P	X	P, 2	X	X	X	X	P, 12	X
Water-related	P	P	P	P	P	X	P, 2	X	X	X	X	P, 12	X
Water-enjoyment		P	P	P	P	X	P, 2	X	X	X	X	P	X
Nonwater-oriented	X	P, 15	P	P	P	X	P, 2	X	X	X	X	X	X
Forest Practices, 8	P	P	P	P	P	P	P, 3	X	P, 3	P	P	NA	NA
Industry	P	P	P	P	P, 6	X	C, 1	X	C, 1	X	X	P, 12	X
In-stream Structures	P	P	NA	NA	NA	NA	NA	NA	NA	P	P	P	C, 14
Log Storage and Rafting	P, 5	P, 5	P, 5	P, 5	X	X	X	X	X	X	X	X	X
Mining	X	X	X	X	X	X	X	X	X	X	P	X	X
Parking	P	P	P	P	P	P	P	X	P	P	P	X	X
Recreational Development	P	P	P	P	P	P	P	P, 9	P, 9	X	X	P, 12	X
Residential Development	X	X	X	X	P	P	X	X	X	X	X	X	X
Signs	P	P	P	P	P	P	P	P, 7	P, 7	P, 4	P, 4	P, 10	X
Outdoor Advertising	X	X	X	X	X	X	X	X	X	X	X	X	X
Solid Waste Landfill and In-water Disposal	X	X	X	X	X	X	X	X	X	X	X	X	X
Solid Waste Collection Facilities	P	P	P	P	P	P	P	X	P	P	P	P	X
Solid Waste Transfer Stations	X	X	C	C	X	X	X	X	X	X	X	X	X
Transportation Facilities	P	P	P	P	P	P	P	P, 13	P	P	P	C, 11	C
Utilities and Utility Facilities	P	P	P	P	P	P	P	P	P	P	P	P	C, 14

Note that the proposed use must also be an approved use in the zoning code. For example, where industrial activities are permitted in the shoreline environment, the zoning code may limit permitted uses to certain kinds of industrial activities.

Overlay – WC zone area, shown on Figure 5.1 following this section.

(Ord. 2859-05 § 8, 2005; Ord. 2766-04 § 2 (part), 2004; Ord. 2713-03 § 2 (part), 2003; Ord. 2600-02 § 2(5.1), 2002.)

- P = Permitted Use (Note that the regulations in this section contain limitations on permitted shoreline uses)
- C = Conditional Use (See Section 33D.030 for conditional use criteria)
- X = Prohibited (Not allowed under any circumstances. Limitations in regulations do not apply)
- 1 = Permitted only in the Agriculture Zone for activities such as food processing.
- 2 = Permitted only in Public Parks for concessions.
- 3 = Permitted only in the Agriculture Zone.
- 4 = Directional signs only.
- 5 = New log storage activities are prohibited, except on dry land. Expansion of existing areas is prohibited where grounding will occur and in the Aquatic Environment.
- 6 = Permitted in the multi-use zones along the riverfront. However, industrial uses are limited to high tech, office-park-type, non-warehouse type activities.
- 7 = Only interpretive and public access signs.
- 8 = Forest practices are allowed in any environment when completed as part of a public access or mitigation/restoration proposal.
- 9 = Only minor public access improvements such as trails, boardwalks, overlooks, and interpretive signs are permitted. Associated facilities including parking, restrooms, etc., must be located outside of the Conservancy environment; provided, that only pervious surface parking for public access may be provided in the Conservancy Agriculture environment designated area. In addition, recreation associated with agricultural uses, such as demonstration farms, shall be permitted in the Conservancy Agriculture environment.
- 10 = Permitted on structures allowed over water.
- 11 = Expansion of existing facilities does not require a conditional use.
- 12 = Permitted to the pierhead/harbor line when the use is permitted on the adjacent shoreline site.
- 13 = A conditional use permit is required for expansion of the railroad in the Urban Conservancy environment along Port Gardner Bay.
- 14 = A conditional use permit is not required for water-dependent utilities.
- 15 = Non-water-oriented commercial uses are only allowed in the North Marina Planned Development



**33D.110 Agricultural practices.****A. Regulations.**

1. New agricultural activities shall provide buffers adjacent to the Snohomish River and other water bodies consistent with the SMP.
2. Manure lagoons shall maintain a minimum of a one-hundred-foot setback from any water body and shall be constructed to an elevation of two feet above the base flood level occurring at the site.
3. All liquid manure storage shall be diked and, if possible, covered.
4. The application of agricultural fertilizers, including animal waste, herbicides and pesticides shall be set back at least one hundred feet from the shoreline. Aerial spraying of fertilizers, chemical pesticides or herbicides is permitted only when approved by a state agency.
5. Livestock confinement and/or feed lots, stock piles of manure solids, and storage of noxious chemicals are prohibited within two hundred feet landward of OHWM.
6. During the application of agricultural chemicals (including fertilizers and pesticides) direct runoff into adjacent water bodies or aquifer recharge areas shall be prevented. Adequate provisions shall be made to minimize their entry into any body of water.
7. Environmentally sensitive areas and required buffers shall be protected from damage due to concentration and overgrazing by livestock by providing the following:
  - a. Suitable bridges, culverts or ramps for stock crossing;
  - b. Ample supplies of clean fresh water in tanks for stock watering; and
  - c. Fencing or other grazing controls to keep livestock out of environmentally sensitive areas and their buffers.
8. Agricultural practices shall prevent and control erosion of soils within shoreline areas and minimize siltation, turbidity, pollution and other environmental degradation of watercourses and wetlands. (Ord. 2600-02 § 2(5.2), 2002.)

**33D.120 Aquaculture.****A. Regulations.**

1. Aquaculture activities shall be prohibited if it is determined that the proposed facility will have a negative impact on shoreline ecology or the habitat, abundance or genetic diversity of native species.
2. Applicants shall include in their applications all information needed to conduct thorough evaluations of their aquaculture proposals prepared by qualified professionals, including but not limited to the following:
  - a. Species to be reared;
  - b. Aquaculture method(s);
  - c. Potential for disease and escapement;

- d. Anticipated use of any feed, pesticides, herbicides, antibiotics, or other substances, and their predicted impacts;
- e. Manpower/employment necessary for the project;
- f. Harvest and processing location, method and timing;
- g. Location and plans for any shoreside activities, including loading and unloading of the product, processing, crew quarters, etc.;
- h. Methods of waste management and disposal and odor control;
- i. Environmental assessment, including best available background information on water quality, tidal variations, prevailing storm wind conditions, current flows, flushing rates, aquatic and benthic organisms, and probable impacts on water quality, biota, currents, littoral drift, and any existing shoreline or water uses. Further baseline studies may be required depending upon the adequacy of available information, existing conditions, the nature of the proposal, and probable adverse environmental impacts. Baseline monitoring shall be at the applicant's expense unless otherwise provided for;
- j. Method of predator control;
- k. Use of lights and noise generating equipment over water that minimizes interference with surrounding uses; and
- l. Other pertinent information deemed necessary by the city.

3. The location of floating and submerged aquaculture structures shall not restrict navigation to or along the shoreline or interfere with general navigation lanes and traffic or "usual and accustomed fishing and shellfish harvest locations." Floating structures shall remain shoreward of principal navigation channels. Other restrictions on the scale of aquaculture activities to protect navigational access may be necessary based on the size and shape of the affected water body.

4. No aquatic organism shall be introduced into city salt or fresh waters without prior written approval of the Washington Department of Fish and Wildlife or the appropriate regulatory agency for the specific organism proposed for introduction. The required approval shall be submitted in writing to the city planning and community development department prior to the introduction or the granting of the permit, whichever comes first.

Unless otherwise provided in the shoreline permit issued by the city, the repeated introduction of an approved organism in the same location shall require approval by the city only at the time the permit is issued. Introduction for purposes of this section shall mean the placing of any aquatic organism in any area within the waters of city regardless of whether it is a native or resident organism and regardless of whether it is being transferred from within or without the waters of city.

5. Aquacultural structures and activities that are not water-dependent (e.g., warehouses for storage of products, parking lots) shall, be located inland of the ordinary high water mark, upland of water-dependent portions of the project, and shall minimize detrimental impacts to the shoreline.

6. Aquacultural structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and equipment shall be removed or repaired promptly by the owner. Where any structure might constitute a potential hazard to the public in the future, the city shall require the posting of a bond commensurate with the cost of removal or repair. The city may abate an abandoned or unsafe structure, following notice to the owner, if the owner fails to respond in thirty days and may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement. Bonding requirements shall not duplicate requirements of other agencies.

7. Legally established aquacultural enterprises, including authorized experimental projects, shall be protected from incompatible uses which may seek to locate nearby. Demonstration of a high probability that such an adjacent use would result in damage to, or destruction of such an aquacultural enterprise shall be grounds for the denial of that use.

8. Operational monitoring may be required if and to the extent that it is necessary to determine, ensure or confirm compliance with predicted or required performance. Such monitoring requirements shall be established as a condition of the permit and shall be conducted at the applicant's (operator's) expense.

9. No processing of any aquacultural product, except for the sorting or culling of the cultured organisms and the washing or removal of surface materials or organisms, shall occur in or over the water after harvest, unless specifically approved by permit. All other processing and processing facilities shall be located on land and shall be governed by, in addition to these provisions, the policies and regulations of other applicable sections of this master program, in particular, provisions addressing commercial and industrial uses.

10. Aquacultural wastes shall be disposed of in a manner that will ensure compliance with all applicable governmental waste disposal standards. No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.

11. Aquacultural uses and facilities shall be located at least six hundred feet from any habitats of special significance for birds or mammals (as determined by the Washington State Department of Wildlife); provided, that fish net-pens and projects involving substantial substrate modification shall be located one thousand, five hundred feet or more from such areas; provided further, that lesser distances may be authorized if the applicant demonstrates

that the wildlife resource will be protected. Greater distances also may be required if supported by the reviewing resource agencies.

12. Hatchery and other aquaculture operations shall be required to maintain a minimum fifty-foot-wide vegetated buffer zone along the affected streamway; provided, that clearing of vegetation shall be permitted for essential water access points.

13. Predator control shall not involve the killing or abusive harassment of birds or mammals. Approved con-

trols include but are not limited to double netting for seals, overhead netting for birds, and three-foot-high fencing or netting for otters. The use of other non-lethal, non-abusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.

14. Permit applications shall identify all pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling agents, or other chemicals that the applicant anticipates using. No such materials shall be used until approval is obtained from all appropriate state and federal agencies, including but not limited to the U.S. Food and Drug Administration, the Washington State Department of Ecology, Fisheries and Agriculture, as required, and proof thereof is submitted to the city. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing, or hand washing, rather than chemical treatment and application.

15. For aquacultural projects using over-water structures, storage of necessary tools and apparatus seaward of the ordinary high water mark shall be limited to containers of not more than three feet in height, as measured from the surface of the raft or dock; provided, that in locations where the visual impact of the proposed aquaculture structures will be minimal, the city may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant. Materials which are not necessary for the immediate and regular operation of the facility shall not be stored seaward of the ordinary high water mark.

16. Proposals for mechanical clam harvesting or other activities that involve substantial substrate modification through dredging, trenching, digging, or adverse sedimentation shall be prohibited in existing kelp beds or in beds of native eelgrass (*Zostera marina*).

17. Fish net-pens shall meet, as a minimum, state-approved administrative guidelines for the management of net-pen cultures; where any conflict in requirements arises the more stringent requirement shall prevail.

18. Fish net-pens shall not occupy more than two surface acres of water area, excluding booming and anchoring requirements.

19. Aquacultural proposals that include net pens or rafts shall not be located closer than one nautical mile to any other aquacultural facility that includes net pens or rafts; provided, that a lesser distance may be authorized by the city if the applicant can demonstrate to the city's satisfaction that the environmental and aesthetic concerns expressed in this master program will be protected. If a lesser distance is requested, the burden of proof shall be on the applicant to demonstrate that the cumulative impacts of the existing and proposed operations would not be contrary to the policies and regulations of this master program.

20. Except as provided in Regulation 18, aquacultural developments approved on an experimental basis shall not exceed five acres in area (except anchorage for floating systems) and five years in duration; provided, that the city may issue a new permit to continue an experimental project as many times as is deemed necessary and appropriate.

21. Where necessary to preserve the integrity of any research data collected, aquaculture developments which would be likely to jeopardize an experimental aquaculture development shall be prohibited within the same bay or within a mile of such a development until after the experimental project is granted non-experimental status or terminated.

22. For floating culture facilities the city shall require a visual impact analysis. (Ord. 2600-02 § 2(5.3), 2002.)

### **33D.130 Boating facilities.**

#### **A. Regulations—General.**

##### **1. All Boating Facilities.**

a. Boating facility development and/or renovations shall comply with all other applicable local, state and federal agency policies and regulations, including, but not limited to, construction standards, water quality standards, shoreline modification standards, standards for the use and storage of fuels and toxic materials, and health standards.

b. Vessels shall not permanently moor on waters of the state unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

c. Boating facilities shall not adversely impact navigation channels.

##### **2. Marinas.**

a. The city shall require and utilize the following information in its review of marina proposals:

(1) Biological resources and habitats for the backshore, foreshore and aquatic environments;

(2) Existing natural shoreline and backshore features and uses, bathymetric contours (one-foot increments);

(3) Geohydraulic processes and flushing characteristics, volume, rates and frequencies;

(4) Area of surface waters appropriated and leased areas;

(5) Site orientation; exposure to wind, waves, flooding or tidal/storm surges; type and extent of shore defense works or shoreline stabilization and flood protection necessary;

(6) All information required for shoreline modification activities;

(7) The design of the facilities, including sewage disposal, water quality controls, provisions for the prevention and control of fuel spillage;

(8) A site plan showing all proposed site improvements, including public access, pedestrian circulation, and a landscaping plan;

(9) An analysis of the impacts of proposed structures on views.

b. There shall be facilities available for handling all types of boat waste generated in the marina and adjacent uplands, including but not limited to holding tanks, bilge, oil, gas, and/or diesel fuels. If private or off-site facilities are used to meet this requirement, signs or brochures shall be available to marina users to advise them of appropriate disposal facilities.

c. Accessory uses at marinas shall be limited to those which are water-oriented. Accessory uses shall be consistent in scale and intensity with the marina and surrounding uses.

d. Shoreline permits for marinas shall be conditioned to require boater education addressing boater impacts on water quality and other shoreline resources.

e. The discharge of sewage and/or toxic material from boats and/or shore installation shall be prohibited within any marina. Toxic material herein defined as any material damaging marine life includes but is not limited to paints, varnishes, detergents, petroleum, contaminated bilge waste water, etc.

f. Under the city of Everett comprehensive plan and zoning code, residential uses are not a permitted use in the industrial zones, maritime commercial zones or areas where the Port of Everett Marina facilities are located. The city is aware that the Port of Everett has adopted a policy that provides for persons to live on their boats (live-aboards) with certain conditions.

The city of Everett shall require the Port of Everett to establish a water quality monitoring program to determine what, if any, significant water quality effects may exist as a result of live-aboards in the Port Marina area.

Live-aboards shall be prohibited in any newly constructed or expanded portions of marina facilities unless all of the following are provided:

(1) Dockside gray water and sewage disposal facilities.

(2) Public access as otherwise required in this master program. Live-aboards will not be a reason to diminish public access.

(3) Actions necessary to avoid impacts to aquatic habitats.

(4) Actions necessary to avoid or mitigate impacts to upland development or services, including parking and access.

(5) Actions necessary to prevent incompatibility with water oriented uses. (Live-aboard residential activities are not a water-oriented use).

(6) Marina management and operation actions to address issues related to live-aboards, including but not limited to security, compatibility with other marina activ-

ities, displacement of recreational boaters, and utility and service provision are in place. See Section 33D.130.F, Marina Management and Operations.

3. Boat Launch Ramps and Day-Use Non-Motorized Boat Rental Facilities. The city shall require and utilize the following information in its review of proposals for boat launch ramps and day-use non-motorized boat rental facilities:

a. Biological resources and habitats for the back-shore, foreshore and aquatic environments;

b. Existing natural shoreline and backshore features and uses;

c. Site orientation; exposure to wind, waves, flooding or tidal/storm surges; type and extent of shore defense works or shoreline stabilization and flood protection necessary;

d. All information required for shoreline modification activities;

e. A site plan showing all proposed site improvements, including pedestrian circulation, and a landscaping plan;

f. An analysis of the impacts of proposed structures on views.

4. Day-use Motorized Boat Rental Facilities. The city shall require applications for day-use motorized boat rental facilities to submit all of the information discussed for boat launch ramps and non-motorized day use boat rental facilities. In addition, the applicant shall submit information regarding the types of boats to be rented and analyze the need for and design of sewage disposal facilities and fueling areas.

B. Regulations—Location.

1. Marinas shall be sited to prevent any restrictions in the use of commercial and recreational shellfish beds. The specific distance shall be determined in conjunction with the Washington State Department of Health Services, the Washington State Department of Ecology and other agencies with expertise. Criteria for determining the specific distance may include:

a. The size of the water body;

b. Tidal flushing action in the project area;

c. Size of the marina and projected intent of use;

d. Whether fuel will be handled or stored;

e. Existence of a pump-out or sewer hook-up; and

f. Expected or planned changes in adjacent land uses that could result in additional water quality or sanitary treatment requirements.

2. Marinas and launch ramps shall locate in areas where there is adequate water mixing and flushing to avoid violations of water quality standards and shall be designed so as not to retard or negatively influence flushing characteristics.

Marine Shores.

3. Boating facilities shall not locate at or along:

- a. Significant littoral drift sectors, including resource material areas, such as accretion beaches, and points;
  - b. Significant fish and shellfish spawning and rearing areas; or
  - c. Poorly flushed backwaters.
4. Foreshore marinas and other boating facilities may be located on or along low energy drift sectors.
  5. Backshore marinas and other boating facilities may be located behind low energy driftways. Connecting channels and their jetties should be designed to protect natural littoral drift processes.
  6. Boating facilities shall not extend seaward of the pierhead or outer harbor line.
  7. Boat houses are not permitted in the Urban Conservancy designation.
  8. Mooring buoys may be permitted through a conditional use permit. The conditional use process must include notification of agencies with jurisdiction.

#### Lake Shores.

9. Marinas shall be prohibited on Everett's lake shores.
10. Launch ramps are permitted in public developments.
11. Day-use non-motorized boat rental facilities are permitted.
12. Launch ramps and day-use non-motorized boat rental facilities shall be located to avoid and mitigate impacts to native aquatic and buffer vegetation.
13. Boat houses for residential use must be set back from the shoreline per the buffer requirements of the SMP. One boat house may be permitted for rescue boats at public recreation facilities. Such boathouse is not required to set back from the shoreline.
14. Mooring buoys shall be prohibited on Everett's lakes, except as allowed for safety purposes in EMC 8.44.050.

#### Rivers.

15. Boating facilities shall not locate along braided or meandering river channels where the channel is subject to change in direction or alignment, or on point bars and other accretion beaches.
16. Boating facilities shall be located so as not to adversely affect flood channel capacity in conformance with FEMA regulations.
17. Subject to compliance with Regulations 15 and 16 above, marinas, launch ramps, day-use motorized boat rental facilities, and day-use non-motorized boat rental facilities are permitted on the Snohomish River.
18. Boat houses and mooring buoys are prohibited along/on the Snohomish River.

#### C. Regulations—Design/Expansion/Renovation.

1. Boating facilities shall be designed in a manner that will minimize damage to ecological functions and ecosystem-wide processes.
2. Marina design shall provide thorough flushing of all enclosed water areas and shall not restrict the movement of aquatic life requiring shallow water.
3. Boating facilities shall be designed so their structures and other features and operations will be aesthetically compatible with or will enhance existing shoreline features and uses, and so views from the uplands and the water are not significantly diminished.
4. Public access, both visual and physical, shall be an integral part of all marina development and design and must include the following:
  - a. Marinas and public launch ramps shall be designed so that existing or potential public access along beaches is not unnecessarily blocked nor made dangerous and public use of the surface waters below the ordinary high water mark is not unduly impaired.
  - b. Covered moorage shall not be constructed where it would block visual access from public access areas and/or a significant numbers of residences.
  - c. Breakwaters constructed for protection of marinas shall be designed to allow public access along the top, where practical.

#### D. Regulations—Boating Facility Parking.

1. To the maximum extent possible, marinas and accessory uses shall share parking facilities.

#### E. Regulations—Utilities.

1. Where moorage is offered in new, expanded or renovated existing marinas, pump-out, holding and/or treatment facilities shall be provided for sewage contained on boats and/or vessels. Such facilities shall be located so as to be conveniently available to all boats. The responsibility for the adequate collection and disposal of marina originating sewage, solid waste and petroleum waste is that of the marina operator.
  2. All marinas shall provide restrooms and showers for boaters' use in conformance with applicable state and local regulations. They shall be kept clean and at a minimum be located within two hundred feet from the dock or pier. Signs shall be posted so that the restrooms are easily identifiable to boating public.
  3. All pipes, plumbing, wires and cables at a marina site shall be placed at or below ground and dock levels.
  4. Public boat launch facilities, day-use motorized boat rental facilities, and day-use non-motorized boat rental facilities shall provide and maintain restrooms or portable toilets.
- #### F. Regulations—Marina Management and Operations.
1. Marinas shall have adequate facilities and establish posted operational procedures for fuel handling and

storage in order to prevent and minimize accidental spillage.

2. Marinas shall have facilities, equipment and established posted procedures for the containment, recovery and mitigation for spilled petroleum, sewage, and toxic products.

3. Marina operators shall provide the following information to all marina users:

a. Regulations pertaining to handling and disposal of waste, sewage and toxic materials;

b. Regulations prohibiting the use of marine toilets while moored unless these toilets are self-contained or have an approved treatment device; and

4. Garbage or litter receptacles shall be provided and maintained by the marina operator at several locations convenient to users in sufficient numbers to properly store all solid waste generated on site.

5. Dock facilities shall meet applicable regulations pertaining to lifesaving equipment such as life rings, hook and ropes.

6. Adequate fire protection shall be required as per the Uniform Fire Code.

G. Regulations—Boat Launches.

1. New boat launch ramps at Silver Lake and Lake Stickney shall provide signage and boat washing facilities to prevent the spread of milfoil into the lakes.

H. Regulations—Covered Moorage.

1. Marina developers are required to provide a detailed plan for covered moorage development. Such a plan must indicate:

a. Covered moorage location, size and general design; and

b. Impact on shoreline views in the marina and from adjacent private and public properties.

2. Covered moorages are prohibited in areas determined to be of high scenic value or where open water views are important.

3. All covered moorages at a specific marina shall be of similar and/or compatible design, materials, color, length and height (unless they exceed the present height limits); and shall be constructed in contiguous groups or modules as part of the overall project.

4. Where covered moorages are used, a public dock shall be provided for viewing the water and for fishing.

5. All covered moorages shall be constructed of non-reflective neutral material and colors.

I. Regulations—Boat Houses.

1. Boat houses for emergency rescue boats shall be permitted in public recreational developments. Such boat houses shall be limited to the size necessary to accommodate the rescue boat(s), and shall not significantly impact views from private properties and public shoreline vistas.

J. Regulations—Mooring Buoys.

1. Mooring buoys shall be located to minimize impacts on navigation.

2. Buoys must be discernible under normal daylight conditions at a minimum of one hundred yards and must have reflectors for nighttime visibility.

3. The applicant must demonstrate the need for a mooring buoy. (Ord. 2600-02 § 2(5.4), 2002.)

**33D.140 Commercial development.**

A. Regulations.

1. The city of Everett shall require and use the following information in its review of commercial development proposals:

a. Nature of the commercial activity (e.g., water-dependent, water-related, water-enjoyment, non-water-oriented, mixed-use) including a breakdown of specific components;

b. Need for shoreline location;

c. Special considerations for enhancing the relationships of the activity to the shoreline;

d. Provisions for public visual and physical access to the shoreline;

e. Provisions to ensure that the development will not cause adverse environmental impacts; and

f. For mixed-use proposals, present alternative mixes of water-oriented and non-water-oriented uses and activities, structural locations, site designs and bulk considerations, alternative enhancements for physical and visual public access to the shoreline (both public and private space), and other considerations which address the goals and policies of the SMP.

2. Non-water-oriented commercial uses shall only be permitted within two hundred feet of the ordinary high water mark when they provide substantial public access and they provide ecological restoration, if appropriate and feasible, and when at least one of the following criteria is met:

a. The site is physically separated from the shoreline by another property, public right-of-way, or significant environmentally sensitive area.

b. The use is part of a mixed-use project or area that includes water-dependent uses.

c. The site is upriver from the SR 529 bridge, or is located along Union or Steamboat Sloughs.

Water-dependent and water-related commercial uses shall be prohibited where they would require new dredging, fill, piers, or other significant modifications in areas designated Aquatic Conservancy, or in the aquatic area west of Smith Island (AU 3.05).

3. Commercial developments that are water-oriented may be permitted as indicated in Table 5.1, Shoreline Use.

4. Priority shall be given to commercial development located in areas presently served by roads and utilities.

5. Commercial uses that are not water-dependent shall be prohibited over the water, except where they are auxiliary to and in support of water-dependent uses, and

provided the size of the over-water construction is not expanded for non-water-dependent uses.

6. Commercial development of public lands shall provide for public access, visual and physical, in accordance with an overall pedestrian circulation plan for the total development of that particular segment of shoreline.

7. All commercial loading and service areas shall be located on the upland side of the commercial activity or provisions must be made to screen the loading and service area from the shoreline and water body.

8. In all new and expanded commercial developments, the best available management practices and procedures shall be employed for safe handling of fuels and toxic or hazardous materials.

9. Commercial uses shall employ best management practices (BMPs) concerning the various services and activities they perform and their impacts on the surrounding water quality. Operators shall take all actions necessary to insure that contaminants do not enter the water or storm drainage system. Development and operations shall comply with the city's drainage ordinance and stormwater management manual. (Ord. 2600-02 § 2(5.5), 2002.)

### **33D.150 Forest practices.**

#### **A. Regulations.**

1. Where applicable, all forest practice activities shall be conducted in compliance with Washington State's Forest Practices Act (Chapter 76.09 RCW) and FERC License #2157.

#### **Road Construction and Maintenance.**

2. All roads shall be constructed on stable soils and with a minimum of alteration of the natural topography. Roads shall be constructed and maintained in conformance with Chapter 222-24 WAC (Forest Practice Rules).

#### **Timber Harvesting.**

Timber harvesting covers all removal of timber from forest lands in commercial operations, thinning, salvage of timber, re-logging merchantable material left after prior harvests, post-harvest cleanup, and clearing of merchantable timber from lands being converted to other uses.

3. All timber harvesting within shoreline jurisdiction shall comply with Chapter 222-30 WAC (Timber Harvesting) regulations and any regulations adopted to implement the Forest and Fish Report dated April 29, 1999.

4. All timber harvesting within shoreline jurisdiction shall comply with FERC License #2157 regarding wildlife mitigation, where applicable. The Wildlife Habitat Management Plan shall be used as guidance. (Ord. 2600-02 § 2(5.6), 2002.)

### **33D.160 Industry.**

#### **A. Regulations.**

1. The shoreline rules clearly provide for a priority of shoreline uses with the highest priority given to environmental restoration and water-dependent and water-related uses (see WAC 173-26-200(2)(d), Preferred uses, 173-26-240(3)(f), Shoreline Use Standards – Industry, and 173-26-250(3)(c), Shorelines of state-wide significance – Priority uses).

a. The Urban Industrial, Urban Maritime, Urban Mixed-Use Industrial, and Deep Water Port shoreline areas along the main channel of the Snohomish River down river from the SR 529 bridge are located along viable commercial waterways along the federally maintained navigation channel. These areas include the historic port area and shall be preserved primarily for water-dependent and water-related uses.

In this area, non-water-dependent and non-water-related uses shall be permitted within two hundred feet of the ordinary high water mark only when the site is physically separated from the water's edge by another property, public right-of-way, or significant environmentally sensitive area. Water-dependent and water-related uses shall be prohibited where they would require new dredging, fill, piers, or other significant modifications in areas designated Aquatic Conservancy.

In the event of a Model Toxic Control Act (MTCA) or federal "Superfund" remediation of a property, non-water-dependent/non-water-related uses may be allowed through a conditional use permit when the applicant demonstrates that the clean-up of the site is not reasonably feasible except upon providing a non-water-dependent/non-water-related use.

Non-water-dependent and non-water-related uses, when permitted, shall provide significant public access per the requirements of Section 33D.080 of the Shoreline Master Program. Preference shall be given to public access uses and uses that provide substantial public enjoyment of the shoreline.

Non-water-dependent and non-water-related uses shall preserve and enhance existing native shoreline vegetation per the requirements of the SMP and shall provide environmental restoration, when feasible.

b. Urban Industrial and Urban Mixed-Use Industrial shoreline areas along the main channel of the Snohomish River upriver from the SR 529 bridge are also located adjacent to the federally maintained navigation channel, and may be commercially viable. However, these areas are to some degree constrained due to the restrictions of the SR 529 bridge and also the presence of significant environmental features along certain sections of the Snohomish River (see the SEWIP resources inventory and the WDFW Priority Habitats map).

In these areas, non-water-dependent and non-water-related uses shall be permitted within two hundred feet of

the ordinary high water mark provided such uses provide substantial public access and public enjoyment of the shoreline. Water-dependent and water-related uses shall be prohibited where they would require new dredging, fill, piers, or other significant modifications in areas designated Aquatic Conservancy. All non-water-dependent and non-water-related uses shall preserve and enhance existing native shoreline vegetation per the requirements of Sections 33D.360 through 33D.590 of this title and shall provide environmental restoration, when feasible.

c. The Urban Mixed-Use Industrial properties along Union and Steamboat Sloughs are not located adjacent to a federally maintained navigation channel.

In these areas, non-water-dependent and non-water-related uses shall be permitted within two hundred feet of the ordinary high water mark provided such uses provide substantial public access and public enjoyment of the shoreline. Water-dependent and water-related uses shall be prohibited where they would require new dredging, fill, piers, or other significant modifications in areas designated Aquatic Conservancy, or in the aquatic area west of Smith Island (AU 3.05). All non-water-dependent and non-water-related uses shall preserve and enhance existing native shoreline vegetation per the requirements of the SMP and shall provide environmental restoration, when feasible.

2. Existing port or industrial development which is neither water-dependent nor water-related shall be permitted to expand inland from, but not along, shoreline areas. Waterward expansion of existing non-water-oriented industry is prohibited unless consistent with Regulation 1 above.

3. Cooperative use of docking, parking, cargo handling, and storage areas shall be given consideration in future shoreline industrial and port development. Proposed developments shall maximize the use of legally established existing industrial facilities and avoid duplication of pier and dock facilities before expanding into undeveloped areas or building new facilities. Proposals for new industrial developments shall demonstrate the need for expansion into an undeveloped area.

4. The construction of facilities for water transport of bulk crude or other forms of petroleum in vessels over one hundred twenty-five thousand dead weight tons is prohibited.

5. Offshore facilities, floating docks, and artificial islands for deep water port expansion shall not be permitted except by conditional use permit.

6. In all new and expanded port and/or industrial developments, the best available management practices and procedures shall be employed for safe handling of fuels and toxic or hazardous materials.

7. Ports and industry shall employ best management practices (BMPs) concerning the various services and activities they perform and their impacts on the surround-

ing water quality. Operators shall take all actions necessary to insure that contaminants do not enter the water or storm drainage system. Development and operations shall comply with the city's drainage ordinance and stormwater management manual.

8. All new or expanded industrial development shall be set back a minimum of twenty feet from adjacent shoreline properties which are located in non-industrial zones. A landscaped buffer shall be provided in the twenty feet, such buffer being of adequate width, height, and plant composition to protect views from shorelines and adjacent properties. (Ord. 2600-02 § 2(5.7), 2002.)

### **33D.170 In-stream structures.**

A. Regulations.

1. All permit applications shall contain, at a minimum, the following information:

a. A site suitability analysis which provides sufficient justification for the proposed action and the site.

b. Proposed location and design of in-stream structures, accessory structures, utility corridors and access/service roads.

c. A hydraulic analysis prepared by a licensed professional engineer which sufficiently describes the project's effects on streamway hydraulics, including potential increases in base flood elevation, changes in stream velocity and the potential for redirection of the normal flow of the affected stream.

d. Sufficient biological resource inventory and analysis to describe the impacts on ecological functions.

e. Provision for erosion control, protection of water quality and fishery and wildlife resources during construction, and proposed mitigation.

f. Long-term management plans which describe, in sufficient detail, provisions for protection of in-stream resources during construction, operation, and maintenance. The plan shall include monitoring, when applicable.

2. Erosion and drainage controls must be provided per the city's drainage ordinance, design and construction standards and specifications and stormwater management manual.

3. Service roads shall be of a size which is minimally necessary to safely accomplish maintenance and repair of the facility.

4. All diversion structures shall be designed to permit the transport of bedload materials.

5. Except for expansions or modifications to the city's diversion dam in the Sultan River, in-stream structures shall provide for adequate upstream and downstream migration of resident and anadromous fish, where applicable. (Ord. 2600-02 § 2(5.8), 2002.)

**33D.180 Log storage and rafting.**

- A. Regulations.
  1. New log storage areas shall be on dry land and paved.
  2. Expansion of existing log dumping, storage, or rafting areas is prohibited where grounding will occur.
  3. Expanded facilities for water storage of logs shall have:
    - a. Easy let-down devices to reduce bark separation and generation of wood debris.
    - b. Practical and effective bark and wood debris controls.
  4. New dry land log storage facilities shall provide practical and effective measures for addressing the anticipated adverse impacts on adjacent properties as a result of dust, noise, lighting, and visual impact.
  5. New log storage, sorting, and loading areas must comply with the city's stormwater manual.
  6. Accumulations of bark and other debris on the land and on docks shall be kept out of the water. (Ord. 2600-02 § 2(5.9), 2002.)

**33D.190 Mining.**

- A. Regulations.
  1. Mining shall be prohibited in Everett's shorelines, except as allowed in Section 33D.200, Municipal watershed utilities. (Ord. 2600-02 § 2(5.10), 2002.)

**33D.200 Municipal watershed utilities.**

- A. Regulations.
  1. Mining is permitted in the Municipal Watershed environment only as necessary to expand the backwash solids drying bed and/or disposal area.
  2. Mining is prohibited in or adjacent to Woods Creek and the Sultan River within the city limits.
  3. A buffer is required between mining activities at the backwash solids drying bed area and Lake Chaplain Reservoir, and other surface waters, as shown on the existing shoreline substantial development permit.
  4. Destruction of priority species habitat is prohibited during mining activities.
  5. All above ground utility and communication facilities shall comply with Section 41.150.D.2.c.
  6. Where utility construction or maintenance activities will result in disruption of shoreline vegetation, development plans shall include provisions for temporary soil stabilization during construction and for restoration of the site to preconstruction appearance and function upon completion of the project. Buffers shall be re-established and/or enhanced as required by the SMP and/or the wild-life habitat management plan.
  7. Utility facilities shall be located and designed so as to minimize or prevent the need for shoreline protective measures.

8. Structural abutments or landfill required for water crossings shall be located landward of the OHWM, unless no reasonable alternative exists. (Ord. 2600-02 § 2(5.11), 2002.)

**33D.210 Parking.**

- A. Regulations.
  1. Parking is prohibited over water.
  2. Parking in shoreline jurisdiction shall directly serve a shoreline use. Parking as a "primary" use and parking that serves a use not approved in the shoreline jurisdiction shall be prohibited.
  3. Parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties. Landscaping shall be provided per zoning code standards, unless a landscape modification is approved by the planning director or hearing examiner, per Section 35.070.
  4. Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened, or where parking will serve public access provided as a part of a development, or in cases when an alternate orientation would have less adverse impact on the shoreline.
  5. Parking facilities for shoreline activities shall provide safe and convenient pedestrian circulation within the parking area and to the shorelines.
  6. Parking for the primary purpose of allowing people to view the shoreline from their car (public view parking) may be permitted subject to the following conditions.
    - a. Public view parking shall not interrupt, restrict, or diminish public access. Where possible, public access corridors, trails or other features shall occur waterward of the public view parking. Where possible, public view parking shall be separated from other public access features by a low hedge or screen.
    - b. Public view parking should be associated with other permitted recreation, public or Port of Everett related activity. (Ord. 2600-02 § 2(5.12), 2002.)

**33D.220 Recreational development.**

- A. Regulations.
  1. In designating shoreline areas for recreation activity or permitting developments in shoreline areas, consideration shall be given to the recommendations of the Everett parks and recreation comprehensive plan and other approved comprehensive public access plans.
  2. Priority shall be given to recreational developments which increase the opportunity for public access and enjoyment to our urban shoreline areas.
  3. Water-dependent recreational uses shall be given priority over other types of recreational use. Water-related and water-oriented recreational uses shall be second priority. Non-water-oriented recreational uses are permitted,

provided they include public access and environmental restoration of the shoreline edge and buffers, and provided that they avoid significant ecological impacts.

4. Recreational facilities shall be provided with adequate sanitary facilities.

5. For recreation developments such as playfields and golf courses that require the use of fertilizers, pesticides, herbicides or other toxic chemicals, the applicant shall submit plans demonstrating the methods to be used to prevent damage to vegetation in critical areas, wildlife, surface and ground water quality. Buffers of native species shall be included in the plan. The city shall determine the required buffer width per the SMP, but in no case shall the buffer strip be less than fifty feet. The developer shall also be required to leave a chemical-free swath at least one hundred feet in width next to water bodies and wetlands, except as necessary for the control of noxious weeds.

6. Motorized vehicular access is prohibited on beaches, except for boat launching and maintenance activities.

7. Pedestrian and bicycle paths shall be provided unless clearly not appropriate.

8. The use of all-terrain and off-road vehicles shall be prohibited.

9. Minor over-water recreation buildings and structures are permitted for public access purposes provided significant adverse impacts are mitigated.

10. Proposals for recreational development shall provide adequate water supply, sewage and garbage disposal.

11. Recreational facilities shall provide adequate provisions to prevent the general public from trespassing and overflowing into adjacent properties.

12. In approving shoreline recreational developments, the city shall ensure that the development will maintain, enhance or restore desirable shoreline features, including unique and fragile areas, scenic views and aesthetic values. To this end, the city may adjust and/or prescribe project dimensions, location of project components on the site, intensity of use, screening, parking requirements and setbacks, as deemed appropriate to achieve this intent.

13. Underwater parks and artificial reefs shall include safety provisions to warn boating traffic of their location.

14. Artificial reefs shall not contain materials toxic or otherwise hazardous to humans or fish and wildlife. (Ord. 2600-02 § 2(5.13), 2002.)

### **33D.230 Residential development.**

#### **A. Regulations.**

1. Residential and accessory structure development over water, including floating homes, shall be prohibited.

2. Shoreline stabilization for new residential structures is prohibited, except as allowed through Section 33D.400.B, Reasonable Use. (Also see Regulation 3 in Section 33D.290, Shoreline Stabilization.) The subdivi-

sion of properties into parcels that will require shoreline stabilization for development to occur shall be prohibited.

3. Where development activities will result in disruption of vegetation with a potential for increased run-off and erosion, development plans shall include provisions for temporary soil stabilization during development and for permanent stabilization upon completion of development. Buffers shall be provided as required by the SMP.

4. Multiple family developments shall orient buildings to views of the shoreline, when feasible, while protecting views of shorelines from other properties. (Ord. 2600-02 § 2(5.14), 2002.)

### **33D.240 Signs, outdoor advertising.**

#### **A. Regulations.**

1. Off-premises outdoor advertising signs are prohibited in shoreline areas.

2. All signs shall comply with Chapter 36 of this title, Signs.

3. Sign plans and designs shall be submitted for review and approval at the time of shoreline permit approval.

4. All signs shall be located and designed to minimize interference with vistas, viewpoints, and visual access to the shoreline.

5. When feasible, signs shall be mounted flush with the building or awning. No sign, other than directional signs, shall be placed in a required view corridor or vista unless mounted flush against the building.

6. Over-water signs or signs on floats or pilings shall be permitted only when related to water-dependent uses.

7. Signs marking historical or cultural sites must be approved by the historic commission.

8. Lighted signs shall be hooded, shaded, or directed downward onto the site and away from surrounding properties or watercourses.

9. Except for public advisory signs, no sign shall have blinking, flashing, fluttering, or other illumination devices which have a changing light intensity or brightness, or which are so constructed and operated as to create an appearance of animated writing or printing, including changing message signs. (Ord. 2600-02 § 2(5.15), 2002.)

### **33D.250 Solid waste disposal and collection.**

#### **A. Regulations.**

1. New solid waste landfill and in-water disposal activities shall be prohibited in shoreline areas.

2. All development shall provide solid waste collection facilities.

3. Solid waste collection facilities in shoreline areas shall be located, constructed, and screened so as to prevent impacts related to health and sanitation, water quality, odor, aesthetics, and public safety. Containers shall be covered, and stormwater runoff shall be treated per city standards.

4. Solid waste transfer stations shall be a conditional use in the Urban Industrial and Urban Mixed-Use Industrial environments.

5. Solid waste transfer stations must be designed to fully contain the refuse within an enclosure and to avoid impacts to water quality.

6. Solid waste transfer stations shall be designed and landscaped to be compatible with adjacent properties and nearby neighborhoods.

7. Solid waste transfer stations shall provide significant landscape screening and/or other design features to mitigate visual impacts from freeways and highways. (Ord. 2600-02 § 2(5.16), 2002.)

### **33D.260 Transportation facilities.**

#### **A. Regulations.**

1. The city of Everett shall prohibit the vacating of street-ends that abut the Snohomish River, Port Gardner Bay, Silver Lake and Lake Stickney, unless the street is not suitable for boat launching, park, viewpoint, recreation, education, or other public purpose.

2. New transportation facilities shall be located and designed to maximize distance from the ordinary high water mark, while serving shoreline properties, unless such location shall result in greater impacts to critical areas.

3. New and expanded public streets in shoreline areas shall include facilities for pedestrians, bicycles, and public transportation, where feasible.

4. Transportation and utility facilities shall be required to make joint use of rights-of-way and to consolidate crossings of water bodies where adverse impact to the shoreline can be mitigated by doing so.

5. New construction and maintenance or repair work carried out on roads and the railroad lines along our shoreline shall be conducted in a manner which minimizes the impact on water quality, public utilization of shoreline area, and ecological functions and ecosystem-wide processes.

6. When disposing of landslide debris along Port Gardner Bay, the railroads shall avoid impacts to eelgrass and kelp beds.

7. Where practical, guard rails of bridges and necessary reinforcing members shall be designed so as not to obstruct the public's view of the shoreline.

8. New transportation facilities in shoreline areas shall be located and designed to minimize or prevent the need for shoreline stabilization measures.

9. New and expanded transportation facilities shall be designed to minimize impacts on shoreline views.

10. Landscaping shall be provided to minimize visual impacts for all new and expanded transportation facilities in shorelines. A preliminary landscape plan shall be provided and approved prior to issuance of a shoreline substantial development permit.

11. All shoreline areas disturbed by facility construction and maintenance shall be replanted and stabilized. Such vegetation shall be maintained by the agency or developer constructing or maintaining the road until established.

12. The city shall give preference to mechanical means rather than the use of herbicides for roadside brush control on city streets in shoreline areas.

13. Culverts shall be located and installed in accordance with city of Everett standards and specifications.

14. Airport facilities, including float plane and heliport facilities, shall be permitted in the Urban Deep Water Port, Urban Industrial, and Urban Mixed-Use Industrial shoreline areas when they conform to FAA standards and when approved by planning commission and city council through a public review process.

15. Transportation facilities shall be prohibited on accretion shoreforms.

16. Navigation channels shall be kept free of hazardous or obstructing uses and activities. (Ord. 2600-02 § 2(5.17), 2002.)

### **33D.270 Utilities.**

#### **A. Regulations.**

1. Wherever reasonable, all new utilities shall be placed underground and existing above ground utilities shall be placed underground during normal replacement processes.

2. Non-water-oriented utilities facilities shall demonstrate that no options exist before approval is granted for location within shoreline areas, except for:

a. Expansion of existing facilities, including the city's water pollution control facility;

b. Utilities constructed in rights-of-way with existing facilities;

c. Utilities necessary to serve developments permitted in shoreline jurisdiction;

d. Sewer facilities necessary to transport sewage to the water pollution control facility; and

e. Water transmission and distribution lines, natural gas lines, and electric power lines, crossing the Snohomish River or other water bodies.

3. Where utility construction or maintenance activities will result in disruption of shoreline vegetation, development plans shall include provisions for temporary soil stabilization during construction and for restoration of the site to preconstruction appearance upon completion of the project. Buffers shall be re-established and/or enhanced as required by the SMP.

4. Utility facilities shall be located and designed so as to minimize or prevent the need for shoreline protective measures.

5. Structural abutments or landfill required for permitted water crossings shall be located landward of the OHWM, unless no reasonable alternative exists.

6. New utility installations in the shoreline areas shall be designed and installed to be aesthetically pleasing, and not significantly impact views of the shoreline.

7. Except for water lines, all underwater pipelines transporting substances hazardous to aquatic life or water quality are prohibited unless no other practical alternative exists, and then only permitted by conditional use. Such facilities shall include an automatic shut off valve on both shorelines. Maintenance procedures shall be submitted with the shoreline permit application.

8. Underground (or water) utility lines shall be completely buried under the river bed in all river or stream crossings and shall be placed below normal maintenance dredging depth established in the navigation channel, except where such lines may be affixed to a bridge structure and except for appropriate water or sewage treatment intake pipes or outfalls. (Ord. 2600-02 § 2(5.18), 2002.)

#### **Article VI. Shoreline Modification Activities**

##### **33D.280 General shoreline modification.**

###### **A. Regulations.**

1. All shoreline modification activities shall be in support of an existing or permitted/approved shoreline use, or habitat restoration and enhancement activities.

2. The city shall require sufficient analysis by professionals with the appropriate expertise to document the impacts of shoreline modification proposals. Such analysis may include, but not be limited to, geotechnical, hydrological, and biological studies, and shall include an analysis of drift cells when appropriate. Mitigation sequencing shall be required. The city shall require the use of best available science and best management practices for the design, development, and ongoing management and monitoring of shoreline modification activities.

3. Docks, bulkheads, bridges, fill, floats, jetties, and other human-made structures shall not intrude into or over significant biological areas unless significant ecological impacts are mitigated.

4. Shoreline modifications in 2001 SEWIP Assessment Unit 5.03 shall be limited to the extent feasible while providing for water-dependent uses. Improvements shall be sited to limit impacts to riparian and marsh vegetation to the extent feasible.

###### **B. Table 6.1.**

Table 6.1 Shoreline Modification Activity By Environment

Environment	Deep Water Port	Mari-time	Industrial	Mixed-Use Industrial	Multi-Use	Shoreline Residential	Conservancy Recreation	Conservancy Agriculture	Municipal Water Quality	Municipal Watershed	Aquatic	Aquatic Conservancy
Stabilization	P	P	P	P	P	P	P	P	P	P	P	C, 1
Breakwaters	C, 1	C, 1	C, 1	C, 1		X	X	X	X	X	C, 1	X
Dredging	P	P	NA	NA	NA	NA	NA	NA	NA	P, 3	P	P, 5
Placement of Dredge Material	P	P	P	P	P	X	P	C, 1	P	C, 3	C, 1, 2	P, 5
Dredge Material Rehandling Facility	P	P	P	P	P	X	P, 4	X	X	C, 3	X	X
Jetties and Groins	C, 1	C, 1	C	C, 1	C, 1	X	C, 1	X	C, 1	C, 3	C, 1	X
Landfill landward of OHWM	P	P	P	P	P	P	P	P	P	P	NA	NA
Landfill waterward of OHWM	P	P	C, 1	C, 1	C, 1	C, 1	NA	NA	C, 1	C, 1	C, 1	P, 5
Piers and Docks	P	P	P	P	P	P	P	C	P	P	P	C, 6
Weirs	C	C	C	C	C	C	C	C	C	C	C, 1	C, 1

- P = Permitted Use (Note that the regulations in this section contain limitations on permitted shoreline modification activities. The modifications are not permitted in all cases.)
- C = Conditional Use (See Section 33D.030 for conditional use criteria.)
- X = Prohibited (Not allowed under any circumstances. Limitations in regulations do not apply.)
- 1 = A conditional use is not required for structures installed to protect or restore ecological functions.
- 2 = A conditional use permit is not required for disposal at a PSDDA site.
- 3 = Permitted only as necessary for the maintenance of water supply facilities.
- 4 = Permitted at Langus Riverfront Park and Thorton A. Sullivan Park only.
- 5 = Permitted only for environmental restoration or mitigation actions; or for beach enhancement or landfill to enhance public access when all impacts to critical saltwater habitats are mitigated.
- 6 = Permitted only for public access improvements and transportation facilities of statewide significance. (Ord. 2859-05 § 9, 2005; Ord. 2736-03 § 2, 2003; Ord. 2600-02 § 2(6.1), 2002.)

**33D.290 Shoreline stabilization.****A. Regulations.**

1. Bulkheads and other shoreline stabilization structures are prohibited for the purpose of creating upland by filling behind the structure, except as allowed in Section 33D.330, Landfill.

2. Bulkheads on Class I marine beaches shall be prohibited, except as allowed to protect an existing use.

3. Structural shoreline stabilization for new non-water-dependent development is only permitted when:

a. The need to protect the uses or development from imminent danger due to erosion caused by tidal action, currents, and waves is demonstrated through a geotechnical report, and

b. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements are not feasible.

c. The structure will not cause significant ecological impacts.

d. Mitigation for all impacts is provided.

4. The subdivision of properties into parcels that will require shoreline stabilization for development to occur shall be prohibited.

5. New shoreline stabilization measures for an existing structure or use, including residential use, is only permitted when there is conclusive evidence, documented by a geotechnical analysis, that the structure or use is in danger of loss or substantial damage from shoreline erosion caused by tidal action, currents, or waves.

Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of conclusive evidence. The geotechnical analysis must evaluate on-site drainage issues and address drainage problems away from the shoreline edge, if appropriate, before considering structural shoreline stabilization.

6. An existing shoreline stabilization structure may be replaced with a similar structure if the applicant demonstrates the need to protect uses or structures from shoreline erosion caused by tidal action, currents, or waves. The replacement structure must be designed, located, sized and constructed to minimize harm to ecological functions. In this case, demonstration of need does not necessarily require a geotechnical report.

Replacement walls or bulkheads shall not encroach waterward of the ordinary high water mark, unless:

a. The replacement is in support of a new or expanded water-dependent or water-related use, including public access; or

b. The replacement is in support of a bridge, utility or navigational structure with no feasible alternative; or

c. The stabilization restores or enhances ecological functions; or

d. The structure is a residence occupied prior to January 1, 1992, and there are overriding safety or environ-

mental concerns (RCW 90.58.100(6) and draft WAC 173-26-230(3)(a)).

7. Shoreline stabilization measures shall be limited to the minimum size necessary.

8. Beach enhancement may be permitted only when the applicant has demonstrated that no significant change in littoral drift will result which will adversely affect adjacent properties or habitat.

9. Beach enhancement projects shall not:

a. Detrimentially interrupt littoral drift, or redirect waves, current or sediments to other shorelines;

b. Result in any exposed groin-like structures;

c. Result in contours sufficiently steep to impede easy pedestrian passage, or trap drifting sediments;

d. Extend waterward more than the minimum amount necessary to achieve the desired stabilization.

10. Shoreline stabilization measures shall be designed by a licensed geotechnical or civil engineer or geologist using best available technology. Harder shoreline stabilization measures, such as bulkheads, will not be permitted when softer measures, such as biotechnical measures are feasible. Shoreline stabilization shall use measures designed to minimize harm to ecological functions, and shall use techniques to restore, as much as possible, the ecological functions of the shoreline. Mitigation of adverse impacts to shoreline functions shall be provided. Shoreline stabilization that will cause significant adverse impacts to adjacent or down-current properties and shoreline areas shall be prohibited.

11. The city may require and utilize the following information during its review of new and replacement shoreline stabilization proposals, as appropriate (the size of the area to be considered depends upon the extent and nature of project work involved):

a. Purpose and documented cause/need for the project, including existing and proposed uses in the area.

b. Existing shoreline stabilization and flood protection devices within the area.

c. Proposed design, construction material and methods.

d. Physical, geological and/or soil characteristics of the area; biological resources on or adjacent to the site; river channel hydraulics and floodway characteristics up and down the stream from the project area; mean sea level elevation at the toe and crest of the structure; direction of net long-shore drift; and normal, low, and high water elevations.

e. Impacts of the proposal (construction impacts and long-term impacts) on adjacent properties; ecological functions and ecosystem-wide processes, including sediment conveyance.

f. Proposed mitigation for identified impacts.

g. Alternative measures (including nonstructural) which may achieve the same purpose, including an analysis of reasons for rejecting softer approaches and a dem-

onstration that the size of stabilization measures is the minimum necessary.

12. Maintenance of vegetation planted on dikes or levees to control erosion shall be permitted when a maintenance plan is approved by the planning director. Such maintenance may include removal of mature trees when replanting is completed.

13. Many of the 2001 SEWIP assessment units designated Aquatic Conservancy in Section 4 of the Shoreline Master Program as well as the aquatic area west of Smith Island (AU 3.05) received high rankings partially due to high quality marsh edge and/or riparian vegetation along dikes adjacent to the aquatic areas. Where structural flood hazard reduction measures are needed to protect development inland from these dikes, when feasible, new dikes or other stabilization structures shall be constructed inland of the existing dikes, and the high quality vegetation shall be preserved and enhanced along the existing dike. (Ord. 2600-02 § 2(6.2), 2002.)

### **33D.300 Breakwaters.**

#### **A. Regulations.**

1. Breakwaters shall be permitted only when constructed as an integral part of a harbor, port or marina where protection from wave action is essential.

2. Applications for breakwaters shall provide the following information:

- a. Purpose of breakwaters.
- b. Construction material.
- c. Method of construction.
- d. Direction of net longshore drift (when appropriate).
- e. Impact on water circulation.
- f. Seasonal wind data (from 1993 revisions).

The city shall require sufficient geotechnical, hydrological and biological studies to analyze the impacts of the proposal.

#### **3. Design Considerations.**

a. Breakwaters shall not impede longshore sand and gravel transport unless such impediment is found to be beneficial. The effect of proposed breakwaters on sand movement shall be evaluated during permit review.

b. Breakwaters shall meet or exceed all design requirements of the State Department of Fish and Wildlife.

c. New or expanded breakwaters shall be designed and certified by a registered civil engineer.

d. Breakwaters shall be designed and constructed in a manner which will prevent detrimental impacts on water circulation, and aquatic life. The design shall also minimize impediments to navigation and to visual access from the shoreline.

e. The design of new breakwaters shall incorporate provisions for public access such as sightseeing and public

fishing if the planning director determines such access is feasible.

f. Floating breakwaters shall be used in place of solid breakwaters wherever they can withstand anticipated wave action in order to maintain sand movement and protect fish and aquatic habitat.

4. A conditional use permit shall be required for construction or expansion of a breakwater, except for those structures installed to protect or restore ecological functions. (Ord. 2600-02 § 2(6.3), 2002.)

### **33D.310 Dredging and dredge material disposal.**

#### **A. Regulations.**

1. Applications for dredging operations (non-maintenance) shall include the following information:

a. Location, depth, width, and total initial volume of material to be dredged.

b. Frequency and quantity of project maintenance dredging.

c. Information on stability of bedlands adjacent to the proposed dredging area.

d. Dredging procedure: time and method of dredging and dredge material placement.

e. Dredge material disposal area: initial location, size, and capacity; plan for disposal of maintenance dredge material for at least a ten-year period; location of channel migration zone, where applicable; method of fill stabilization.

f. Dredge materials: existing biological communities or resources in area to be dredged, and the physical, chemical and biological make-up of the dredge materials.

g. Hydraulic analysis, including tidal fluctuation, current flows, direction and projected impacts on ecological functions and ecosystem-wide processes.

2. Dredging shall only be permitted for the following purposes and only when other alternatives are impracticable:

a. To improve water quality or aquatic habitat, including removal of invasive aquatic species.

b. To maintain and improve navigability and water-flow and to provide for port/water-dependent industrial development and marinas.

c. To mitigate conditions which could endanger public safety.

d. To create or improve public recreational opportunities.

3. Dredging for the primary purpose of obtaining material for landfill is prohibited. (This does not include maintenance dredging required for an existing channel.)

4. In designating areas for the placement of dredge materials or in approving placement of dredge materials at a specific site, consideration shall be given, but not limited to, the following:

a. Existing and proposed use of the site.

b. Project phasing.

c. Impacts on critical areas, ecological functions and ecosystem-wide processes.

5. Dredging and dredge material placement shall be scheduled to avoid conflicts with commercial fisheries.

6. Proposals for dredging and dredge materials placement shall include all feasible mitigating measures, including scheduling, to protect marine, riverine, and lacustrine habitats and to minimize adverse impacts such as turbidity, adverse modifications on littoral drift, release of nutrients, heavy metals, sulfides, organic material or toxic substances, dissolved oxygen depletion, disruption of food chains, loss of benthic productivity, and disturbance of fish migration and important localized biological communities.

7. Dredging and dredge material placement shall be prohibited on or in archaeological sites which are on-record with the Washington State Office of Archaeology and Historic Preservation until such time as they are released by the state.

8. Except for open water disposal of dredge material at a PSDDA site, all dredge materials placement shall comply with the landfill regulations and shoreline stabilization regulations, as applicable. In addition, upland hydraulic dredge material disposal activities shall adhere to the following conditions:

a. Containment dikes shall be built and maintained so as to prevent the return of settleable solids into a water body.

b. An adequate settling basin shall be built and maintained so that the site's discharge water carries a minimum of suspended sediment. Basins shall be designed to maintain at least one foot of standing water at all times to encourage proper settling.

c. Runoff water from dredge materials deposit must enter the waterway through an outfall at a location that maximizes circulation and flushing, and minimizes erosion.

d. The outside face of dikes shall be sloped at 1-1/2 to 1 (horizontal to vertical) or flatter, and protected from erosion by revegetating the slope (i.e., grass or native vegetation). Landscaping and buffer areas may be required.

9. Unconfined, open-water disposal of dredged material in Puget Sound shall only occur at permitted PSDDA sites as a last resort if no other options are available. Any party utilizing the PSDDA site must comply with all PSDDA requirements.

10. Dredge material placement in shoreline areas shall not impair scenic views. When necessary, sites shall be adequately screened from view, except for short-term pre-loading/stockpiling.

11. Dredge material placement shall have highest priority in the Urban Industrial environment. Dredge material placement shall also be permitted in the Urban Deep Water Port, Urban Mixed-Use Industrial, Urban Mari-

time, Urban Multi-Use, Urban Conservancy – Recreation, and Municipal Water Quality environments.

12. Except for ecological restoration and enhancement activities, dredge material placement in the Urban Conservancy, Municipal Watershed, Aquatic and Aquatic Conservancy environments shall require a conditional use permit.

13. Dredge material placement shall be prohibited in the Urban Residential environment.

14. Location of new dredge material rehandling facilities are permitted in the Urban Deep Water Port, Urban Industrial, Urban Maritime, Urban Mixed-Use Industrial, Urban Multi-Use, and Municipal Water Quality Treatment environments. Rehandling facilities in the Municipal Watershed environment would require a conditional use permit. (Ord. 2600-02 § 2(6.4), 2002.)

### **33D.320 Jetties and groins.**

#### **A. Regulations.**

1. Jetties and groins which result in an adverse effect on adjacent beaches shall be prohibited.

2. Jetties and groins shall be permitted only for the improvement to navigation channels for water-dependent industrial activities and marinas as part of a marina/port development, habitat enhancement, to enhance potable water quality, or to artificially create a beach where one does not exist.

3. Applications for jetties and groins shall include the following: the reason for the project, type of construction, method of construction, direction of net alongshore drift, source and destination of material proposed to be trapped, and sufficient geotechnical, hydrological and biological studies to analyze the impacts of the proposal.

4. Construction of jetties and groins shall require conditional use permits, except for those structures installed to protect or restore ecological functions. (Ord. 2600-02 § 2(6.5), 2002.)

### **33D.330 Landfill.**

#### **A. Regulations.**

1. Landfills for water-dependent uses in the Urban Deep Water Port and Urban Maritime environments and for public use shall be given priority.

2. Landfills shall be permitted only when used as preparation for an activity otherwise permitted by the Shoreline Master Program for the specific environment in which the landfill is located.

3. Landfills waterward of the ordinary high water mark are permitted only when necessary to accommodate water-dependent uses; a transportation facility, utility or navigational structure with no feasible alternative; clean-up and disposal of contaminated sediments; mitigation actions; ecological enhancement and restoration; and public access, including beach creation projects.

4. Conditional use permits are required for landfills waterward of the ordinary high water mark, except for projects in the Urban Deep Water Port and Urban Maritime environments, dike maintenance projects, and for habitat enhancement and restoration projects, including mitigation actions.

5. Projects must be located and designed to minimize the area of landfill necessary to accommodate the use. For example, projects should be designed with pile supported piers, rather than piers constructed with fill, which alter the normal flow of water currents.

6. Applications for landfills must address impacts to wetlands and streams; aquatic habitats; flooding; ecosystem-wide processes such as sediment transport; navigation; and public access. All projects involving a landfill shall include the following information: physical and biological characteristics of the landfill site, source and quality of landfill material, grading plan showing the site and adjacent properties and waters, method of placement and compaction, type of proposed surfacing and runoff control devices, method of perimeter erosion control, and proposed use of the fill area. Depending upon the nature and location of the proposed landfill, additional information/studies will be required to address impacts of the proposal. Landfills that will result in significant adverse impacts that cannot be mitigated are prohibited.

7. The perimeter of all landfills shall be provided with some means to control erosion, unless the geotechnical and/or hydrological information documents that there will be a public benefit by not providing erosion control. Erosion control measures must be consistent with the policies and regulations in Section 33D.290, Shoreline Stabilization.

8. Landfills in floodplains and floodways must comply with the regulations in Chapter 30 of this title, Floodplain Overlay Districts and Regulations.

9. Fill materials shall be sand, gravel, soil, rock, or similar material. Clean dredge material from a permitted dredging operation shall be permitted. Materials such as wood waste may be approved for fill in limited situations. Landfill with toxic/hazardous dredge spoils and sanitary landfill materials are prohibited. Contaminated dredge spoils may be placed in shoreline areas as a conditional use.

10. Excavation of beach material solely for the purpose of obtaining fill material shall be prohibited. When practical and where it would not result in significant adverse impacts, excess beach material from construction of utilities or other allowed improvements should be used for beach enhancement and/or environmental restoration projects, rather than landfill. (Ord. 2600-02 § 2(6.6), 2002.)

### **33D.340 Piers, docks and floats.**

#### **A. Regulations—General.**

1. Piers, docks and floats shall only be permitted for water-dependent and water-related uses, including public access. Commercial uses that are auxiliary to and in support of water-dependent uses shall also be permitted on over-water structures provided the size of the over-water construction is not expanded for non-water-dependent uses.

2. New piers and docks for nonresidential use shall only be permitted when the applicant demonstrates that a specific need exists to support the intended water-dependent or water-related use. If the Port of Everett or other public or commercial entity has performed a needs analysis or comprehensive master plan projecting the future needs for pier or dock space, and if the plan or analysis is approved by the city, it may serve as the necessary justification for pier design, size, and construction.

3. Piers, docks, and floats shall be located, designed, and constructed so as to cause minimum interference with navigation and public use of the water surface and shoreline; to mitigate the impacts to ecological functions and critical areas, such as eelgrass beds and fish habitats (see the definition of “mitigation sequencing”); to avoid or minimize impacts to processes such as tidal currents and littoral drift; to minimize impacts on views; and to cause no undue harm to adjacent properties. Piers, docks and floats shall be the minimum size and height necessary to meet the needs of the proposed use.

4. Proposals for piers and docks shall include the following: the purpose of the project; description of the proposed structure (size, location relative to property lines and OHWM, design, and materials); any shoreline modification required; ownership of the lands; location, width, height and length of piers or docks on adjacent properties within three hundred feet; and sufficient studies, as determined by the planning director, to analyze the impacts of the proposal.

5. Overhead wiring and plumbing shall be prohibited on piers or docks.

6. Pilings and deck materials shall be made of inert non-polluting material or other materials approved by applicable state agencies.

7. No side yard setbacks are required for piers designed to connect with waterfront public access on the adjacent lot.

8. Piers and docks containing more than ten moorage spaces are classified as marinas and must meet the requirements of Section 33D.130, Boating Facilities.

9. Live-aboards are not permitted at piers and docks.

#### **B. Regulations—Single-Family Piers, Docks and Floats.**

1. Piers, docks and floats for single-family use shall be prohibited on the Snohomish River and its estuary, or Port Gardner Bay.

2. A pier shall be allowed only when the applicant has demonstrated a need for moorage and that the following alternatives have been investigated and are not available: commercial or marina moorage, floating moorage buoy or joint use moorage pier.

3. Joint use of piers by two or more waterfront property owners shall have priority over individual piers. Only one pier, dock or float shall be permitted for all lots in any short subdivision or subdivision that occurs after September 1, 2000. Such pier, dock or float shall be shared between all lots in the short subdivision or subdivision.

4. Covered over-water moorage, either fixed or floating, shall be prohibited (does not apply to marinas).

5. No pier or dock may be located within fifteen feet of a side lot line, unless the pier or dock is shared with the owner of the adjacent lot, in which case no setback is required.

6. No single-family lot shall have more than one pier, dock or float.

7. Piers shall be oriented perpendicular to the shoreline. No pier shall exceed six feet in width, twenty-five feet in length, or five feet in height above the ordinary high water mark on the landward side.

8. A shared pier may include one extension, finger pier or float for each dwelling, not to exceed one hundred fifty square feet in area for each residence, up to a maximum size of three hundred square feet.

9. Swimming floats are permitted in lieu of moorage piers when anchored off-shore and limited to one hundred square feet per dwelling unit, up to a maximum size of three hundred square feet.

#### C. Regulations—Multi-Family Residential Piers for Moorage.

1. Piers, docks and floats for private multiple-family use shall be prohibited on the Snohomish River and its estuary, or Port Gardner Bay.

2. Each development shall be allowed to construct one pier for the entire development for the purposes of providing a launching area and temporary moorage.

3. Permanent moorage shall occur on the uplands and not on the surface of the water.

4. Swimming floats are permitted in lieu of moorage piers when anchored off-shore and limited to one hundred square feet per dwelling unit, up to a maximum size of three hundred square feet.

5. Piers and docks must be set back a minimum of fifteen feet from the side lot lines.

6. For community piers and docks, maximum width and length shall be determined by the city on a case-by-case basis. No pier shall exceed five feet in height above the ordinary high water mark on the landward side.

#### D. Regulations—Recreational/Commercial/Industrial Piers.

1. Piers and docks shall be permitted for recreational use, multi-use commercial and industrial facilities where

the major use is water-dependent and public access is provided when there is no conflict with public safety.

2. Piers and docks shall be designed and constructed to enable emergency equipment, vehicles, and personnel to reach all the surface areas of the pier.

3. Water-dependent/water-related piers shall be permitted to the outer harbor line or the pierhead line.

4. Bulk storage of gasoline, oil, and other petroleum products shall be prohibited on piers or docks. (Ord. 2600-02 § 2(6.7), 2002.)

### 33D.350 Weirs.

#### A. Regulations.

1. A conditional use permit shall be required for any weir, except weirs constructed for the restoration of ecological functions.

2. Proposals that include weirs must provide sufficient hydrologic analysis to demonstrate that the proposal will not result in flooding of adjacent or upstream properties or result in channel migration. (Ord. 2600-02 § 2(6.8), 2002.)

## Article VII. Environmentally Sensitive Areas

### 33D.360 User guide.

This article establishes regulations pertaining to the development of environmentally sensitive areas. Many areas of Everett have been or may become listed, identified, inventoried, classified or rated as environmentally sensitive by the city or other public agencies. This article establishes regulations for development within or adjacent to all environmentally sensitive areas. If you are interested in developing property identified as containing or adjacent to steep slopes, lakes, streams, wetlands, springs, erosion hazard areas, landslide hazard areas, seismic hazard areas, or other unstable soil conditions, you should read this article. This article contains more stringent requirements than other provisions within this title for affected properties. These regulations supersede any less restrictive requirements contained elsewhere in this title. No action may be undertaken by any person which results in any alteration of an environmentally sensitive area unless such alteration is in compliance with the requirements of this article. Alteration includes the terms "use" and "development" as defined in this title, and includes any modification of the natural environment of environmentally sensitive areas including any grading, filling and/or excavation. Certain exceptions to the requirements of this article are listed in Section 33D.400. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 1, 1991.)

### 33D.370 Purpose.

Erosion, flood, landslide, and seismic hazard areas, streams, wetlands, protective buffers, and wildlife habitat areas constitute environmentally sensitive areas that are of

special concern to the city. The purpose of this article is to protect the environmentally sensitive areas of the Everett community by establishing standards for development of properties which contain or adjoin environmentally sensitive areas and thus protect the public health, safety, and welfare by:

A. Preserving, protecting, and restoring environmentally sensitive areas by regulating development within such areas and their buffers;

B. Mitigating unavoidable adverse impacts by regulating alterations, when protection cannot be required;

C. Protecting the public from personal injury, loss of life or property damage due to flooding, erosion, landslides, seismic events, or soil subsidence;

D. Avoiding publicly financed expenditures to correct misuses of environmentally sensitive areas, which may cause:

1. Unnecessary maintenance and replacement of public facilities,

2. Publicly funded mitigation of avoidable impacts,

3. Public costs for emergency rescue and relief operations where the causes are avoidable, or

4. Degradation of the natural environment;

E. Protecting and enhancing unique, sensitive, and valuable elements of the environment, including fish and wildlife habitat;

F. Alerting appraisers, assessors, owners, potential buyers or lessees to the presence of environmentally sensitive areas and the respective development limitations of such areas;

G. Providing city officials with sufficient information, direction and authority to protect environmentally sensitive areas when evaluating public or private development proposals; and

H. Implementing the policies of the Growth Management Act, State Environmental Policy Act, Chapter 43.21C RCW, Chapter 20.04 of the Everett Municipal Code, the city's general plan, and all updates and amendments, functional plans and other land use policies formally adopted or accepted by the city. (Ord. 2909-06 § 64, 2006: Ord. 1838-91 § 2, 1991.)

### **33D.380 Applicability.**

A. This article establishes regulations for the protection of environmentally sensitive areas. No development permit may be issued, no subdivision of land may be approved, nor may any use be established on any lot which contains, adjoins, or is in close proximity to an environmentally sensitive area until approvals required by this article have been granted by the city. Lots which are listed, identified, classified, or rated as environmentally sensitive areas are those which are or may become so designated by the Everett general plan, Everett SEPA resource inventory maps, Everett inventory of environmentally sensitive areas or by any other studies which indicate that all or por-

tions of a lot are environmentally sensitive areas. A site-specific analysis which indicates that any environmentally sensitive area regulated by this article exists on a lot will result in that portion of the lot being classified as environmentally sensitive.

B. In addition to the requirements of this article, the applicant shall obtain all necessary state and federal and other local permits. (Ord. 2909-06 § 64, 2006: Ord. 1838-91 § 3, 1991.)

### **33D.390 Environmentally sensitive features.**

On all lots containing or adjoining environmentally sensitive areas the following features shall not be altered or developed except as otherwise permitted by this article:

A. Area of flood hazard (if located in a designated floodplain, see Chapter 19.30 of the Everett Municipal Code);

B. Wetlands;

C. Streams;

D. The following geologically hazardous areas:

1. Slopes of forty percent or greater,

2. Erosion hazard areas when associated with another environmentally sensitive area,

3. Landslide hazard areas.

4. Seismic hazard areas;

E. Fish and wildlife conservation areas;

F. Slopes of twenty-five percent or greater associated or in conjunction with one or more of the sensitive elements listed in subsections A through E of this section; and

G. Ground water discharge areas, such as springs and seeps, that are associated with or occur upon any of the environmentally sensitive areas listed in subsections A through F of this section. (Ord. 2909-06 § 64, 2006: Ord. 1838-91 § 4, 1991.)

### **33D.400 Exemptions, exceptions, modifications.**

Certain activities are exempt from the requirements of this article, while other activities which are regulated by this article may be granted specific exceptions or an administrative modification as provided in this article. This section lists the activities which are exempt from the regulations of this article, the exceptions which may be granted to the requirements of this article, and the administrative modifications which can be granted to other requirements of this title of the city code.

A. Exemptions. All activities which are exempted, excepted, or granted modifications shall prevent, minimize and/or compensate for impacts to environmentally sensitive areas to the maximum extent possible. Such activities which are exempted, excepted, or granted modifications shall not be exempt from other laws or permit requirements which may be applicable. The following are exemptions to the provisions of this article; however, the exemptions listed in this section may not be exempted

from other state or federal regulations or permit requirements:

1. Emergencies that threaten the public health, safety and welfare, as verified by the city;
2. Legally constructed structures in existence on the date the ordinance codified in this article becomes effective that do not meet the buffer requirements of this article may be remodeled, reconstructed or replaced provided that the new construction or related activity does not further encroach into an environmentally sensitive area. Remodeling or reconstruction shall be subject to all other requirements of the zoning code;
3. Existing and ongoing agriculture in agricultural zones in existence as of the date this article becomes effective; provided, however, at such time as the property ceases to be used for agricultural activities, the property shall be brought into compliance with the provisions of this article;
4. Normal and routine maintenance of legally constructed irrigation and drainage ditches, provided that this exemption shall not apply to any ditches used by salmonids;
5. Normal and routine maintenance of agricultural ponds, livestock watering ponds and fish ponds, provided that such activities shall not involve the conversion of any wetland or stream not used for such purposes on the date this article becomes effective;
6. Entirely artificial structures intentionally constructed by humans from upland areas for purposes of storm water drainage or water quality control, or ornamental landscape ponds, which are not part of a mitigation plan required by this article;
7. Category III wetlands less than five hundred square feet in area having only one wetland class, which is not forested, and which is hydrologically isolated;
8. Category IV wetlands less than eight thousand square feet in area;
9. The following water, sewer, storm drainage, electric, natural gas, cable communications, and telephone utility related activities, public street and public park maintenance activities when undertaken pursuant to best management practices to avoid impacts to environmentally sensitive areas:
  - a. Normal and routine maintenance or repair of existing utility structures or right-of-way,
  - b. Relocation of electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of fifty-five thousand volts or less, when required and/or approved by the planning director, using the review process described in Title 15, Local Project Review Procedures,
  - c. Relocation of natural gas, cable communications, telephone facilities, lines, pipes, mains, equipment or appurtenances when required and/or approved by the

planning director, using the review process described in Title 15, Local Project Review Procedures,

d. Installation or construction in improved street rights-of-way and replacement, operation or alteration of all facilities listed in subsections A.9.b and A.9.c of this section,

e. Normal and routine maintenance of public streets, state highways, and public park facilities. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area nor does it include construction of a maintenance road or the dumping of maintenance debris;

10. Buffer management when approved by the planning director and all agencies with jurisdiction;

11. Forest practices on city-owned watershed property located in remote areas not contiguous to the Everett corporate boundaries, undertaken in accordance with the requirements of the State Department of Natural Resources.

B. Reasonable Use Exception. Nothing in this article is intended to preclude reasonable economic use of property as set forth in this title. If the requirements of this article as applied to a specific lot would deny all reasonable economic use of the lot, development will be permitted if the applicant demonstrates all of the following to the satisfaction of the planning director:

1. There is no other reasonable use or feasible alternative to the proposed development with less impact on the environmentally sensitive area; and

2. The proposed development does not pose a threat to the public health, safety and welfare on or off of the subject lot; and

3. Any alterations permitted to the requirements of this article shall be the minimum necessary to allow for reasonable use of the property; and

4. The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant in subdividing the property or adjusting a boundary line, thereby creating the undevelopable condition after the effective date of this article; and

5. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible.

C. Reasonable Use Decision Process. Whenever an applicant for a development proposal submits a reasonable use proposal to the planning director, the proposal shall include the following information which will be used to evaluate the criteria for reasonable use exception:

1. A description of the areas of the lot which are either environmentally sensitive or within setbacks required by this article;

2. A description of the amount of the lot which is within setbacks required by other standards of the zoning code;

3. An analysis of the minimum amount of development that would be considered "reasonable economic use"

of the lot, including a narrative which includes a factual basis for this determination;

4. An analysis of the impact that the amount of development described in subsection C.3 of this section would have on the environmentally sensitive areas;

5. An analysis of whether any other reasonable use with less impact on the environmentally sensitive areas and buffers is possible. This must also include an analysis of whether there is any practicable on-site alternative to the proposed development with less impact, including reduction in density, phasing of project implementation, change in timing of activities, revision of lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the environmentally sensitive areas and buffers;

6. A design of the proposal so that the amount of development proposed as "reasonable economic use" will have the least impact practicable on the environmentally sensitive areas;

7. An analysis of the modifications needed to the standards of this article to accommodate the proposed development;

8. A description of any modifications needed to the required front, side and rear setbacks; building height; and landscape widths to provide for a reasonable use while providing protection to the environmentally sensitive areas;

9. Such other information as the planning director determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.

D. Reasonable Use Administrative Modification. If, in order to provide reasonable economic use, the standards of this title need to be modified, the planning director is authorized to grant an administrative modification to the standards of this title in accordance with the following:

1. If a reasonable economic use of a lot cannot exist without modification of the required front, side and/or rear setbacks, building height, and/or landscape widths, the planning director is authorized to administratively modify such standards only to the extent necessary to provide for a reasonable economic use of the lot while still providing protection to the environmentally sensitive areas;

2. If a reasonable economic use of a lot cannot exist without a reduction of the buffers of the environmentally sensitive areas, the planning director is authorized to administratively permit a reduction in the buffers only to the extent necessary to provide for a reasonable use of the lot, provided there is adequate mitigation provided for any reduction in the buffer. This approach shall be preferred in circumstances where the environmentally sensitive areas have already been degraded or imputed by activities occurring prior to the effective date of this article, and enhancement/restoration of the degraded environmentally

sensitive area can reasonably be expected to be accomplished; or

3. If a reasonable economic use of a lot cannot exist by means of either subsection D.1 or D.2 of this section, then the planning director is authorized, using the review process described in Title 15, Local Project Review Procedures, to administratively grant a transfer of development rights in addition to subsection D.1 or D.2 of this section, or in lieu of them. For purposes of this section, "transfer of development rights (TDR)" means that the city severs the development rights from the fee interest and permits the owner of the restricted property to either transfer an authorized portion of the development rights in that property to another lot owned by the restricted party in accordance with the following provisions, or permits the owner of the restricted property to sell an authorized portion of the rights to owners of land who can use the authorized development rights in accordance with the following:

a. R-S, R-1 and R-2 Zones. The number of dwelling units allowed under a reasonable use determination for any residential development may be transferred to an R-S, R-1 or R-2 zone; provided, that the number of dwelling units allowed to be transferred to the receiving site shall not exceed the lesser of:

i. The number of dwelling units which the planning director determines to be the minimum necessary to allow for reasonable economic use of the restricted property, or

ii. Twenty percent more dwelling units than would be permitted on the receiving site without the transfer of development rights.

In approving a transfer of development rights to the receiving site in the R-S, R-1, or R-2 zone, the planning director shall have the authority to allow for a reduction of the minimum lot area allowed by the zone in which the receiving site is located by not more than twenty percent. All such lots shall have a minimum lot width of fifty feet. All dwelling units on such lots shall be single-family dwellings.

b. R-1(A) and R-2(A) Zones. The amount of development transferred to the receiving lot shall not result in a development density which exceeds the maximum permitted in the use zone of the receiving lot without the transferred development by more than twenty-five percent. All other requirements of the use zone in which the receiving lot is located shall apply to the transferred development.

c. Multiple-Family Zones. The amount of development transferred to the receiving lot shall be limited only by all other requirements of this title applicable to the use zone in which the receiving lot is located (building height, off-street parking, setbacks, multiple-family development standards, etc.), excluding maximum permitted density.

d. Commercial and Industrial Zones. The amount of development transferred to the receiving lot shall not exceed that which can be accommodated by allowing an

increase of permitted height on the receiving lot of not more than fifteen feet. All other requirements of the use zone in which the receiving lot is located shall be applicable to the transferred development.

E. Public Utility and Infrastructure Exception. If the application of this section would prohibit a development proposal by a public agency or public utility to construct utility lines for the conveyance of water, sewage, storm drainage, natural gas, or telecommunications; or the construction of collector or arterial streets and highways, the agency or utility may request an exception pursuant to this subsection. Such a request shall be reviewed by the hearing examiner using the review process described in Title 15, Local Project Review Procedures. The hearing examiner may approve, or approve with modifications such a request only when the following findings are made:

1. There is no other practicable alternative to the proposed development with less impact on the environmentally sensitive area; and
2. The proposal mitigates the impacts on the environmentally sensitive areas to the maximum extent possible; and
3. The proposal does not impact a significant fish or wildlife habitat area.

F. Prohibition on Variances—Other Exceptions Permitted by this Article. The variance procedures described in Section 41.130 of this title shall not apply to the standards of this article. The following subsections permit alteration or modification of the requirements of this article for protection of environmentally sensitive areas:

1. Subsection 8 for modification of standards for geologically hazardous areas;
2. Subsections 10 and 11 for modification of standards for wetlands and their required buffers;
3. Subsection 14 for modification of standards for streams and their required buffers. (Ord. 2909-06 § 64, 2006; Ord. 2538-01 §§ 44, 45, 46, 2001; Ord. 1838-91 § 5, 1991.)

### **33D.410 Permitted uses.**

Uses permitted on lots containing or adjoining environmentally sensitive areas shall be the same as those permitted in the use zone in which the lot is located. Each use shall be evaluated in accordance with the review process required for the proposed use in the use zone in conjunction with the requirements of this article and other city, state, and federal regulations. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 6, 1991.)

### **33D.420 Submittal requirement—Supporting information.**

A. Submittal Requirements. Applications for land uses or developments proposed on lots with environmentally sensitive areas shall be filed with the planning department. The city may waive specific submittal

requirements determined to be unnecessary for review of a specific application. All developments proposed on lots which may contain or adjoin environmentally sensitive areas shall be evaluated by the applicant to provide the information necessary for the planning department to determine if and to what extent the site contains environmentally sensitive areas.

B. Supporting Information. All land uses and developments proposed on or adjacent to lots which are listed, identified, inventoried, classified, or rated as environmentally sensitive shall include studies which describe the environmental conditions of the site. No activity, including clearing, filling or grading, shall be permitted until the information required by this section is reviewed and approved by the city. Such studies shall be prepared by experts with demonstrated qualifications in the area of concern, who shall prepare the studies in accordance with the requirements of this article to the satisfaction of the planning department. The city may retain consultants at the applicant's expense to assist the review of studies outside the range of staff expertise. The planning director shall develop and maintain a detailed list of required study contents. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 7, 1991.)

### **33D.430 Geologically hazardous areas.**

A. Designation. The following are considered geologically hazardous areas and shall not be altered except as otherwise provided by this article:

1. Slopes of forty percent or greater;
2. Landslide hazard areas;
3. Seismic hazard areas;
4. Erosion hazard areas when associated with other environmentally sensitive areas;
5. Other areas which the city has reason to believe are geologically hazardous.

B. Protective Requirements.

1. Development proposals on properties which are designated as or which the city has reason to believe are geologically hazardous areas shall have a standard buffer of twenty-five feet from the top, toe and sides of such areas.

2. The setback buffer requirement listed in subsection B.1 of this section may be increased by the city when necessary to protect public health, safety and welfare, based upon information contained in a geotechnical report or for other reasons related to the geologically hazardous conditions of the lot.

3. The setback buffers required by this subsection shall be maintained in native vegetation to provide additional soil stability and erosion control. If the buffer area has been cleared, it shall be replanted with native vegetation.

C. Permitted Alterations. Unless associated with another environmentally sensitive area, the planning

director, using the review process described in Title 15, Local Project Review Procedures, may allow alteration of an area identified as a geologically hazardous area or the standard buffers listed in subsection B of this section if he/she approves a geotechnical report which demonstrates that:

1. The proposed development will not create a hazard to the subject property, surrounding properties or rights-of-way, erosion or sedimentation to off-site properties or bodies of water;
2. The proposal addresses the existing geological constraints of the site, including an assessment of soils and hydrology;
3. The proposed method of construction will reduce erosion potential, landslide and seismic hazard potential, and will improve or not adversely affect the stability of slopes;
4. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation;
5. The proposal is consistent with the purposes and provisions of this article;
6. The proposal mitigates all impacts identified in the geotechnical report; and
7. All utilities and access roads or driveways to and within the site are located so as to require the minimum amount of modification to slopes, vegetation or geologically hazardous areas.

D. Additional Requirements. As part of any approval of development on or adjacent to geologically hazardous areas or within the standard buffers required by subsection B of this section, the city may require:

1. An environmentally sensitive area protective covenant or tract for the area approved for alteration or any geologically hazardous area not approved for alteration;
2. The presence of a geotechnical consultant on the site to supervise during clearing, grading, filling and construction activities which may affect geologically hazardous areas, and provide the city with certification that the construction is in compliance with his/her recommendations and has met with his/her approval, and other relevant information concerning the geologically hazardous conditions of the site;
3. Vegetation and other soil stabilizing structures or materials be retained or provided. (Ord. 2909-06 § 64, 2006; Ord. 2538-01 § 47, 2001; Ord. 1838-91 § 8, 1991.)

**33D.440 Wetland delineation and rating.**

A. Wetland Delineation. Wetlands shall be identified and delineated in accordance with the approach specified in the Washington State Wetlands Identification and Delineation Manual. The wetlands boundaries established by this approach shall then be used in satisfying the requirements of this section. Wetlands shall be classified according to the classification of the U.S. Fish and Wild-

life Service’s Classification of Wetlands and Deepwater Habitats of the United States.

B. Wetland Rating. “Wetland rating” means the placement of wetlands into one of the following categories:

1. Category I Wetlands (Exceptional Resource Value). “Category I wetlands” means wetlands that meet any one of the following criteria:
  - a. Documented habitats of primary association;
  - b. High-quality native wetland communities, including documented category I or II quality natural heritage wetland sites and sites which qualify as a category I or II quality natural heritage wetland;
  - c. High-quality, regionally rare wetland communities with irreplaceable ecological functions, including sphagnum bogs and fens, kelp, and eel grass beds, estuarine wetlands, or coniferous forested wetlands occurring on organic soils;
  - d. Wetlands which:
    - i. Are greater than or equal to five acres in size;
    - ii. Have three or more wetland classes; and
    - iii. Have an open water component.
2. Category II Wetlands (Significant Resource Value). “Category II wetlands” means wetlands other than category I wetlands that meet any one of the following criteria:
  - a. Wetlands which:
    - i. Are greater than or equal to one acre;
    - ii. Have forty to sixty percent open water in dispersed patches; and
    - iii. Have two or more wetland classes.
  - b. Wetlands which:
    - i. Are greater than or equal to one acre; and
    - ii. Have a forested wetland class; or
    - iii. Riparian wetlands of any size.
3. Category III Wetlands (Important Resource Value). “Category III wetlands” means wetlands which do not qualify as category I, II or IV wetlands.
4. Category IV Wetlands (Ordinary Resource Value). “Category IV wetlands” means wetlands that are hydrologically isolated; have an area less than or equal to one acre; and contain one vegetation class, eighty percent of which is dominated by one or more of the species listed below:

Common Name	Scientific Name
Small-fruited bulrush	Scirpus microcarpus
Hard hack spirea	Spirea douglasii
Purple loosestrife	Lythrum salicaria
Townsend’s cordgrass	Spartina townsendii
Canada thistle	Cirsium arvense
Himalayan blackberry	Rubus discolor
Reed canary grass	Phalaris arundinacea

Common Name	Scientific Name
Velvet grass	Holcus lanatus
Foxtail	Alopecurus pratensis
Soft rush	Juncus effusus
Reed	Phragmites communis
Orchard grass	Dactylis glomerata
Buttercup	Ranunculus repens
Colonial Bent Grass	Agrostis tenuis
Redtop	Agrostis alba

(Ord. 2909-06 § 64, 2006; Ord. 2397-99 § 60, 1999; Ord. 1838-91 § 9, 1991.)

### 33D.450 Standard wetland buffer width requirements.

A. Standard Buffer Width. The following minimum buffers of native vegetation shall apply to wetlands based upon the wetland category. Buffers shall be measured from the wetland boundary delineated as required by Section 33D.440.A. If the designated buffer contains significant vegetation with drip lines extending beyond the edge of the buffer, the buffer shall be extended to five feet beyond the outside edge of the drip line. For purposes of this section, "significant vegetation" means a healthy evergreen tree, ten inches in diameter or greater, measured 4.5 feet above existing grade.

1. Category I: one hundred feet;
2. Category II: seventy-five feet;
3. Category III: fifty feet;
4. Category IV: twenty-five feet.

B. Permitted Uses within Required Buffers.

1. Subject to the following criteria, wetponds, bio-swales, and detention facilities are permitted within the following required wetland buffers areas:

a. Permitted Areas.

i. For category I wetlands, facilities shall be permitted only within buffer areas where there has been prior legal alteration which eliminated significant vegetation and where a buffer enhancement plan is provided for the proposed facility.

ii. For category II wetlands, facilities shall be located to minimize reduction of the required buffer. To the maximum extent feasible, facilities shall be located within buffer areas where there has been prior legal alteration or in buffer areas with less than fifty percent forested/native vegetation cover.

iii. Buffer areas for category III and IV wetlands.

b. Criteria.

i. Permitted facilities shall not substantially alter wetland hydrology and shall not degrade wetland functions;

ii. Facilities shall not occupy more than fifty percent of the total required buffer area;

iii. Facilities shall be designed to be integrated into the wetland buffer as a natural drainage system meeting the requirements as established in Section 18.28.080(I)(1) and 18.28.160(C)(1). The slopes and all areas that are disturbed shall be planted with the native vegetation consistent with a buffer enhancement/mitigation plan. Above ground concrete walls and structures are not permitted. Below grade structures may be permitted only if it can be shown to the satisfaction of the planning director that the use of such materials fits with the natural design of the proposed facility and does not interfere with wildlife passages or adversely impact biological functions of the buffer or the adjacent environmentally sensitive area;

iv. The location of a maintenance/access road is limited to the upland side of the facility, unless otherwise approved by the planning director; and

v. With the exception of buffers for category I wetlands, buffer replacement is not required for facilities which meet the criteria in subsection (a) and this subsection.

c. Maintenance. Normal and routine maintenance of the storm water drainage or water quality control facility and required planting is permitted and shall exempt from the requirements of this article.

C. Required Fencing—Signs.

1. A temporary construction fence shall be placed along the construction setback line to prevent encroachment during construction. The city may require any development proposed on a lot which contains or adjoins a wetland to provide a fence or other structural protection at the edge of the wetland buffer to minimize encroachment into and disturbance of the wetland and buffer area after construction.

2. The city may require the applicant to provide informational signs in conspicuous locations on the fence or near the wetland to identify the wetland as an environmentally sensitive area and the importance of maintaining it in a clean and undisturbed condition. Such signs shall meet the requirements for incidental signs as specified in Chapter 36 of this title.

D. Increased Standard Wetland Buffer Width. The minimum buffer width stated in subsection A of this section shall be increased when the city finds, based upon a site-specific wetland analysis, that impacts on the wetland from a proposed development can only be mitigated by a greater buffer width. The standard wetland buffer width shall be increased:

1. When the wetland is used by salmonids, plant and/or animal species proposed or listed by the federal government or state as an endangered, threatened, rare, candidate, sensitive or monitored; or has critical or outstanding potential habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees, and the increased buffer is necessary to protect such habitat;

2. When the adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse wetland impacts; or

3. When the standard buffer has minimal or degraded vegetative cover that cannot be improved through enhancement; or

4. When the minimum buffer for a wetland extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:

a. The minimum buffer for that particular wetland; or

b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less.

E. **Standard Wetland Buffer Width Reduction.** The planning director may, using the review process described in Title 15, Local Project Review Procedures, reduce the standard wetland buffer width only when there has previously been substantial legal alteration of the wetland and/or buffer on the subject lot or adjoining lots. The planning director shall require buffer width averaging rather than allowing a buffer width reduction except when the proposal includes a wetland and buffer enhancement plan that improves the functional values of the buffer and the wetland. An enhanced buffer shall not result in more than a fifty percent reduction in the standard buffer width, and the reduced buffer shall not be less than the minimum dimension allowed by buffer width averaging.

F. **Buffer Width Averaging.** The city may allow buffer width averaging, provided that the total area on the lot contained within the buffer is not less than that required within the standard buffer, and that averaging will not reduce the wetland functional values. The city may require buffer width averaging in order to provide protection to a particular portion of a wetland which is especially sensitive, or to incorporate existing significant vegetation or habitat areas into the buffer. Buffer width averaging shall not adversely impact the functions and values of the wetland. The adjusted minimum buffer width shall not be less than fifty percent of the standard buffer width or twenty feet, whichever is greater. (Ord. 2909-06 § 64, 2006; Ord. 2538-01 § 48, 2001; Ord. 2332-98 § 1, 1998; Ord. 1838-91 § 10, 1991.)

### **33D.460 Avoiding wetland impacts.**

A. **Preservation and Protection Goals.** It is the short-term goal of this article that there be no net loss of the acreage or functional values of all wetlands regulated by this article. The long-term goal is a net gain in functional values. To realize wetland preservation goals, the city will use the following methods of wetland impact mitigation in order of preference:

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

2. Minimize impact by limiting the degree or magnitude of the action and its implementation by using appro-

priate technology, or by taking affirmative steps to avoid or reduce impact;

3. Rectify the impact by repairing, rehabilitating or restoring the affected sensitive areas;

4. Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;

5. Compensate for the impact by replacing, enhancing, or providing substitute wetland areas and environments;

6. Monitor the impact and take appropriate corrective measures.

#### **B. Wetland Preservation/Alteration Thresholds.**

1. **Category I Wetlands.** All category I wetlands shall be preserved except as provided in this article. The planning director, using the review process as described in Title 15, Local Project Review Procedures, may allow alteration of category I wetlands:

a. Where alteration is allowed pursuant to Section 33D.400 of this article:

b. The alteration is solely to provide access to deep water for a water-dependent use or to expand an existing water-dependent use in an area which is designated as an urban environment by the shoreline master program, and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated; or

c. The alteration is to allow a public park or public recreational use, or to provide public access to the shoreline within an area designated as an urban or conservancy/recreation environment by the shoreline master program; provided, that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated;

d. Enhancement of wetlands is permitted where the wetlands being enhanced are in a degraded condition and the enhancement proposed is likely to provide substantial rehabilitation and improved functional values.

2. **Category II Wetlands.** All category II wetlands shall be preserved except as provided in this article. The planning director, using the review process described in Title 15, Local Project Review Procedures, may allow alteration of category II wetlands:

a. Where alteration is allowed pursuant to Section 33D.400; or

b. The alteration is solely to provide access to deep water for a water-dependent use or to expand an existing water-dependent use in an area which is designated as an urban environment by the shoreline master program, and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated; or

c. The alteration is to allow a public park or recreational use, or to provide public access to the shoreline within an area designated as an urban or conservancy/recreation environment by the shoreline master program; provided, that there is no feasible and reasonable alternative to making the alteration and the alteration does not act to degrade the functions of the wetland, or the alteration proposed has a reasonable likelihood of being fully mitigated; or

d. In areas which are not subject to the shoreline master program, alteration of category II wetlands may only occur under the following circumstances:

i. Water-dependent activities may be approved where there are no practicable alternatives which would not involve a wetland or which would not have other significant adverse environmental impacts.

ii. Non-water-dependent activities may be allowed to alter category II wetlands only upon demonstration that (a) reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid or result in less adverse impact on a regulated wetland or its buffer, will not accomplish the basic purpose of the project; and (b) in cases where the applicant has rejected alternatives to the project as proposed, due to constraints such as zoning, deficiencies of infrastructure, or lot size, the applicant has made a reasonable attempt to remove or accommodate such constraints.

e. Enhancement of wetlands is permitted where the wetlands being enhanced are in a degraded condition and the enhancement proposed is likely to provide substantial rehabilitation and improved functional values.

### 3. Category III Wetlands.

a. Alteration of category III wetlands may be allowed by the city only when mitigation is provided for the loss of all functional values.

b. Enhancement of wetlands is permitted.

4. Category IV Wetlands. Category IV wetlands are permitted to be altered as provided for category III wetlands, or in the event the city has established a wetland mitigation fund for the area in which the wetland is located, then the applicant may pay into a wetland mitigation fund established by the city, which shall be a pro rata share of the cost of the drainage facilities or improvements to be constructed, based upon the size and functional values of the wetland to be altered. All mitigation funds shall be paid to the city prior to alteration of the category IV wetland.

5. Silver Lake Watershed. The city shall not allow the draining, filling, encroachment or degradation of wetlands within the Silver Lake Watershed, except for the following circumstances:

a. Hydrologically isolated category III or IV wetlands with a surface area of three thousand square feet or less, or hydrologically isolated category IV wetlands less

than ten thousand square feet in area. Compensatory wetland mitigation shall still be required for alteration of such wetlands;

b. Where alteration is necessary to allow for reasonable use of property as provided in Section 33D.400, or to allow access to a lot; or

c. When the applicant demonstrates to the satisfaction of the planning director and public works director that such activities will result in an enhancement of wetlands which improves the water quality functions of the wetland, or will improve the other functions of the wetland if water quality will not be degraded. Any such proposed activities shall be reviewed using the review process described in Title 15, Local Project Review Procedures.

C. Compensating for Wetland Impacts. Wetland and buffer alteration allowed by this section shall be subject to the following requirements:

1. Each activity/use shall be designed so as to minimize overall wetland or buffer alteration to the greatest extent possible.

2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.

3. A mitigation plan shall be prepared in accordance with subsection D of this section.

4. The city may require the applicant to rehabilitate a wetland or its buffer by removing debris, sediment, non-native vegetation, or other material detrimental to the area, by replanting disturbed vegetation, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to water quality or habitat exists.

5. In approving alteration or relocation of a wetland, the city shall require that an area larger than the altered portion of the wetland be provided as compensation for destruction of the functions of the altered wetland and to ensure that such functional values are replaced. The following ratios apply to creation or restoration which is in-kind, on-site, timed prior to or concurrent with alteration, and has a high probability of success. The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered.

a. Category I. 6:1

b. Category II or III.

i. Forested—3:1

ii. Scrub-Shrub—1.5:1

iii. Emergent—1.25:1

c. Category IV. 1.25:1 unless a mitigation fee is paid as provided by subsection B.4 of this section.

d. The city may increase the ratios under any one of the following circumstances:

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

ii. Significant period of time between destruction and replication of wetland functions;

- iii. Projected losses in functional value;
  - iv. The relocation is off-site or the replacement is with out-of-kind compensation;
  - v. The wetland has been illegally filled or altered.
  - e. The city may decrease these ratios if the findings of a wetlands mitigation plan demonstrates that no net loss of wetland functional values will result from the decreased ratio.
  - f. In no case shall the replacement acreage be less than that which is altered.
6. When wetland compensation is allowed, the city may require that the wetland compensation be completed and functioning prior to allowing the existing wetland to be filled or altered. For category I wetlands, the city shall require the relocated wetland area to be completed and functioning prior to allowing the existing wetland to be altered.
7. The city may limit certain development activities near a wetland to specific months in order to minimize impacts on wetland functional values.
8. The city may apply additional conditions or restrictions or require specific construction techniques in order to minimize impacts on wetland functional values.
9. Wetland compensation shall not occur in areas having high-quality terrestrial habitat.
10. The city may allow wetland mitigation banking in lieu of other forms of wetland impact mitigation when the mitigation site being used for the credit allowed pursuant to this section is either a wetland created from a site which was previously nonwetland or a wetland of lesser size or functional value than the wetland being altered. Under the wetland mitigation banking process, alteration of a wetland on the development site shall occur only when the created or enhanced wetland is successfully functioning in accordance with an approved wetland mitigation plan. The created or enhanced wetland shall have greater functional value than that being altered. In evaluating a wetland mitigation banking proposal, the planning director shall determine the amount of credit given for mitigation banking using the ratios described in subsection C.5 of this section as a guide. The amount of credit will be dependent upon the functional value of the wetland being altered and the wetland being used for mitigation banking. The city, using the review process described in Title 15, Local Project Review Procedures, may allow wetland mitigation banking under the following circumstances:
- a. When alteration is allowed pursuant to the "reasonable use" exception as provided in Section 33D.400.B;
  - b. When alteration is allowed for a water-dependent or water-related use;
  - c. When on-site or off-site mitigation is not practicable;
  - d. When the wetland being altered is of a lower quality and has lesser functional values than the wetland which is being used for the mitigation banking.

D. Wetland Mitigation Plans. When wetland alteration is permitted by this article, a mitigation plan shall be required to describe the methods the applicant will use to minimize impacts to wetland functional values. A detailed mitigation plan shall be approved by the city prior to any development activity occurring on a lot upon which wetland or wetland buffer alteration, restoration, creation or enhancement is proposed. The mitigation plan shall be prepared by a qualified person using accepted methodologies and include information as required by the planning director's administrative guidelines, and shall:

- 1. Include a baseline study that quantifies the existing functional values of the wetland, functional values that will be lost, and the wetland's functional values after mitigation;
- 2. Specify how functional values will be preserved or replaced;
- 3. Specify how impacts will be avoided, minimized or compensated for;
- 4. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;
- 5. Include provisions for monitoring the mitigated area on a long-term basis to determine whether the plan was successful;
- 6. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and
- 7. Include provisions for an assurance device as provided by Chapter 40 of this title to ensure that work is completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

E. Protective Covenants and Tracts. The city may require that wetlands and their buffers on development sites be placed within an environmentally sensitive area protective covenant or tract as provided in Section 33D.550 of this article. (Ord. 2909-06 § 64, 2006; Ord. 2538-01 §§ 49—52, 2001; Ord. 1838-91 § 11, 1991.)

### **33D.470 Lakes, ponds, constructed and created wetlands.**

A. Lakes. Lakes which are subject to the shoreline master program shall be protected as required by Section 33D.460.B of this article. Lakes which are not subject to the shoreline master program shall be protected according to the applicable wetland category.

B. Ponds. Ponds are considered wetlands unless they were intentionally created from nonwetland sites, in which case they do not constitute wetlands and are not regulated by the provisions of this article. Ponds shall be protected according to the applicable wetland category.

C. Constructed Wetlands. Wetlands that were intentionally constructed by humans from nonwetland sites

shall be considered as artificial wetlands, and shall not be regulated by the provisions of this article. Constructed wetlands can include ponds, irrigation and drainage ditches, grass-lined swales, canals, storm water detention and retention facilities, and artificial landscape features.

D. Created Wetlands. Wetlands created to mitigate alteration, restoration, creation, or enhancement activities allowed pursuant to this article shall be protected according to the applicable wetland category being replaced. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 12, 1991.)

### 33D.480 Stream rating.

Rating means the placement of streams into one of the following categories:

A. Category I. Category I streams are those streams inventoried as shorelines of the state under the city's shoreline master program, pursuant to Chapter 90.58 RCW, or those that are used by salmonids.

B. Category II. Category II streams are those streams that are smaller than category I streams that flow year-round during years of normal rainfall.

C. Category III. Category III streams are those streams that are naturally intermittent or ephemeral during years of normal rainfall and are not used by salmonids in any portion of the stream system.

D. Category IV. Category IV streams are naturally occurring, intermittent swales. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 13, 1991.)

### 33D.490 Standard stream buffer requirements.

A. Standard Buffer Width. It is the goal of this article to preserve streams and their buffers in a natural condition to the maximum extent possible. Buffers shall be measured from the top of the upper bank or, if that cannot be determined, from the ordinary high-water mark as surveyed in the field. In braided channels and alluvial fans, the top of the bank or ordinary high-water mark shall be determined so as to include the entire stream feature. Except for category IV streams, if the designated buffer contains significant vegetation with drip lines extending beyond the edge of the buffer, the buffer shall be extended to five feet beyond the outside edge of the drip line. For purposes of this section, significant vegetation means a healthy evergreen tree, ten inches in diameter or greater, measured four and one-half feet above existing grade. Except as otherwise provided by Section 33D.400 of this article, the following minimum buffers of native vegetation shall apply to streams based upon category:

1. Category I Streams. Category I streams shall have a minimum buffer of one hundred feet on each side of the stream, except that properties under the jurisdiction of the shoreline master program which abut category I streams may have a minimum buffer of less than one hundred feet when shoreline public access improvements may otherwise be permitted or required during the shoreline permit

review process; or when a water-dependent or water-related use which requires a lesser buffer standard is approved during the shoreline permit review process.

2. Category II Streams. Category II streams shall have a minimum buffer of fifty feet on each side of the stream.

3. Category III Streams. Category III streams shall have a minimum buffer of twenty-five feet.

4. Category IV Streams. Category IV streams shall have a minimum buffer of ten feet.

B. Permitted Uses within Required Buffers. Subject to the following criteria, wetponds, bioswales, and detention facilities are permitted within the following required stream buffers areas:

1. Permitted Areas.

a. For category I streams, facilities shall be permitted only within buffer areas where there has been prior legal alteration which eliminated significant vegetation and where a buffer enhancement plan is provided for the proposed facility.

b. For category II streams, facilities shall be located to minimize reduction of the required buffer. To the maximum extent feasible, facilities shall be located within buffer areas where there has been prior legal alteration or in buffer areas with less than fifty percent forested/native vegetation cover.

c. Buffer areas for category III and IV streams.

2. Criteria.

a. Permitted facilities shall not substantially alter stream hydrology and shall not degrade stream functions;

b. Facilities shall not occupy more than fifty percent of the total required buffer area;

c. Facilities shall be designed to be integrated into the stream buffer as a natural drainage system meeting the requirements as established in Sections 18.28.080(I)(1) and 18.28.160(C)(1). The slopes and all areas that are disturbed shall be planted with the native vegetation consistent with a buffer enhancement/mitigation plan. Above ground concrete walls and structures are not permitted. Below grade structures may be permitted only if it can be shown to the satisfaction of the planning director that the use of such materials fits with the natural design of the proposed facility and does not interfere with wildlife passages or adversely impact biological functions of the buffer or the adjacent environmentally sensitive area;

d. The location of a maintenance/access road is limited to the upland side of the facility unless otherwise approved by the planning director; and

e. With the exception of buffers for category I streams, buffer replacement is not required for facilities which meet the criteria in subsection B.1 of this section and this subsection.

3. Maintenance. Normal and routine maintenance of the storm water drainage or water quality control facility

and required planting is permitted and shall exempt from the requirements of this article.

C. **Standard Buffer Width Increase.** The city shall require increased buffer widths as necessary to protect streams when the stream is particularly sensitive to disturbance, or the development poses unusual impacts and the increased buffer width is necessary to protect the environmentally sensitive areas described in this subsection. Circumstances which may require buffers beyond minimum requirements include, but are not limited to, the following:

1. The stream reach affected by the development proposal serves as critical fish habitat for spawning or rearing as determined by the city using information from resource agencies including, but not limited to, the Washington State Departments of Fisheries or Wildlife, U.S. Fish and Wildlife Service, and native tribes;

2. The stream or adjacent riparian corridor is used by species listed by the federal government or the state as endangered, threatened, rare, sensitive, or monitored, or provides critical or outstanding actual or potential habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting or lookout trees;

3. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area;

4. Increased buffer width is necessary to effectively include the riparian corridor of the stream;

5. A trail or utility corridor, as provided by Section 33D.400, is proposed within the buffer;

6. A drainage or water quality improvement, approved by the city, is proposed within the buffer;

7. When the minimum buffer for a stream extends into an area with a slope of greater than twenty-five percent, the buffer shall be the greater of:

a. The minimum buffer for that particular stream; or

b. Twenty-five feet beyond the point where the slope becomes twenty-five percent or less.

D. **Standard Stream Buffer Width Reduction.** The planning director may, using the review process as described in Title 15, Local Project Review Procedures, reduce the standard stream buffer width only when there has previously been substantial legal alteration of the stream and/or buffer on the subject lot or adjoining lots. The planning director shall require buffer width averaging rather than allowing a buffer width reduction except when the proposal includes a stream and buffer enhancement plan that improves the functional values of the buffer and the stream. An enhanced buffer shall not result in more than a fifty percent reduction in buffer width, and the reduced buffer shall not be less than the minimum dimension allowed by buffer width averaging.

E. **Riparian Wetland.** Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland, unless the stream buffer requirement is more protective, in which case the stream buffer requirement

shall apply. Riparian wetland and associated stream buffers shall not be reduced except as provided in Section 33D.400 of this article.

F. **Standard Buffer Width Averaging.** The city may allow buffer width averaging, provided that the total area on the lot contained within the averaged buffer is not less than that required within the standard buffer. The city may require buffer width averaging in order to provide protection to a particular portion of a stream which is especially sensitive or to incorporate existing significant vegetative or habitat features into the buffer. Averaging shall not adversely impact the functions and values of the stream system. In either case, the adjusted minimum buffer width shall not be less than fifty percent of the standard buffer width or ten feet, whichever is greater. (Ord. 2909-06 § 64, 2006; Ord. 2538-01 § 53, 2001; Ord. 2332-98 § 2, 1998; Ord. 1838-91 § 14, 1991.)

### **33D.500 Avoiding stream impacts.**

A. **Stream Preservation/Alteration Goal and Priorities.** It is the short-term goal of this section that there be no net loss of the functional values of all streams in the city, and the long-term goal to improve the quality and functional values of the stream systems in Everett. To realize stream preservation and protection goals, the city will use the following methods of stream impact mitigation in order of preference:

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

2. Minimize impact 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 impact;

3. Rectify the impact by repairing, rehabilitating or restoring the affected sensitive areas;

4. Reduce or eliminate the impact over time by prevention and maintenance operations during the life of the actions;

5. Compensate for the impact by replacing, enhancing, or providing substitute streams and environments;

6. Monitor the impact and take appropriate corrective measures.

B. **Stream Preservation/Alteration Thresholds.**

1. **Category I Streams.** All category I streams shall be preserved. The city may allow alteration of category I streams under the following circumstances:

a. Where alteration is allowed pursuant to Section 33D.400 of this article;

b. The alteration is solely to provide access to deep water for a water-dependent use or to expand an existing water-dependent use in an area which is designated as an urban environment by the shoreline master program, and the alteration does not act to degrade the functions of the stream, or the degradation can be fully mitigated; or

c. When necessary to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Alteration for the purpose of providing access shall be limited to the minimum number of stream crossings required to permit reasonable access.

2. Category II and Category III Streams.

a. Except as provided in this subsection no alteration of a category II or category III stream shall be allowed except as otherwise provided by Section 33D.400 of this article; or

b. The planning director may, using the review process described in Title 15, Local Project Review Procedures, allow alteration or relocation of category II or category III streams only when the applicant can demonstrate that the alteration or relocation enhances the functional values of the stream;

c. Culverting within a stream shall only be permitted as provided by Section 33D.400 of this article or to provide access to a lot or a substantial portion of a lot when no other feasible means of access exists. Use of common access points shall be required for abutting lots which have no other feasible means of access. Culverting shall be limited to the minimum number of stream crossings required to permit reasonable access. The type of culvert used shall be as required by the Department of Fisheries or Department of Wildlife.

3. Category IV Streams. Category IV streams may be altered, relocated or culverted when:

a. The loss of the functional values of the altered stream can be fully replaced;

b. No feasible and reasonable development alternative exists which does not alter, relocate or culvert the stream; or

c. It is necessary for access to the lot or a substantial portion of a lot.

4. Watershed Management Plans. The city shall not allow relocation or alteration of any category I, II or III stream located within an area where an adopted watershed management plan does not allow for stream alteration or relocation, except when allowed by Section 33D.400 of this article, or to allow access to a lot or substantial portion of a lot when no other feasible means of access exists.

C. Compensating for Stream Impacts. Stream system and buffer alteration, when allowed by Section 33D.400 of this article shall be subject to the following requirements:

1. Each activity/use shall be designed so as to minimize overall stream system or buffer alteration to the greatest extent possible.

2. Construction techniques and field marking of areas to be disturbed shall be approved by the city prior to site disturbance to ensure minimal encroachment.

3. A mitigation plan shall be prepared in accordance with subsection D of this section.

4. The city may require the applicant to rehabilitate a stream system and its buffer area by removing harmful debris, sediment, non-native vegetation, or other material detrimental to the area, by replanting disturbed vegetation, by removing culverted portions of a stream from culverts, or by other means deemed appropriate by the city. Rehabilitation or restoration may be required at any time that a condition detrimental to stream functional values exists.

5. In approving alteration or relocation of a stream system or its buffer, the city may require that an area larger than the altered portion of the stream and its buffer be provided as compensation for destruction of the functions of the altered stream system and to ensure that such functional values are replaced.

6. When stream system relocation or compensation is allowed, the city shall require that the stream relocation be completed prior to allowing the existing stream to be filled or altered.

7. The city may limit certain development activities near a stream to specific months in order to minimize impacts on water quality and wildlife habitat.

8. The city may apply additional conditions or restrictions, or require specific construction techniques in order to minimize impacts to stream systems and their buffers.

9. Stream compensation shall not occur in areas having high-quality terrestrial habitat.

D. Stream Impact Mitigation Plans. When stream alteration is permitted, mitigation shall be required for the loss of stream system functional values. All required mitigation shall be specified in a detailed mitigation plan, which shall be approved by the city prior to any development activity occurring on a site upon which stream system alteration is proposed. The mitigation plan shall be prepared by a qualified person using accepted methodologies and include information as required by the planning director's administrative guidelines, and shall:

1. Include a baseline study that quantifies the existing functional values of the system, functional values that will be lost, and the stream's functional values after mitigation;

2. Specify how functional values will be replaced;

3. Specify when mitigation will occur relative to project construction and to the requirements of permits issued by other agencies;

4. Include provisions for monitoring the mitigated area on a long-term basis to determine whether the plan was successful;

5. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and

6. Include provisions for an assurance device as provided by Chapter 40 of this title to ensure that work is

completed in accordance with the mitigation plan and that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation failure results within five years of implementation.

E. Protective Covenants and Tracts. The city may require that streams and their buffers on development sites be placed within an environmentally sensitive area protective covenant or environmentally sensitive area tract as provided by Section 33D.550 of this article.

F. Fencing and Other Protection Mechanisms. The city may require that any development proposed on a lot which contains or adjoins a stream provide a fence or other structural protection along the upland side of the stream and its buffer to minimize encroachment into and disturbance of the stream and buffer area. (Ord. 2909-06 § 64, 2006; Ord. 2538-01 § 54, 2001; Ord. 1838-91 § 15, 1991.)

### **33D.510 Areas of special flood hazard.**

Areas of special flood hazard shall be governed by the provisions of Chapter 30 of this title. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 16, 1991.)

### **33D.520 Fish and wildlife conservation areas.**

It is the goal of the city to preserve, protect and enhance fish and wildlife conservation areas through sound habitat management practices. If a development is proposed on or within a distance which could impact fish and wildlife conservation areas, as described in this section, the applicant shall provide a habitat management plan (HMP), prepared by a qualified expert for evaluation by the city, state and federal agencies. The HMP shall be based upon sound habitat management practices and be designed to achieve specific habitat objectives. The city shall ask the appropriate resource agencies to review and comment on the development impacts and the provisions of the HMP.

A. Habitats of Primary Association. When a development is proposed on or adjacent to a habitat of primary association, the applicant shall prepare an HMP. All actions shall be taken which are necessary to avoid reducing the likelihood that the species will maintain and reproduce over the long term.

B. Riparian Corridors. When riparian corridors are in satisfactory condition for fish and wildlife use, the habitat management approach shall be to allow the natural ecosystems to function with minimal disruption. Protection from human disturbance shall be carried out by following the standards of this article for wetlands, streams, lakes and ponds. When a development is proposed on a lot with a disturbed riparian corridor, the city may require that the habitat be enhanced by creating more diversity and eliminating any source of degradation, including, but not limited to:

1. Vegetative plantings of native or preferred wildlife food species;

2. Construction of nesting islands or installation of nesting boxes;

3. Removal of pollutant sources or fish movement blockages; or

4. Other actions necessary to enhance the viability of the riparian corridor for the benefit of wildlife habitat.

C. Continuous Vegetative Corridors Linking Watersheds. When a development is proposed in an area which is within vegetative corridors linking watersheds, the applicant shall prepare an HMP, which includes measures to:

1. Design cleared areas with irregular boundaries to increase edge habitat and the length of edge habitat; and

2. Maintain a mix of natural vegetation having structural diversity in a continuum from watershed to watershed.

D. Significant Biological Areas. When a development is proposed adjacent to or on a significant biological area, an HMP shall be prepared, shall include all actions necessary to maintain or enhance the significant biological features present. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 17, 1991.)

### **33D.530 Ground water discharge areas.**

Lots which contain or are affected by springs, seeps or ground water discharge areas shall be evaluated to determine the relationship the discharge has on geologically hazardous areas, wetlands, streams, fish, plant and wildlife habitat areas. An analysis of such features shall be included in the application for development of the subject property. The city may allow modification of such features consistent with the provisions of this article related to geological hazards, streams, wetlands, fish, plant and wildlife habitat areas, as applicable. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 18, 1991.)

### **33D.540 Lot area—Lot coverage—Permitted number of dwelling units in multiple-family developments.**

A. Lot Area. The calculation of minimum lot area for lots which contain areas classified as environmentally sensitive shall be determined as provided in this section. Lots that include land which is submerged beneath the mean high water mark of lakes, Port Gardner Bay, or category I streams shall not be permitted to include the submerged portion of the lot in the calculation of lot area.

1. Single-Family Residential Developments. This subsection applies to new lots created through the subdivision, short subdivision, or cluster development process, where the land to be subdivided contains environmentally sensitive areas and/or buffers. This subsection is not to be used with the lot area averaging provisions in Section 39.130 of this title, or in easement access short subdivisions.

a. For any new residential lot created, one hundred percent of the area of those portions of the lot classified as environmentally sensitive and buffer may be credited toward the calculation of lot area. All such lots shall contain not less than four thousand square feet, exclusive of environmentally sensitive area or buffer. Land placed within an environmentally sensitive area protective tract may be included in the calculation of lot area as provided in this article. Where a protective tract is provided, all lots shall contain a net area, excluding the tract, of not less than four thousand square feet.

2. Multiple-Family Developments. In multiple-family residential developments, all of the area which is classified as environmentally sensitive may be included in the calculation of minimum lot area; however, the permitted number of dwelling units shall be calculated in accordance with the requirements of subsection C of this section.

3. Commercial and Industrial Zones.

a. If the minimum lot area requirement is twelve thousand square feet or less, none of those portions of the lot which are classified as environmentally sensitive may be used in the calculation of minimum lot area. Land placed within an environmentally sensitive area protective tract may be included in the calculation of minimum lot area provided in this article.

b. If the minimum lot area requirement is between twelve thousand square feet and one acre, up to twenty-five percent of the area of those portions of the lot classified as environmentally sensitive may be included in the calculation of minimum lot area. Land placed within an environmentally sensitive area protective tract may be included in the calculation of minimum lot area provided in this article.

c. If the minimum lot area requirement is greater than one acre, up to fifty percent of those portions of the lot classified as environmentally sensitive may be included in the calculation of minimum lot area. Land placed within an environmentally sensitive area protective tract may be included in the calculation of minimum lot area provided in this article.

B. Lot Coverage. For any zone in which lot coverage requirements apply, only the area defined as buildable shall be used in the calculation of lot coverage.

C. Permitted Number of Dwelling Units in Multiple-Family Developments. For zones in which multiple-family developments are permitted, the number of dwelling units allowed for lots which contain areas classified as environmentally sensitive shall be determined using the formula specified in this subsection. Lots that include land which is submerged beneath lakes, Port Gardner Bay, or category I streams shall not be permitted to include the submerged portion of the lot in the calculation of lot area.

$$[(D.U./Ac.) (Buildable Area)] + [(D.U./Ac.) (Undevelopable Area)] \times (Development Factor) = \text{Permitted Number of Dwelling Units.}$$

(D.U./Ac. is derived by dividing 43,560 square feet by the density standard in the applicable zone, as listed in the use-standards table.)

The development factor is determined by the following table:

Percent of Lot in Buildable Area*	Development Factor
91—99	0.45
81—90	0.40
71—80	0.35
61—70	0.30
51—60	0.25
41—50	0.20
31—40	0.15
21—30	0.10
11—20	0.05
0—10	0.03

\*Percentages of more than two digits shall be rounded down to two digits.

(Ord. 2909-06 § 64, 2006; Ord. 2720-03 § 5, 2003; Ord. 1838-91 § 19, 1991.)

**33D.550 Covenants, tracts, notice on title.**

A. Environmentally Sensitive Area Covenants. All features classified as environmentally sensitive by this article, including buffers, shall be placed in environmentally sensitive area protective covenant.

B. Environmentally Sensitive Area Tracts. The city may require that any area classified as environmentally sensitive be placed in a separate tract, rather than included in the protective covenant. Such a tract shall remain in the same ownership as the parcel it was segregated from; placed into undivided common ownership of all lots within a proposed subdivision, short subdivision, or binding site plan; or dedicated to a public agency who is willing to accept the tract for long-term management of the protected resource.

C. Notice on Title. The owner of any property on which a development proposal is submitted shall file with the Snohomish County auditor a notice approved by the planning department, which shall provide notice in the public record of the presence of an environmentally sensitive area covenant or tract, the application of this article to the property, and that limitations on actions in or affecting such areas may exist. The applicant shall submit proof that the notice has been filed for record before the city may approve any development proposal on the site. The notice

shall run with the land, and failure to provide such notice to any purchaser prior to transferring any interest in the property is a violation of this article. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 20, 1991.)

### **33D.560 Appeals.**

Any decision made by the city pursuant to this article shall be subject to the appeals provisions as set forth in Title 15, Local Project Review Procedures. (Ord. 2909-06 § 64, 2006; Ord. 2538-01 § 55, 2001; Ord. 1838-91 § 21, 1991.)

### **33D.570 Assurance devices.**

The city shall require performance or maintenance assurance devices in accordance with Chapter 40 of this title to ensure compliance with this article and adequate protection and maintenance of environmentally sensitive areas. (Ord. 2909-06 § 64, 2006; Ord. 1838-91 § 22, 1991.)

### **33D.580 Previously altered environmentally sensitive areas.**

It is the goal of this article to restore and enhance the condition of environmentally sensitive areas which have been previously altered. Properties containing environmentally sensitive areas which have been previously altered may be developed in accordance with all requirements of this article and this title of the code.

A. **Legal Alterations.** Environmentally sensitive areas regulated by this article which previously have been legally altered in accordance with all local, state and federal regulations in effect at the time of alteration may be developed in accordance with the requirements of this article. Any prior alteration which was legally commenced that resulted in an environmentally sensitive area which is regulated by this article being reclassified as buildable shall be evaluated using the review process described in Title 15, Local Project Review Procedures. The planning director may approve any development proposal which meets all other requirements of this title, or modify such proposal based upon the impacts that the proposal would have on any remaining area classified by this article as environmentally sensitive. The planning director shall use all authority granted by this article, SEPA, or other legal mechanism to require enhancement of the previously altered environmentally sensitive area to the condition which would be required by this article for new development, to the maximum extent feasible.

#### **B. Unauthorized Alterations.**

1. Environmentally sensitive areas regulated by this article which have been illegally altered may be developed in accordance with the requirements of this title; provided, that all environmentally sensitive areas which were illegally altered shall be considered environmentally sensitive areas and shall be regulated in accordance with the

requirements of this article. Any proposal to develop on a lot which contains an environmentally sensitive area that has been illegally altered shall be reviewed by the planning director using the review process described in Title 15, Local Project Review Procedures.

2. The planning director shall require restoration of the unauthorized area of alteration to a condition which is equivalent or superior to its prior natural condition, to the extent that such condition can be determined. As an alternative to restoration of the illegally altered environmentally sensitive area, the planning director may allow for the recreation of wetlands, stream corridors, or habitat areas of the same type which have been altered in a different location than that which has been altered if the alternative location will result in a net improvement in functional values or a higher quality environmentally sensitive area than possible in the area which has been previously altered.

3. Any illegal alteration of an environmentally sensitive area that occurred prior to the effective date of this article which is not proposed for development as allowed by this article shall be restored as provided by Section 33D.590 of this article. (Ord. 2909-06 § 64, 2006; Ord. 2538-01 §§ 56, 57, 2001; Ord. 1838-91 § 23, 1991.)

### **33D.590 Enforcement—Violation—Penalties.**

Notwithstanding the enforcement, violation and penalties provision found in Chapter 41 of this title, the provisions set forth in this section shall apply to all violations of this article. Penalty and enforcement provided in this section shall not be deemed exclusive, and the city may pursue any remedy or relief it deems appropriate.

A. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this article shall be subject to the provisions of Chapter 1.20.

B. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this article is guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars. It shall be a separate offense for each and every day or portion thereof during which any violation of any provisions of this article is committed.

C. Any person, firm, corporation, or association or any agent thereof who violates any of the provisions of this article is liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to the violation occurring. If an equivalent condition cannot be provided, the violator shall be subject to a fine in an amount equal to the value of the damage to the environmentally sensitive area, determined using best available methods of calculating the value of vegetation, land and water resources, including but not limited to the

evaluation methods of the International Society of Arboriculture.

D. Restoration shall include, but not be limited to, the replacement of all improperly removed ground cover with species similar to those which were removed or other approved species such that the biological and habitat values will be replaced, improper fill removed and slope stabilized. Studies by the qualified experts shall be submitted to determine the conditions which were likely to exist on the lot prior to the illegal alteration.

E. Restoration shall also include installation and maintenance of interim and emergency erosion controls measures until such time as the restored ground cover and vegetation reach sufficient maturation to function in compliance with the performance standards adopted by the city.

F. The city shall stop work on any existing permits and halt the issuance of any or all future permits or approvals for any activity which violates the provisions of this article, until the property is fully restored in compliance with this article and all penalties are paid.

G. Notwithstanding the other provisions provided in this article, anything done contrary to the provisions of this article or the failure to comply with the provisions of this article is declared to be a public nuisance.

H. The city is authorized to apply to any court of competent jurisdiction and any such court, upon hearing and for cause shown, may grant a preliminary, temporary or permanent injunction restraining any person, firm, and/or corporation from violating any of the provisions of this article and compelling compliance with the provisions thereof. The violator shall comply with the injunction and pay all costs incurred by the city in seeking the injunction. (Ord. 2909-06 § 64, 2006: Ord. 1838-91 § 24, 1991.)

# Shoreline Master Program Shoreline Use Designations

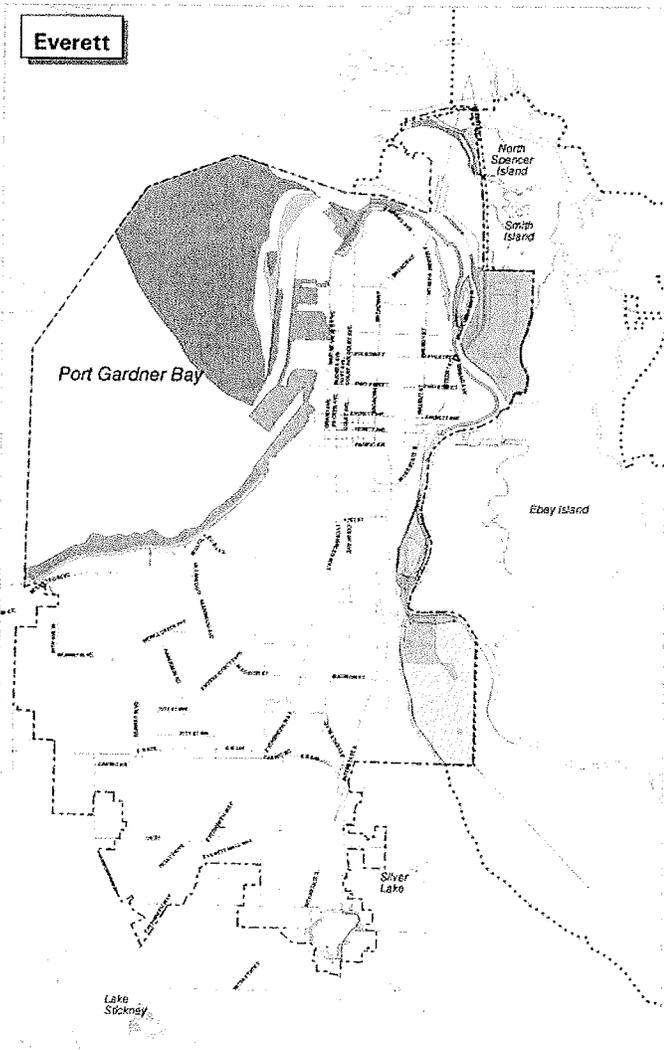
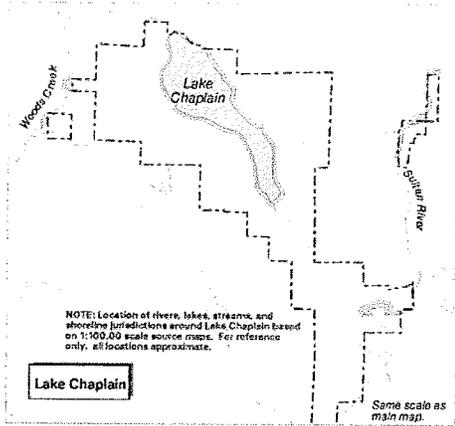


Figure 4.1

**Legend:**

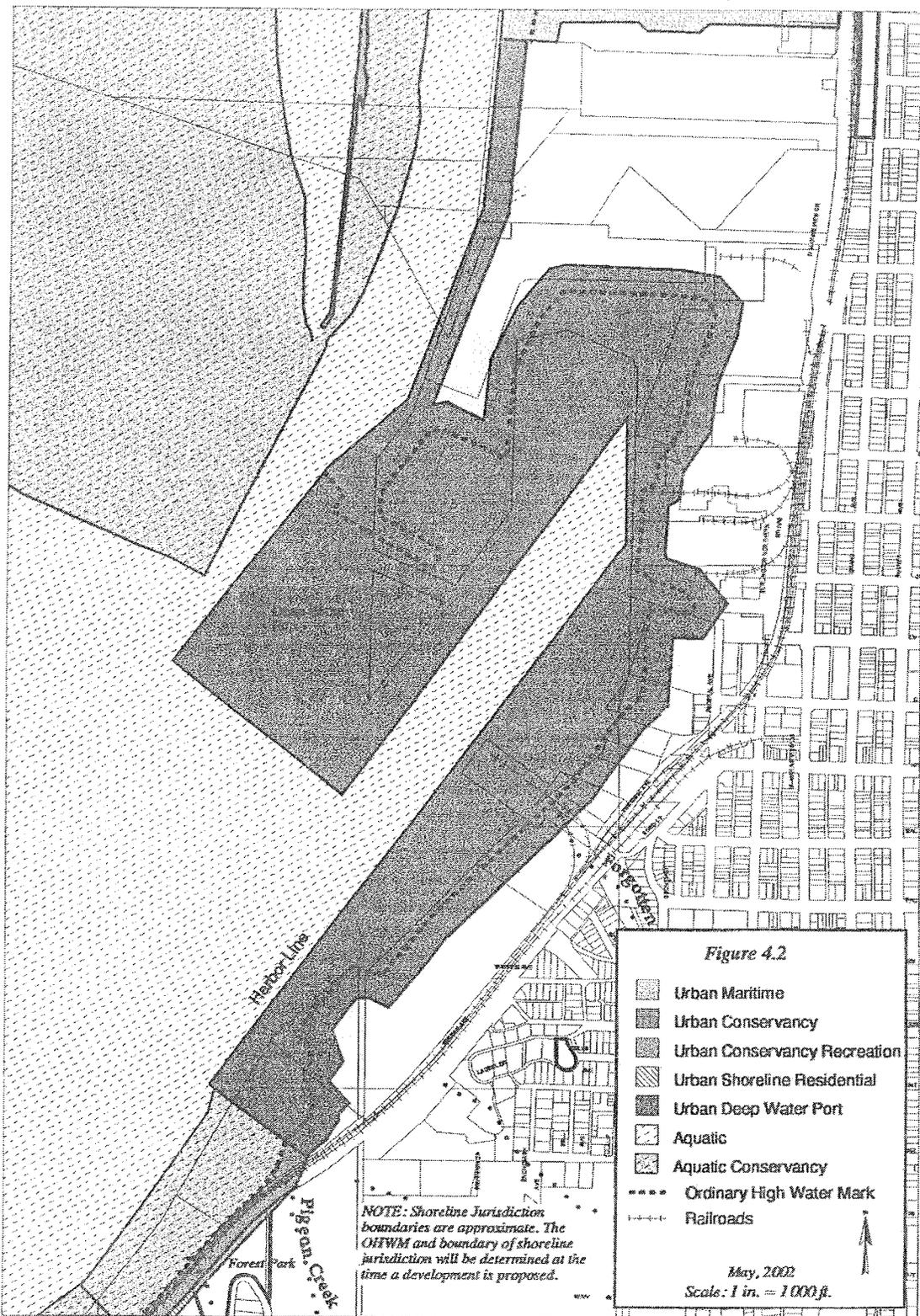
- Urban Conservancy
- Urban Conservancy Recreational
- Interim Urban Conservancy Agriculture
- Urban Mixed Use Industrial
- Shoreline Residential
- Urban Multi-Use
- Urban Industrial
- Urban Maritime
- Urban Maritime Interim
- Urban Deep Water Port
- Aquatic
- Aquatic Conservancy
- Municipal/Water Quality
- Municipal Watershed
- Everett City Limits
- Urban Growth Boundary

Scale: 1 inch = 6000 feet



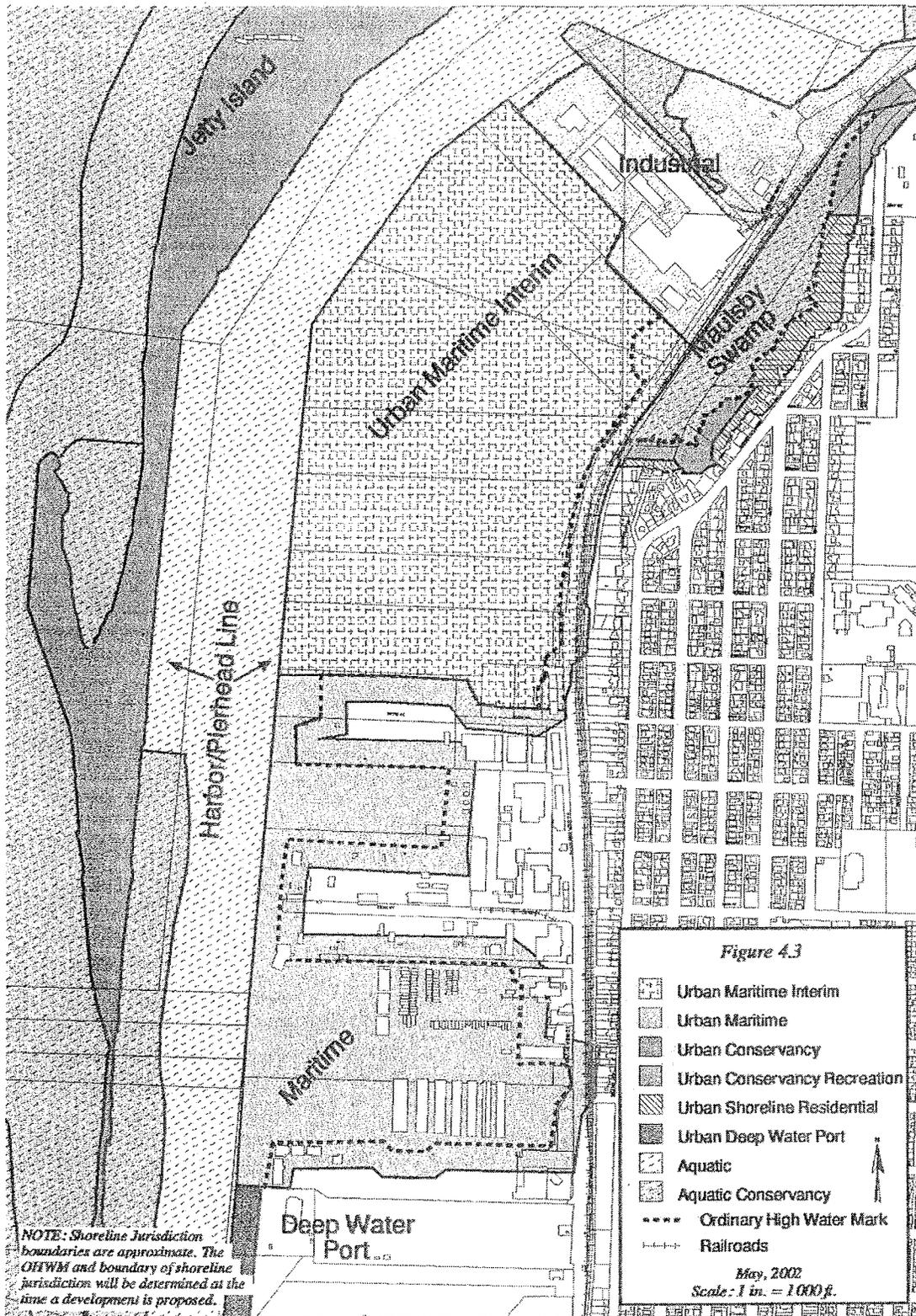
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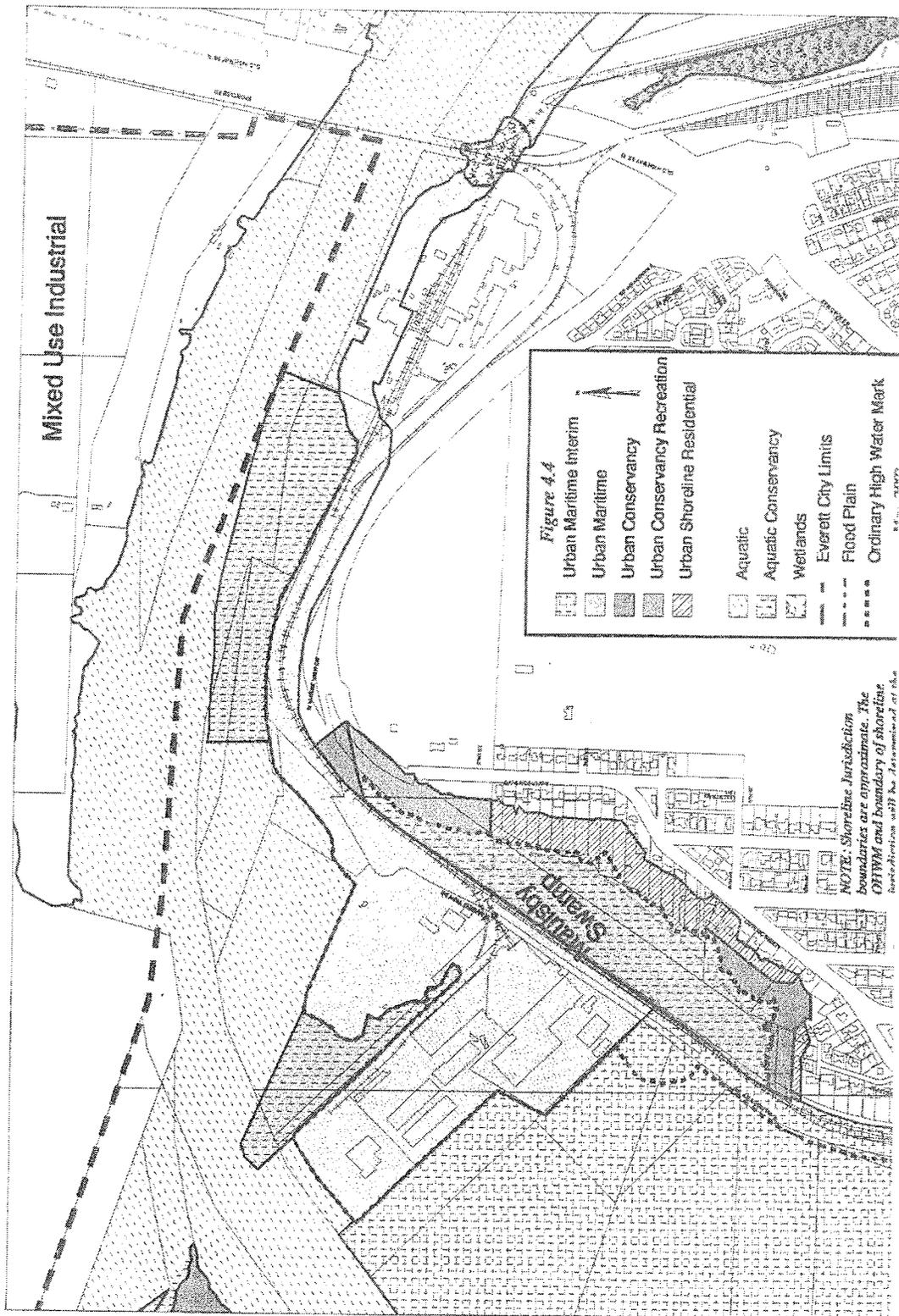


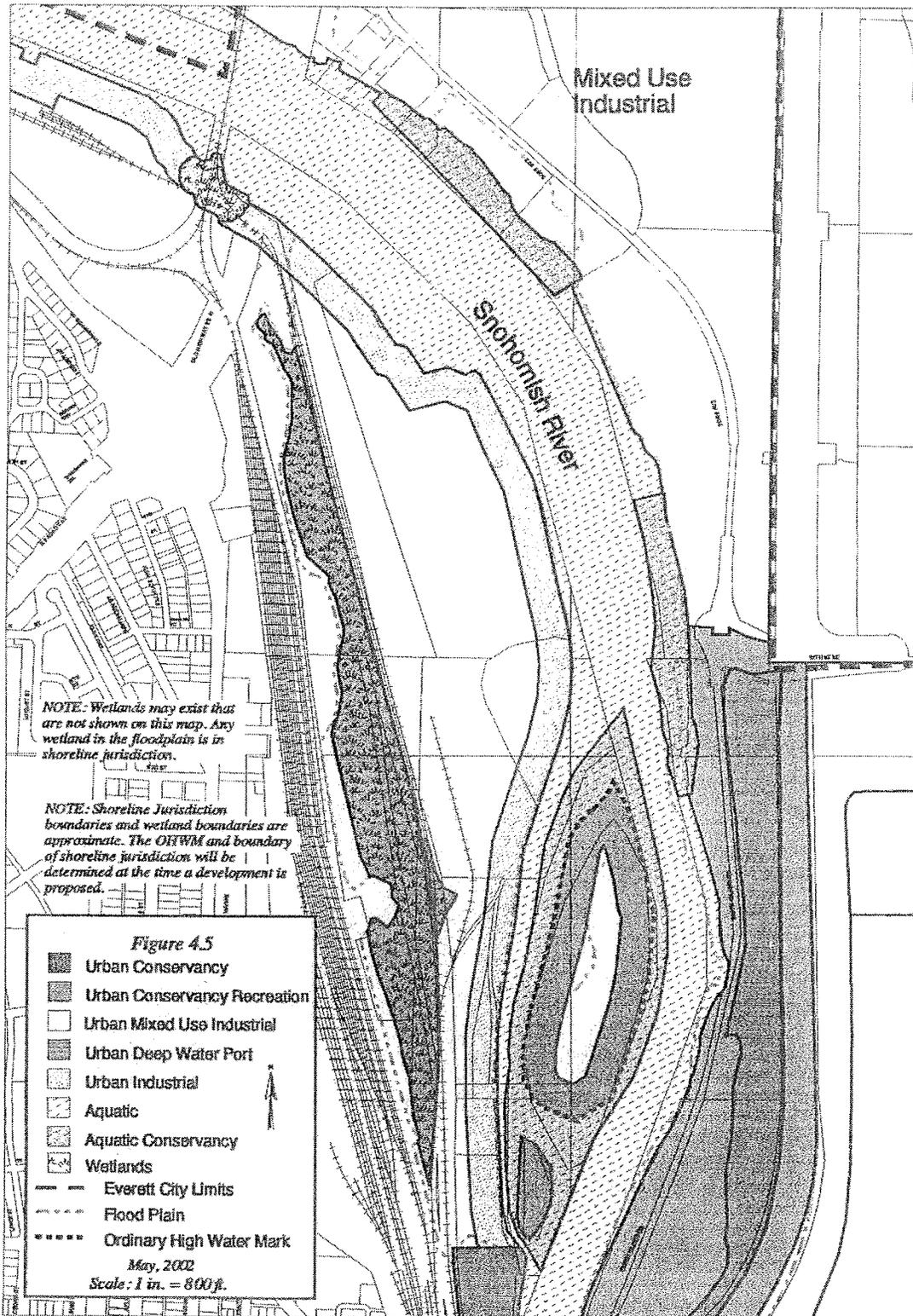


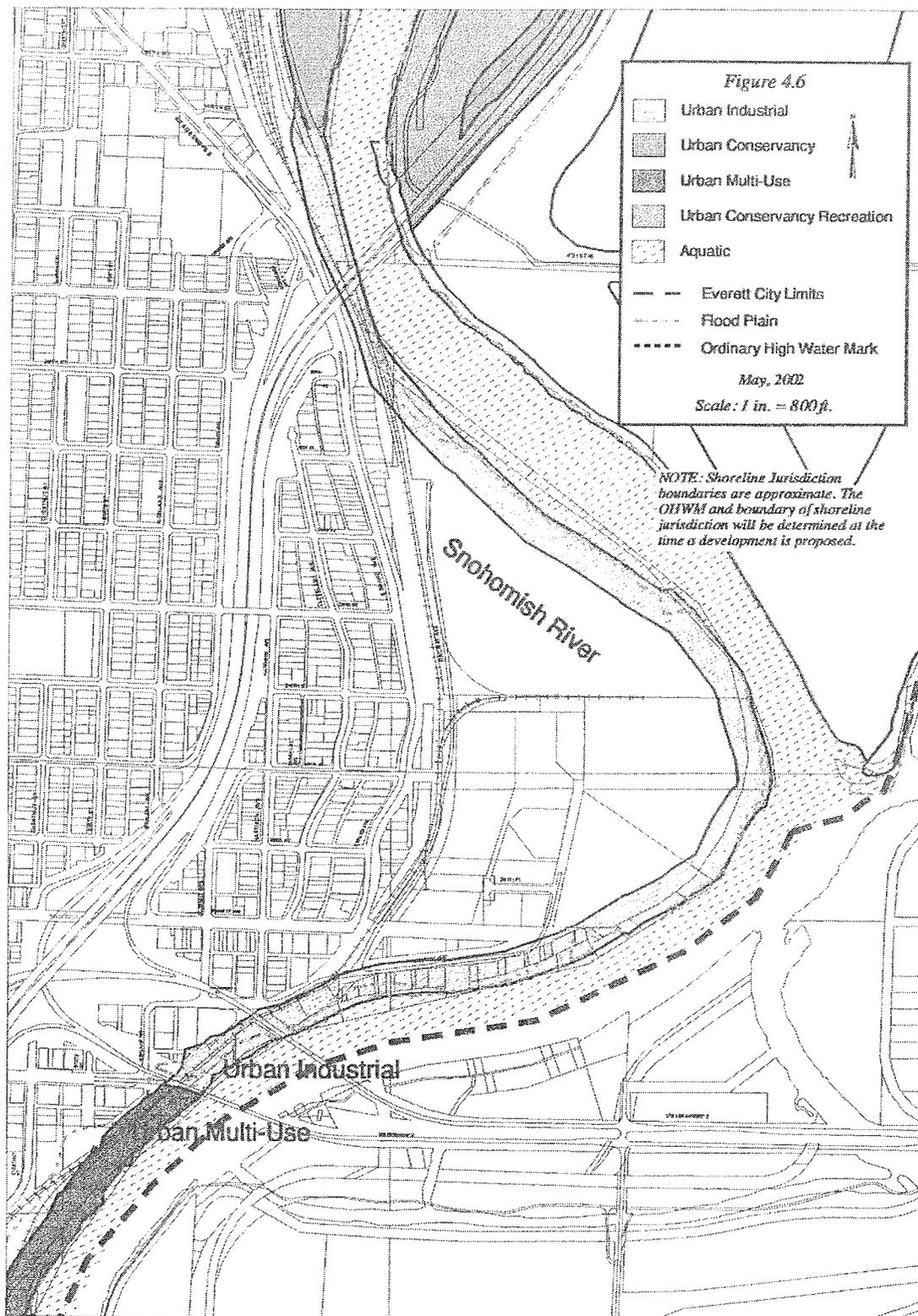
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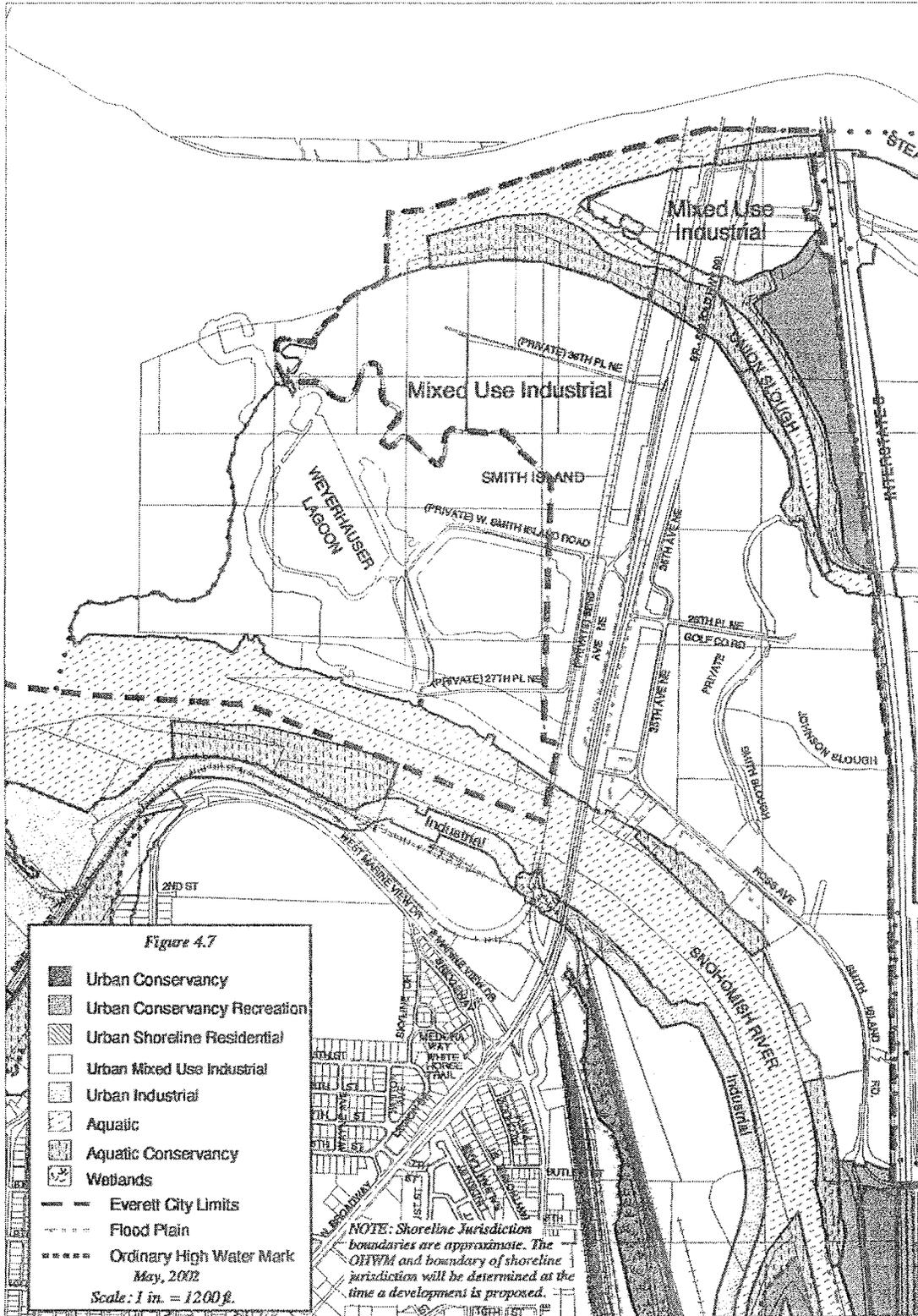
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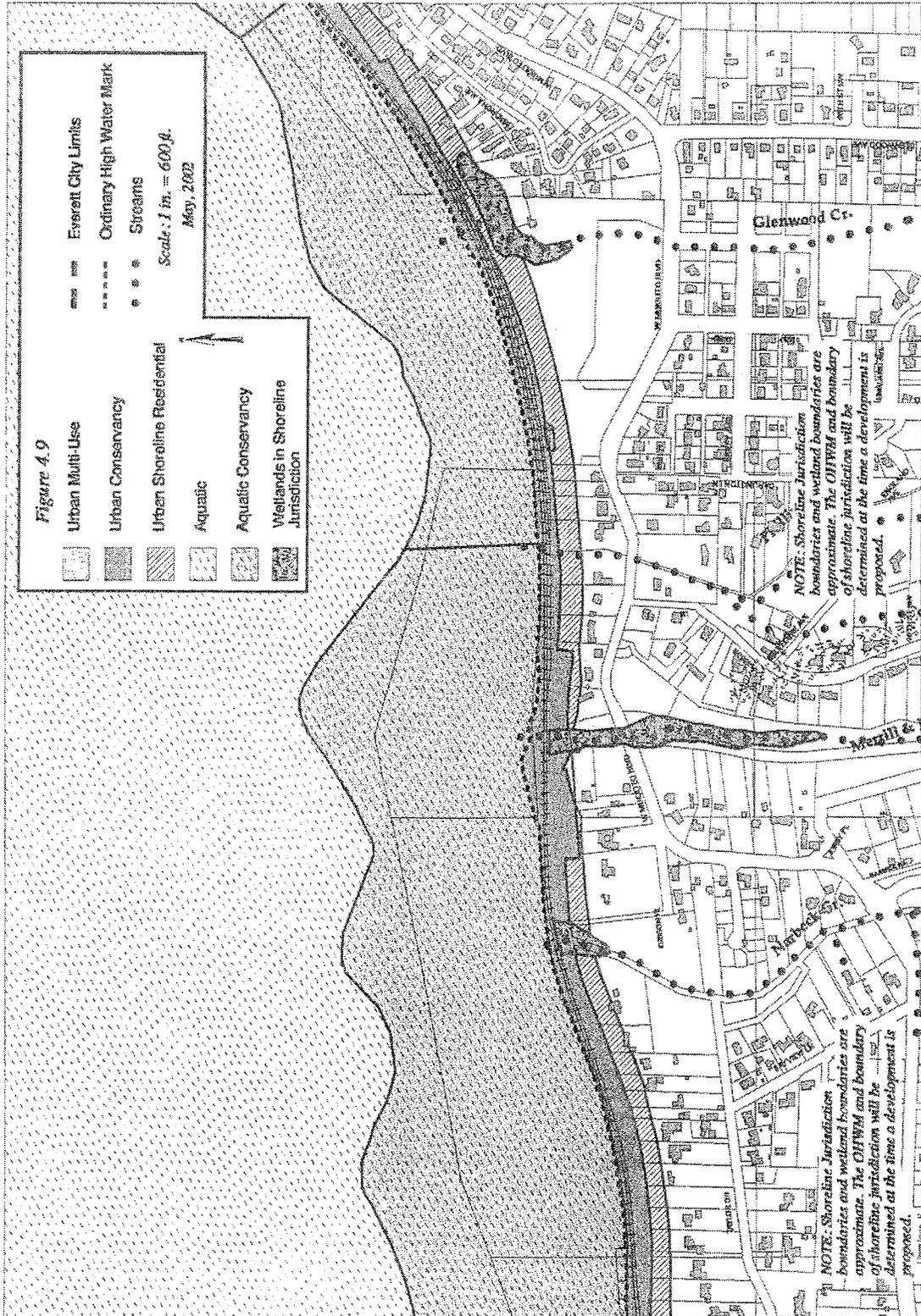


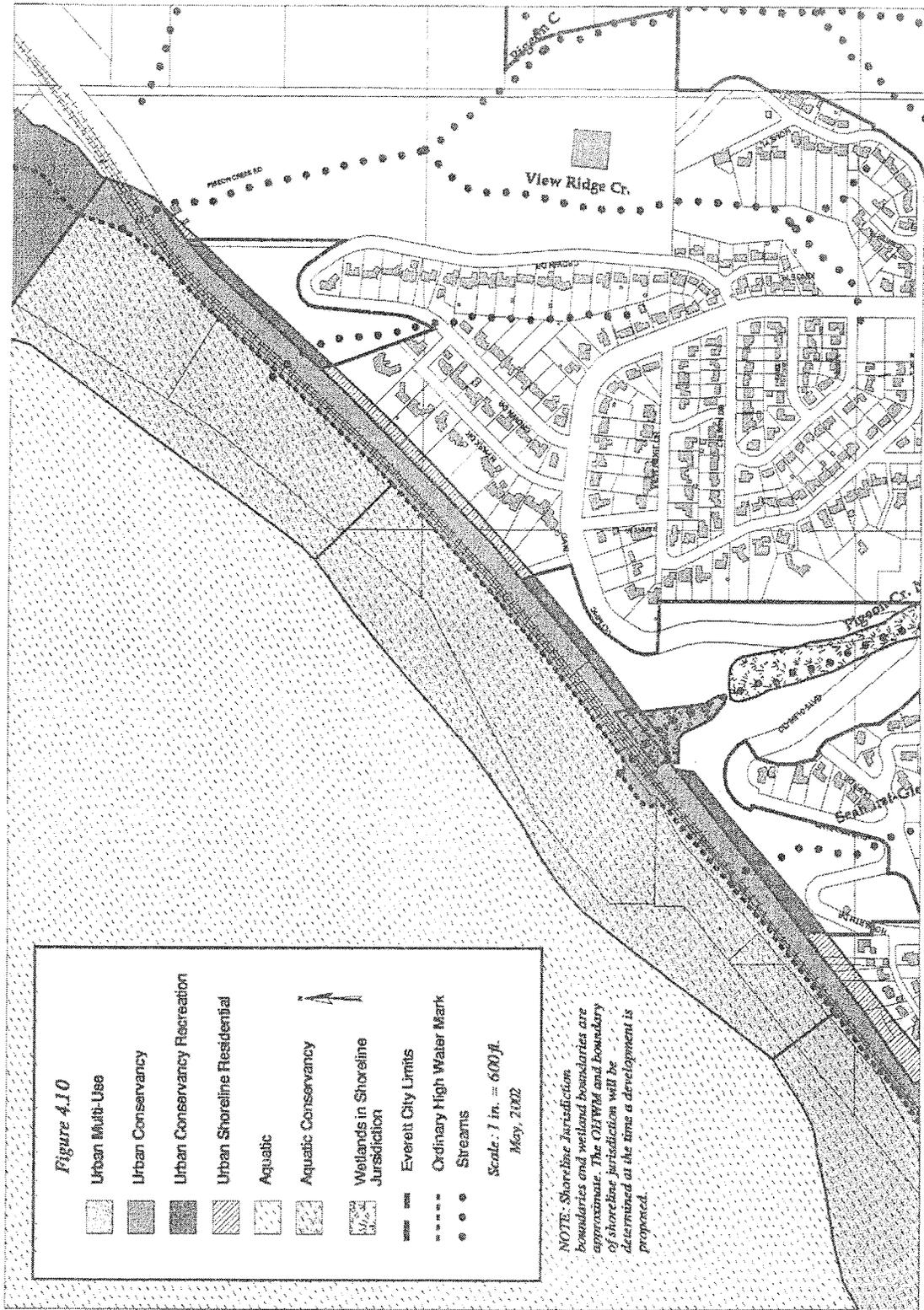




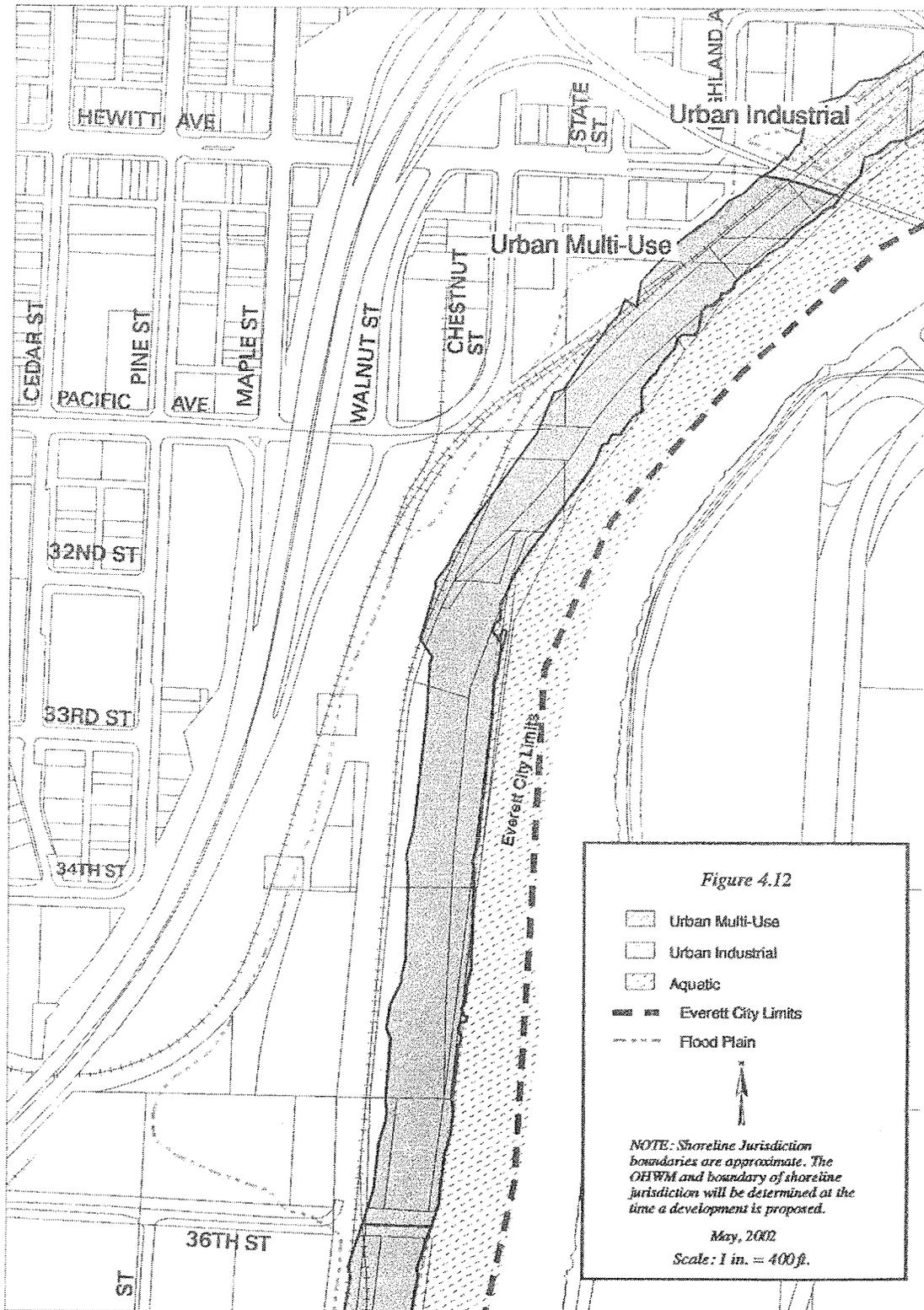






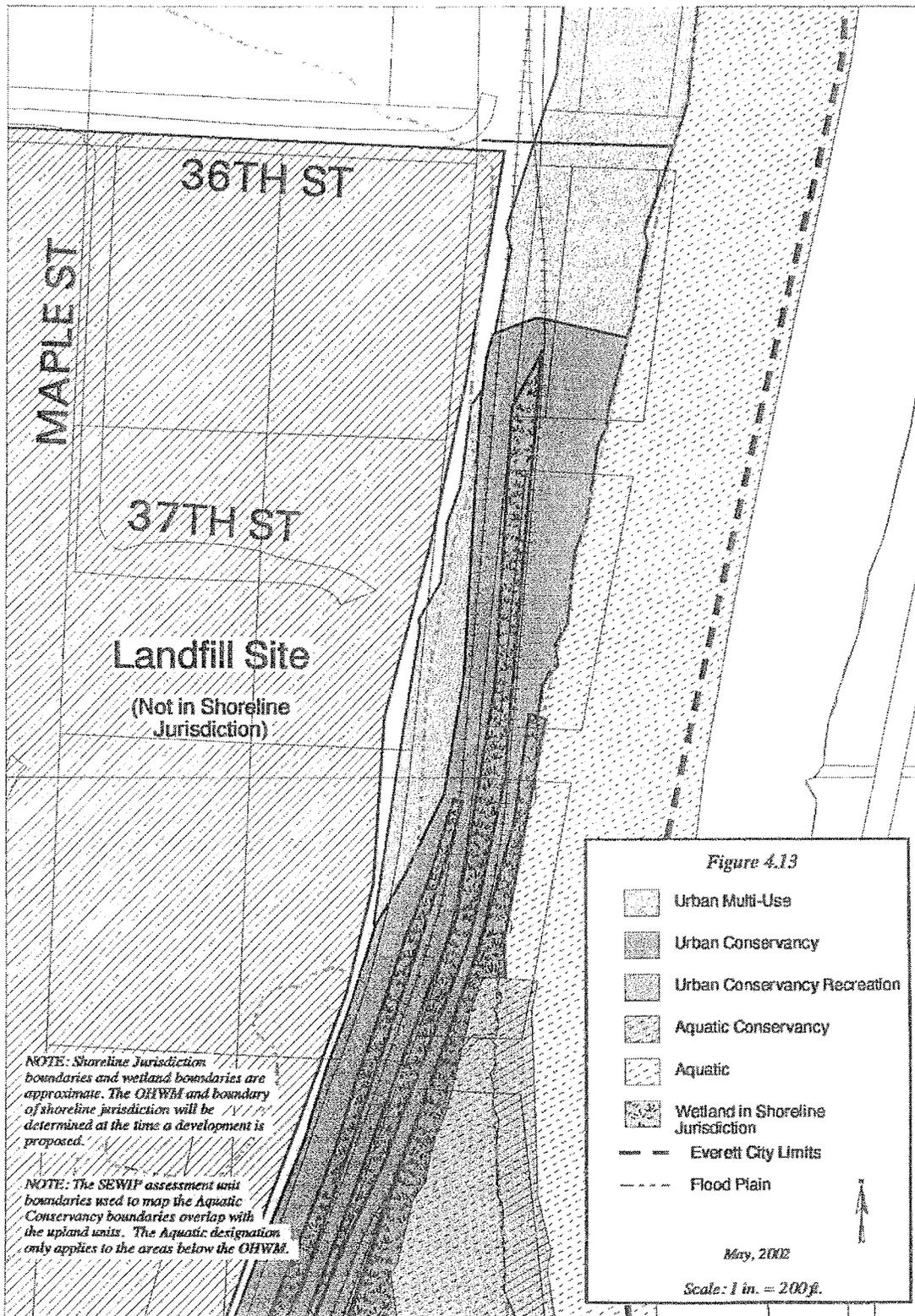


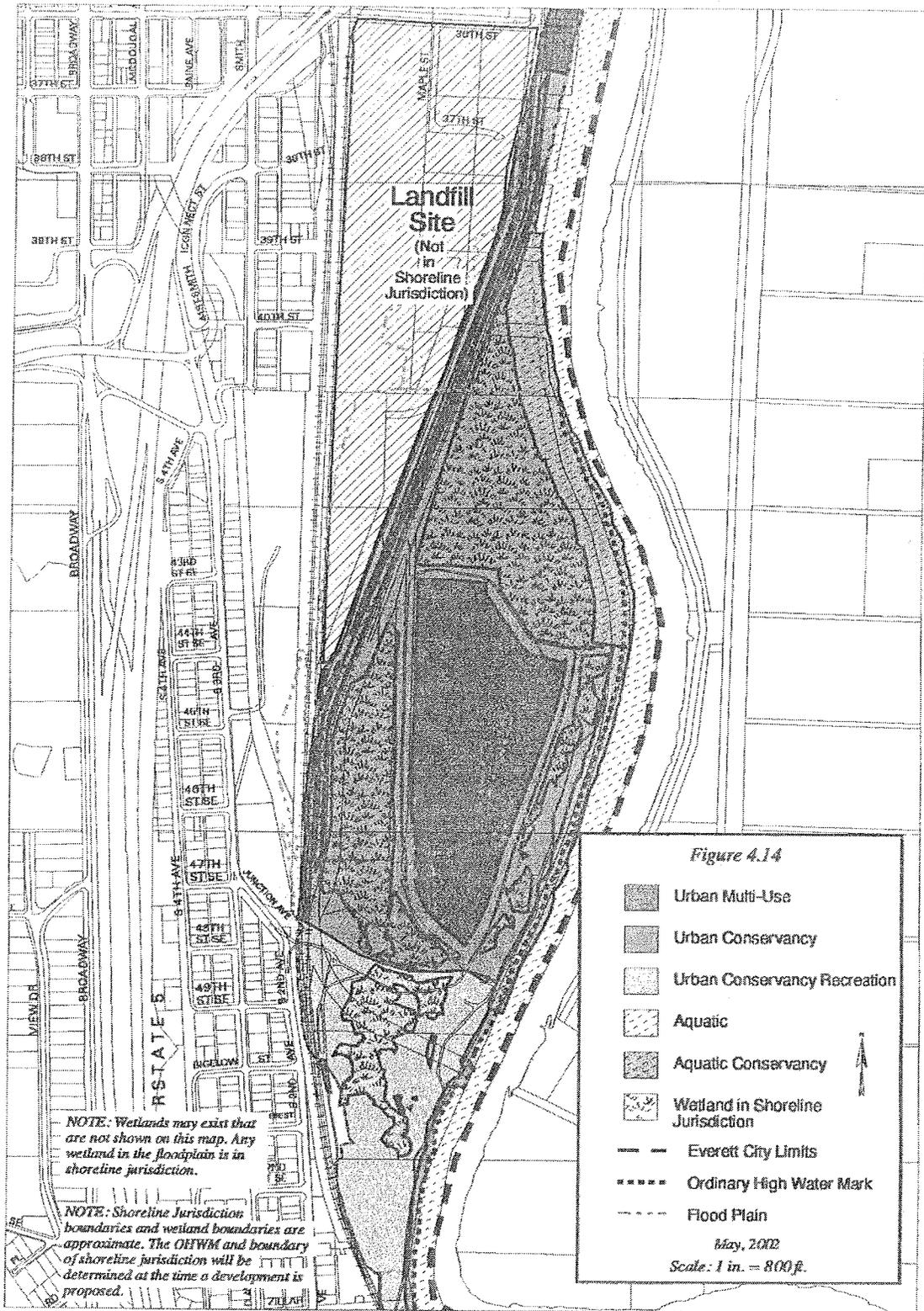


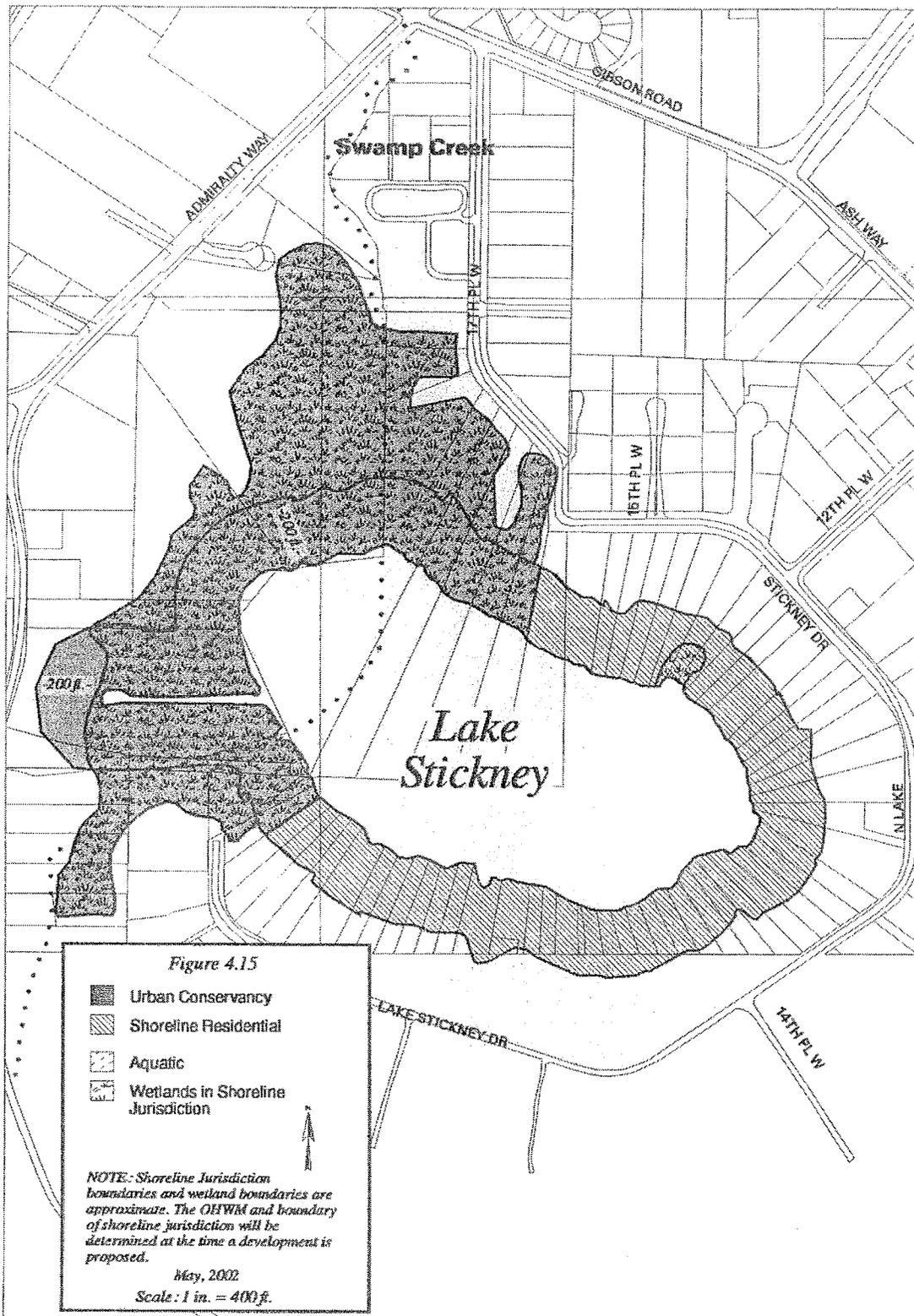


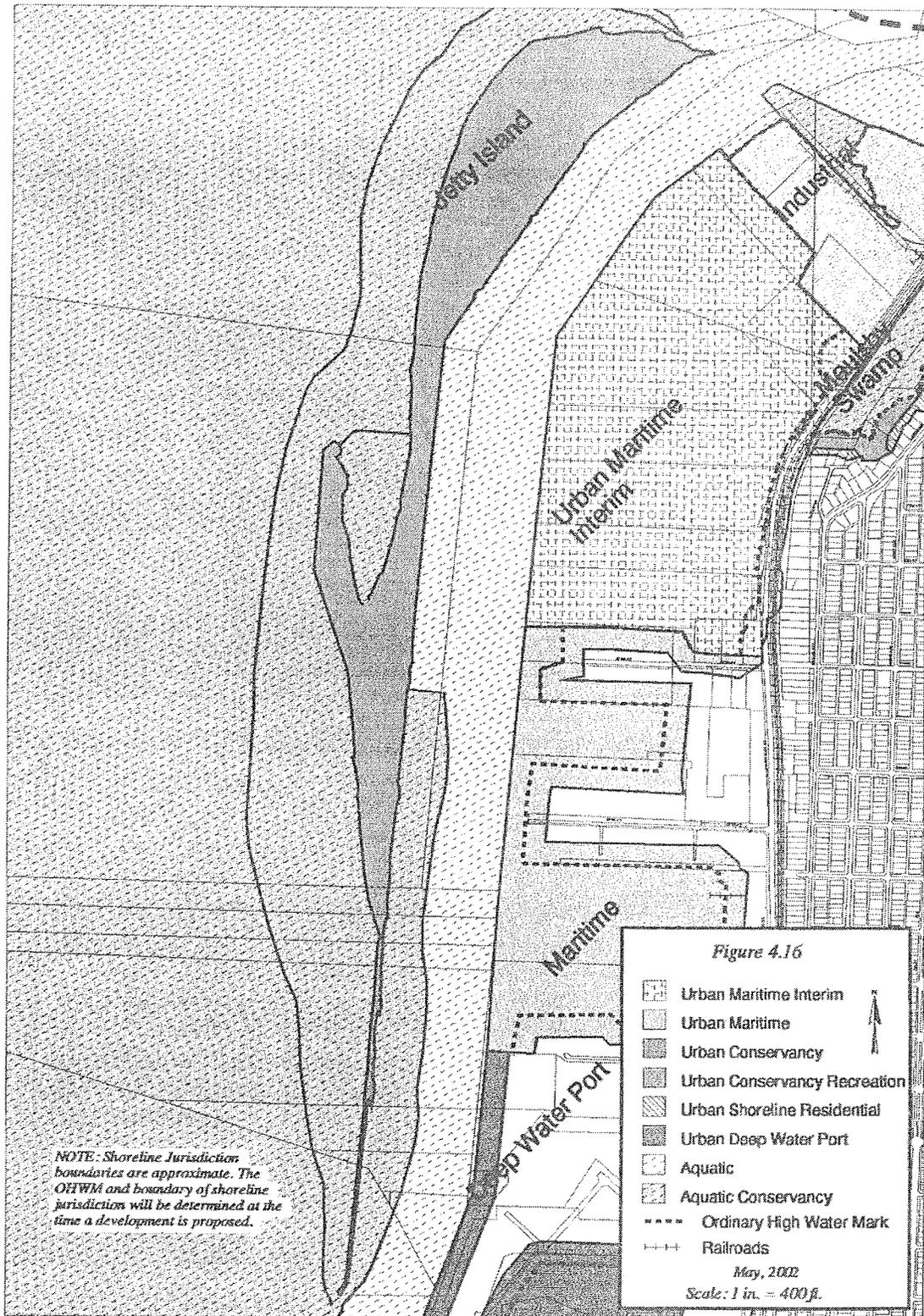
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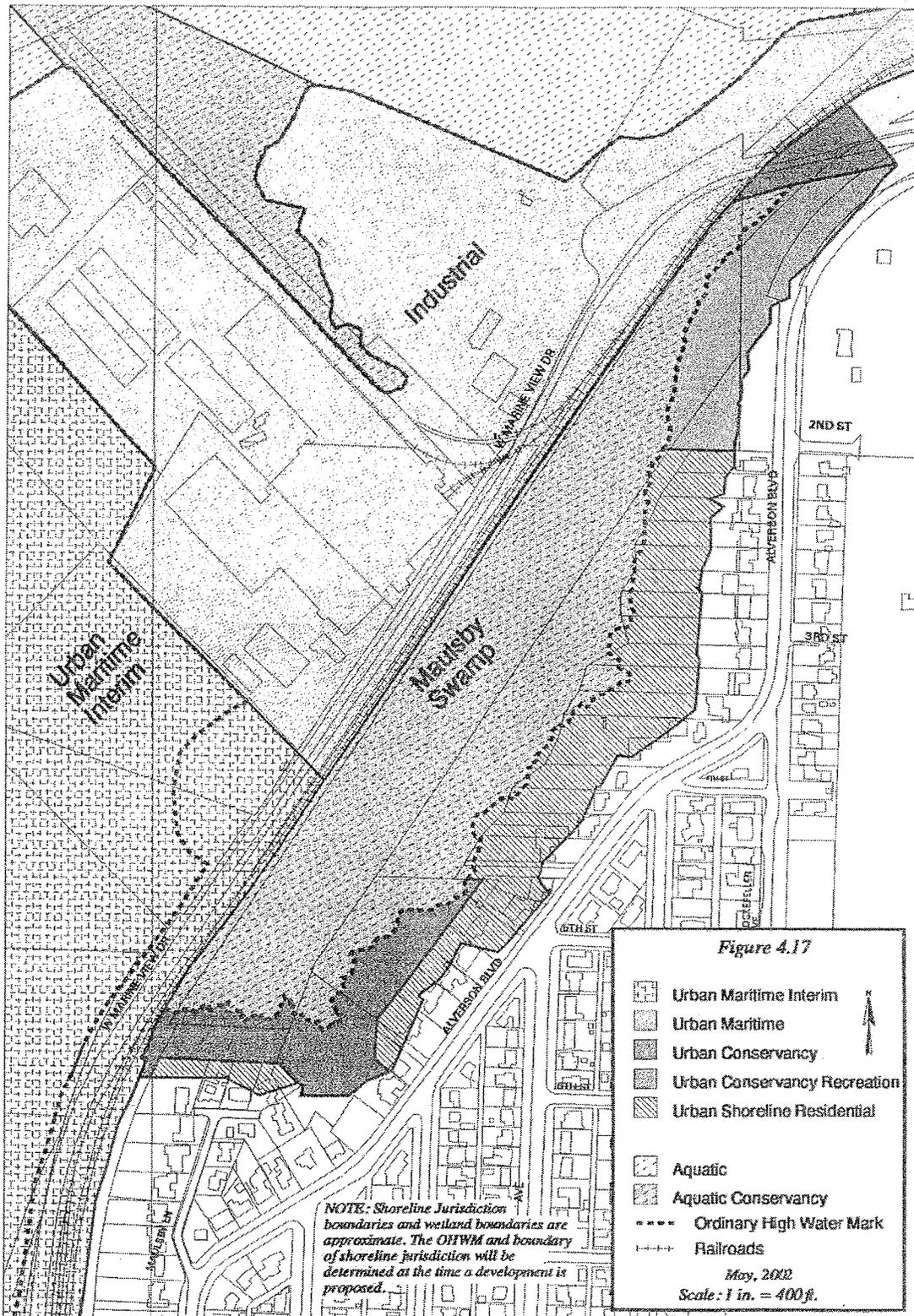
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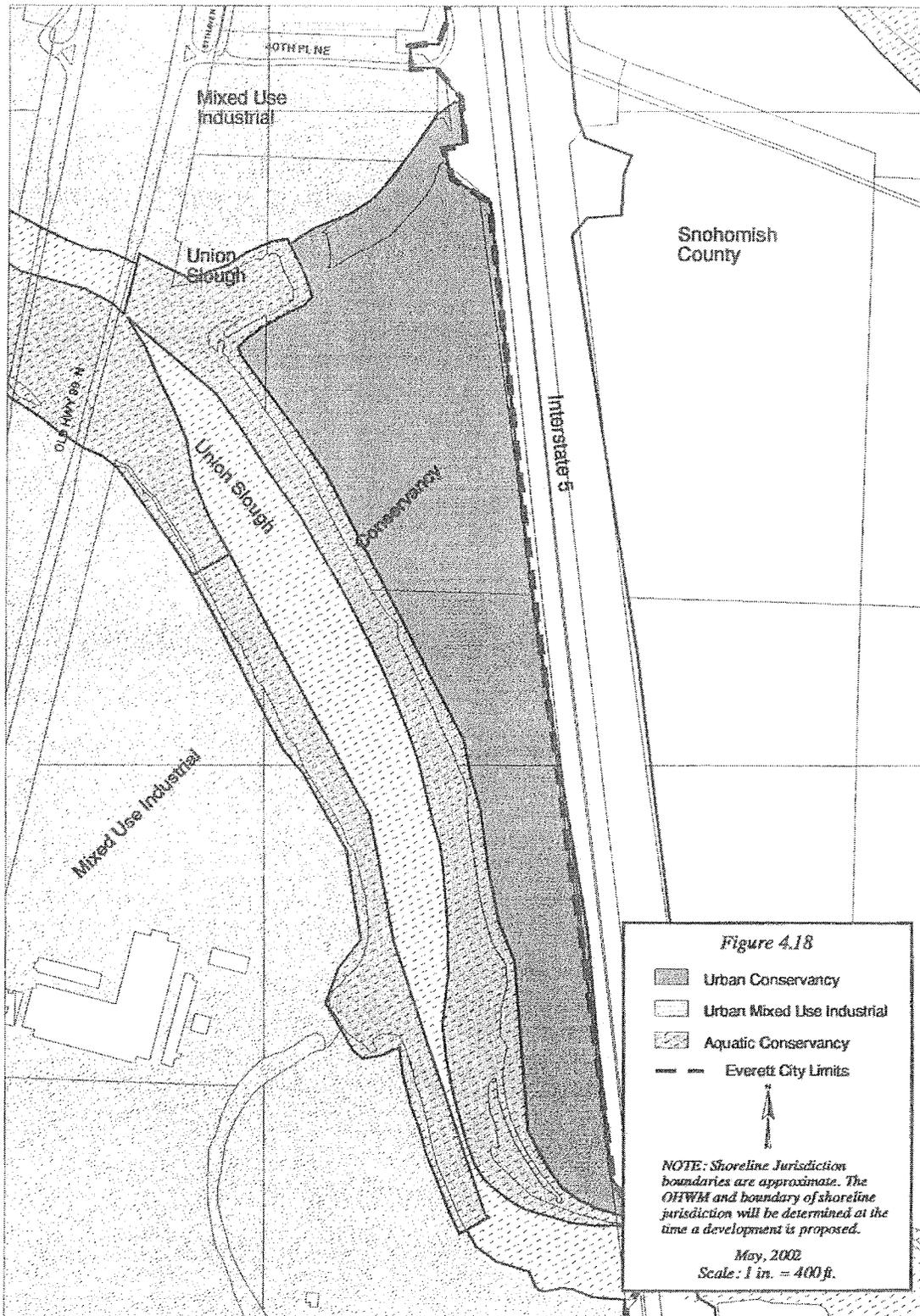






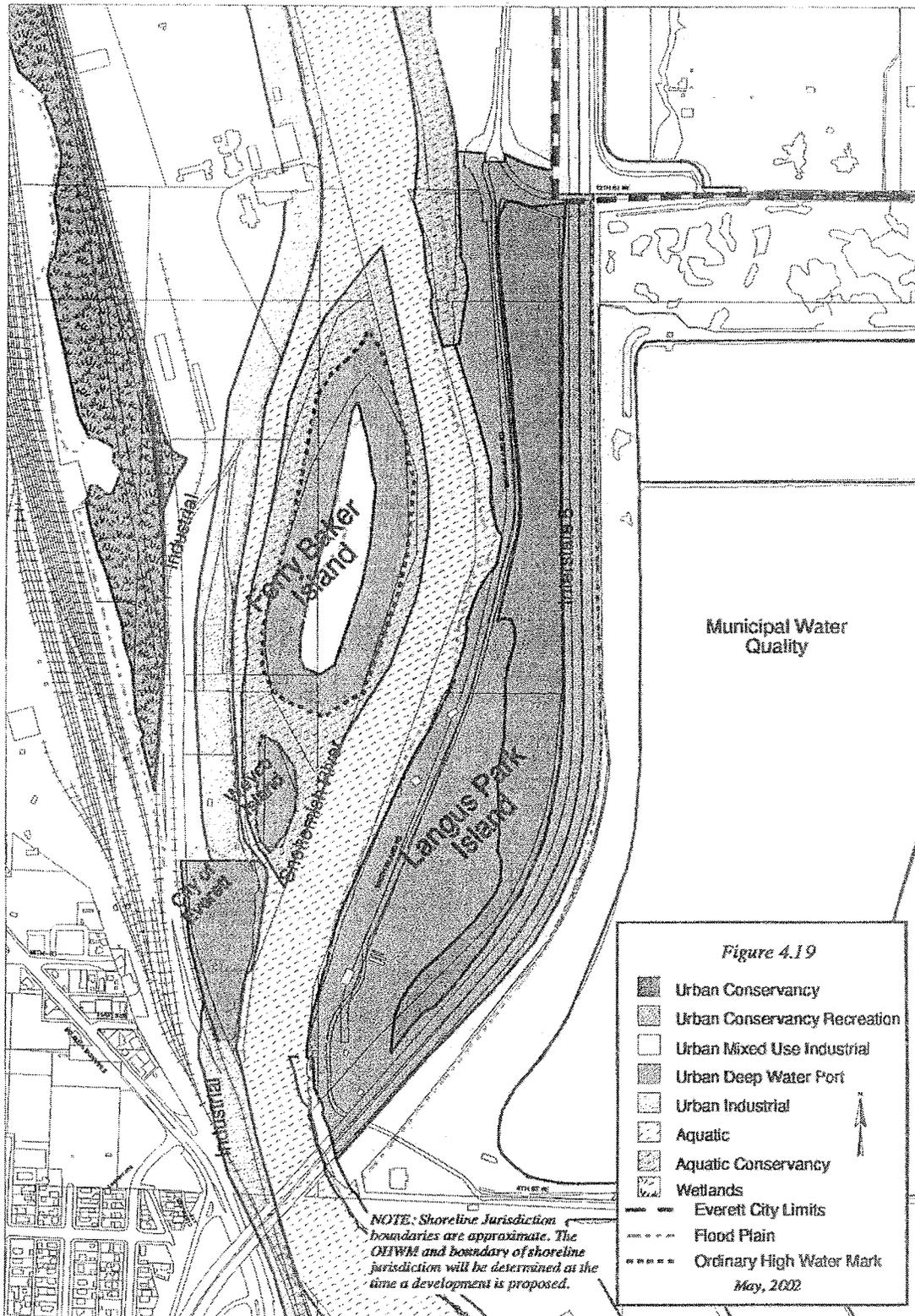


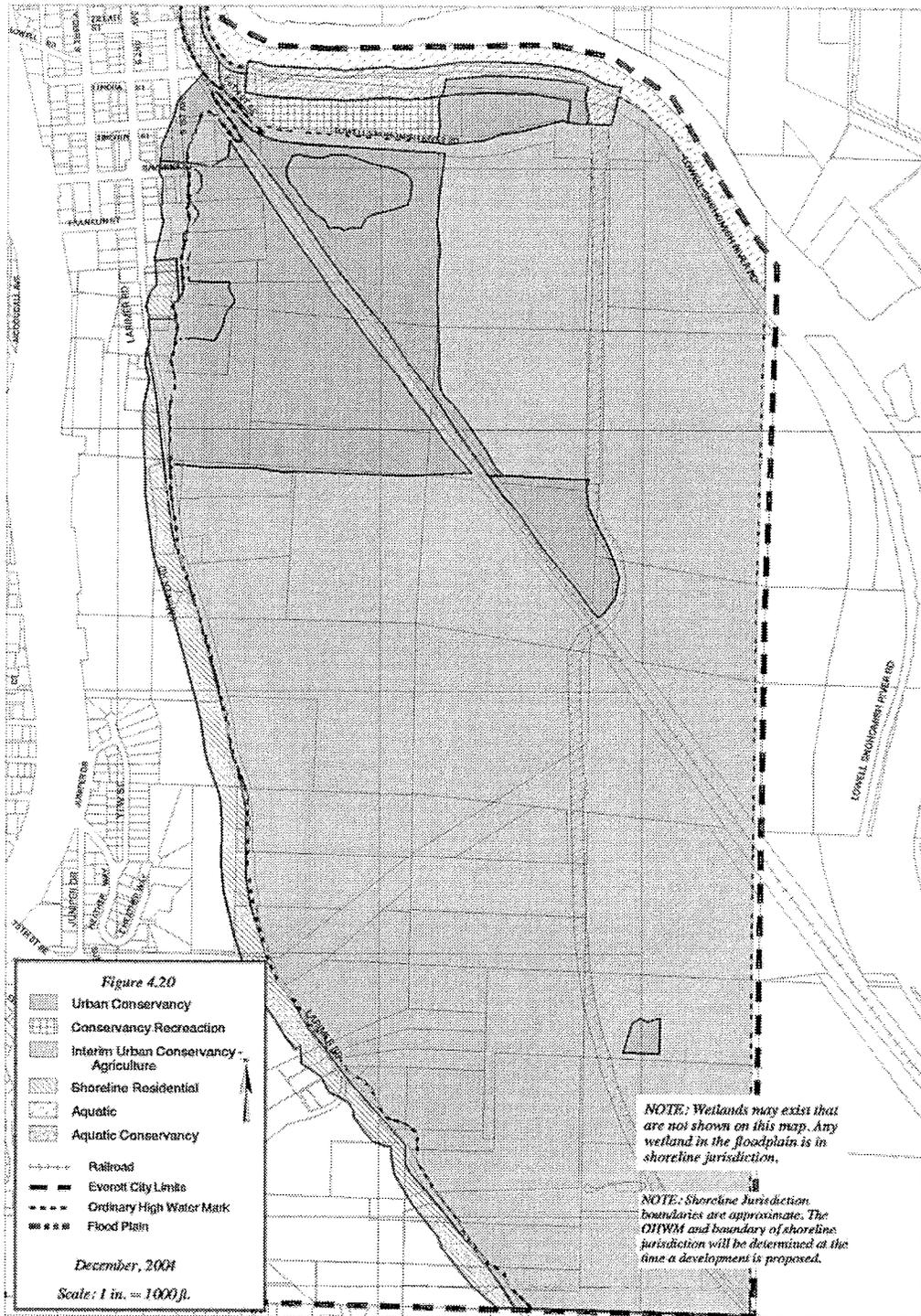




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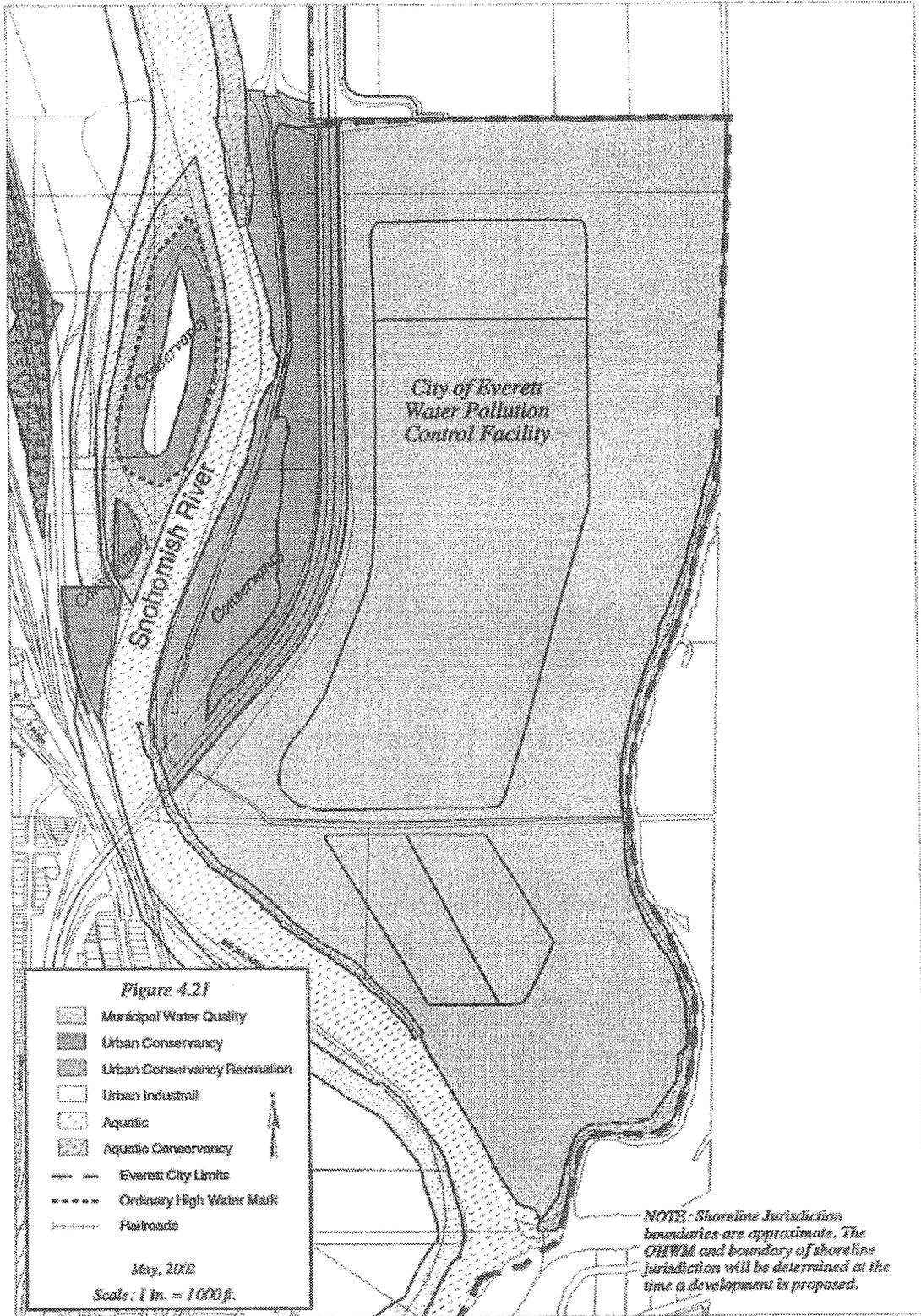
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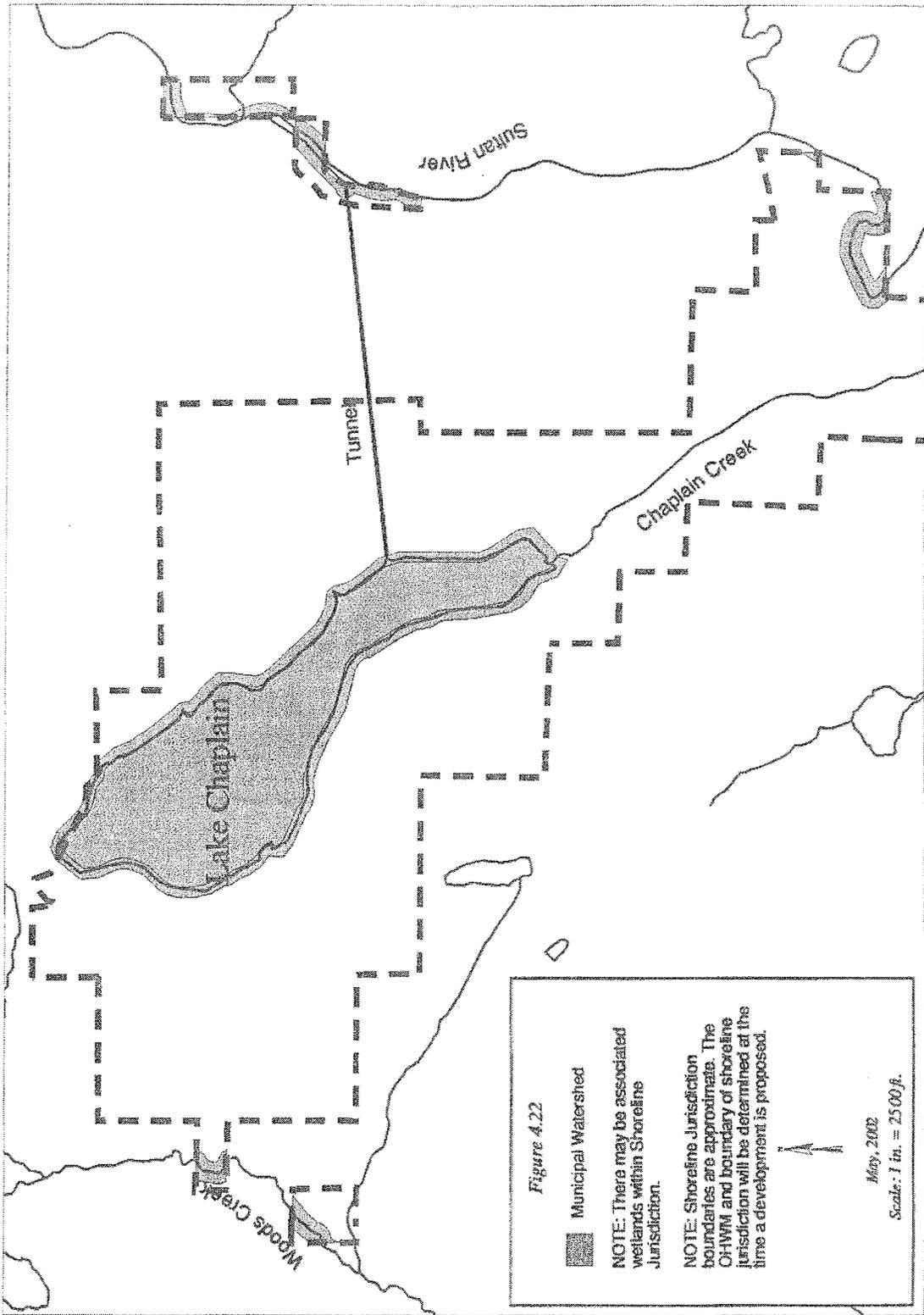




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(Everett I-07)





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(Everett 11-02)

