

# **SHORELINE MASTER PROGRAM UPDATE**

## **TOWN OF ROCKFORD SPOKANE COUNTY, WASHINGTON**

**Revised April 2021**

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# TABLE OF CONTENTS

## SHORELINE REGULATIONS

<b>SECTION 1 - Shoreline Master Program Introduction.....</b>	<b>1</b>
1.1 Intro/Background Info .....	1
1.2 Overview of Process .....	2
1.3 Using of this document .....	4
<b>Section 2 – Environmental Designations .....</b>	<b>5</b>
2.1 Environmental Designation Provisions (WAC 126-211(5)) .....	5
2.2 Aquatic Environment .....	6
2.3 Urban Conservancy Environment .....	6
2.4 Shoreline Residential Environment .....	7
2.5 Shoreline Mixed Use Environment .....	8
<b>Section 3 – Goals and Policies .....</b>	<b>10</b>
3.1 Introduction .....	10
3.2 General Goals and Policies .....	10
3.3 Economic Development .....	11
3.4 Public Access Element .....	11
3.5 Recreation Element .....	12
3.6 Circulation Element .....	12
3.7 Shoreline Use Element .....	13
3.8 Conservation .....	16
3.9 Historical, Cultural, Scientific & Educational Element .....	17
3.10 Flood Hazard Reduction Element .....	18
3.11 Utilities Element .....	19
3.12 Critical Areas Element .....	19
<b>Section 4 – General Shoreline Regulations .....</b>	<b>21</b>
4.1 Archaeological and Historic Resources .....	21
4.2 Critical Areas .....	21
4.3 Flood Hazard Reduction .....	22
4.4 Public Access .....	24
4.5 Shoreline Vegetation Conservation .....	25
4.6 Mitigation Sequencing .....	26
4.7 Water Quality, Stormwater, and Nonpoint Pollution .....	26
4.8 Introduction - Specific Shoreline Uses .....	27
4.9 General Use Provisions: .....	27
4.10 Commercial Development .....	31

4.11 Industrial Development .....	31
4.12 Residential Development .....	32
4.13 Recreational Development .....	33
4.14 Agriculture .....	34
4.15 In-stream Structures .....	35
4.16 Transportation .....	35
4.17 Parking .....	36
4.18 Utilities .....	36
4.19 Unclassified Uses and Activities .....	37
4.20 Introduction - Shoreline Modifications .....	37
4.21 Shoreline Stabilization .....	40
4.22 Land Disturbing Activities .....	41
4.23 Piers and Docks .....	41
4.24 Fill .....	42
4.25 Dikes and Levees, Groins, and Weirs .....	43
4.26 Dredging and Dredge Material Disposal .....	44
4.27 Shoreline Habitat and Natural Systems Enhancement Projects .....	45
<b>Section 5 - Administrative Procedures .....</b>	<b>46</b>
5.1 Purpose and Applicability .....	46
5.2 Program Administrator .....	46
5.3 Relief.....	47
5.4 Permit Types .....	49
5.5 SMP Permit Procedures .....	55
<b>Section 6 - Definitions .....</b>	<b>65</b>
6.1 List of Acronyms .....	65
6.2 Definitions .....	66
<b>Appendix A.....</b>	<b>72</b>

#### LIST OF TABLES

<b>Table 4.1 – Shoreline Uses .....</b>	<b>29</b>
<b>Table 4-2 – Shoreline Modifications .....</b>	<b>39</b>

#### LIST OF FIGURES

<b>Figure 1 - Shoreline Environmental Designations Exhibit .....</b>	<b>9</b>
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## **SECTION 1 - SHORELINE MASTER PROGRAM INTRODUCTION**

### **1.1 Intro/Background Information**

Pursuant to the Revised Code of Washington (RCW) 90.58 (i.e. the Shoreline Management Act (SMA) of 1971), and WAC 173-26-010, the Town is updating its Shoreline Master Program (SMP). In 2020, the town began the process of updating their SMP. The update must be completed by June 30, 2021 to meet Ecology's schedule.

The Washington State SMA requires jurisdictions that contain "Shorelines of the State" within their boundaries to periodically update their SMP as required with the regulatory agency, namely the Washington State Department of Ecology (Ecology). The SMA was originally established by the Washington State Legislature in 1971. The passage of the SMA provided a state and local partnership that outlines minimum guidance standards for adoption by local governments for shoreline use. Additionally, it requires local governments to develop and administer SMPs to regulate shoreline development. The SMA applies to marine waters, lakes greater than 20 acres, and rivers and streams with average flows greater than 20 cubic feet per second (cfs). The SMA covers land 200 feet from the ordinary high-water mark (OHWM) of these waters and beyond if associated wetlands extend outward of the 200 foot buffer.

The three areas of focus of the SMP update are: 1) accommodate reasonable and protective uses of the shoreline; 2) protect shoreline environmental resources; and 3) protect the public's right to access and use the shorelines (RCW 90.58.020). These protections are designed to meet the overarching policy of the SMA, which is to ensure that, "the public's opportunity to enjoy the physical and aesthetic qualities of natural Shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally (RCW 90.58.020)."

The purpose of this SMP Update is to be consistent with the SMA and corresponding guidelines; coordinate with the State Growth Management Act; protect, restore and enhance the Town's environmental resources; offer public access and enjoyment of shorelines; and promote the public health, safety, and general welfare by providing guidelines and regulations for the future development of the Town's shoreline.

This SMP Update provides goals, policies and regulations for the development of shorelines within the jurisdiction of the town and acts as a regulatory tool for shoreline development. This SMP Update incorporates the Shoreline Inventory/Characterization Assessment Report (2012) and the Shoreline Restoration Plan (June, 2013).

## 1.2 Overview of Process

The SMA and the SMP guidelines identify specific components that need to be included in the SMP Update. The following is a summary of each component.

**Community Vision** – This component identifies the community’s long-range vision of their shorelines. This vision suggests how the overall community SMP policies, regulations, and environment designations are established.

**Goals & Policies** – The implementation of the community vision begins with the development of goals and policies. The SMA and SMP guidelines require the community to develop goals, policies and regulations for the shoreline jurisdiction, without regard to environmental designations. Some of these categories include archaeological and historic resources, critical areas, flood hazard areas, public access, shoreline vegetation conservation, water quality, storm water and non-point pollution. The goals provide a foundation for policies, which shall shape the regulations that can be specific to environment designations, shoreline uses, and/or shoreline modifications.

**Environmental Designations** – Environmental designations classify shoreline areas based on local shoreline conditions including ecological functions, land use patterns, community goals, and shoreline management recommendations made in the inventory and characterization reports. The environment designations are similar to land use designations in the local comprehensive plan.

Environmental designations provide “the framework for implementing shoreline policies and regulatory measures specific to the environment designation” [WAC 173-26-191(1)(d)]. Each environmental designation must have a purpose statement, designation criteria, and management policies and regulations specific to each environment. Environmental designation regulations establish specific uses such as residential or industrial for these shoreline areas [WAC 173-26-211]. Through this SMP Update, the environmental designations are mapped in a similar way as a zoning map.

**Regulations** – Regulations identify specific rules that apply to shoreline development. The SMP distinguishes development between uses (e.g., residential, agriculture or commercial) and modifications (e.g., shoreline stabilization or dredging). The regulations apply requirements for the permitting of uses and modifications within each environmental designation. Management policies will be projected through regulations and include elements pertaining to permitted, conditional and prohibited uses; setbacks and buffers; height and lot coverage; density limits; vegetation conservation; signage; and public access.

**Administrative Provisions** – This component defines the policies and regulations that cover how the SMP will be administered and enforced. The Administrative Provisions define the triggers and processes that are administered through the SMP.

**Appendices** – The appendices include the complete Shoreline Inventory / Characterization Report, Community Visioning Report, Cumulative Impact Analysis.

This SMP Update was developed around the community visioning that took place at the beginning of the update process. This set the framework for the development of the goals, policies and regulations that are required to manage, protect and improve the shoreline of Rock Creek. The issues and priorities the community members identified during the visioning process, influenced the establishment of specific goals and policies that the community can support as the

Town implements the SMP Update. It offers a platform for reinforcing the positive aspects of the Town while striving to overcome barriers to success, balancing the need to encourage growth and investment with the need to foster a quality living environment.

Each of the following elements present a summary of related existing conditions, the planning objectives the section strives to achieve, and a set of goals, policies and programs for the Town to pursue. For purposes of this plan, these key concepts are defined as:

**Goals** are the broadest expression of community desires consistent with the Shoreline Management Act (SMA). These statements provide value in the goal-setting process because it focuses the community on mutually desired outcomes before beginning the potentially more divisive process of deciding how to best achieve those outcomes. A goal is a direction setter. It is an ideal future end, condition, or state related to the public health, safety, or general welfare toward which planning and implementation measures are directed. Consequently, a goal is generally not quantifiable, time dependent, or suggestive of specific actions for its achievement.

A **policy** is a commitment to act in a prescribed manner in the administration of the master program. Policy statements identify guidelines to establish a definite course to guide present and future decisions. A policy is a specific statement that guides decision-making. It indicates a clear commitment of the local legislative body. A policy is based on the SMP's goals. A policy guides the development of ordinances and regulations.

A **regulation** is an authoritative rule dealing with the specifics of a use or physical standard. Regulations are specific implementation measures driven from specific policies. All future development shall conform to the regulations.

An **action** is the outcome or product of a project, which could involve some sort of public infrastructure (e.g. a new bridge or stormwater facility) or private development (e.g. a new restaurant).

### 1.3 Using of this document

This SMP Update develops both a policy and regulatory document per the SMA. The process is similar for other planning documents such as the comprehensive plan (policy) and zoning code (regulatory).

In using this document, it is important to understand that the intended role is to yield:

- a. A vision of the shoreline.
- b. An internal guide providing Town staff with set goals and policies.
- c. A guide for elected and appointed leaders providing direction on decision making and establishing regulations.
- d. An outline of key issues and Town characteristics.

The overall intent of this plan is to provide a comprehensive and coordinated step towards a variety of community goals as they relate to the shoreline. However, further actions will be needed to implement this plan including:

- a. Further study – in some cases the Town will need to conduct relatively simple inventories or studies; in other cases, the creation of more topic-specific or sub-area plans will be necessary.
- b. Consistency – the Town's set of development and zoning regulations will need to be updated and/or revised to implement the plan. Other, department specific plans may also require review.
- c. Use and updates – Town leaders and staff will need to internalize and use the plan, marking progress, considering revisions, and updating the plan regularly on-pace with conditions.
- d. Public involvement – residents will need to remain active in helping achieve goals and in monitoring the plan's progress over time.

## **SECTION 2 – ENVIRONMENTAL DESIGNATIONS**

As described in WAC 173-26-191 (1)(d), shoreline master programs shall contain a system to classify shoreline areas into specific environmental designations. Shoreline Environmental Designations (SED) are analogous to zoning designations for areas within the shoreline jurisdiction. SEDs provide a uniform basis for applying policies and use regulations within each designation if allowed by underlying zoning requirements. SEDs are intended to encourage appropriate uses and activities while providing for protection and restoration of shoreline ecological functions.

SEDs are based on existing and proposed land use patterns, the biological and physical character of the shoreline as described in the Shoreline Inventory and Characterization Summary Report, URS, November 2012, and the goals and aspirations of the community expressed through the local comprehensive plan. The shoreline designations are illustrated on the Shorelines Designations Map which is an integral part of the Shoreline Master Program, and is available for public viewing at Town Hall.<sup>1</sup> Characteristics and general management policies for each of the designations are given in Section 3.0.

It is anticipated that reasonable standards, restrictions, and prohibitions on shoreline developments will be instituted as shoreline regulations. This is necessary so that shoreline development will reasonably protect existing uses and shoreline character so that the statewide goal for “No Net Loss” of shoreline ecological functions is achieved.

### **2.1 Environmental Designation Provisions (WAC 126-211(5))**

The information provided for each SED generally follows the state classification guidelines (WAC 173-26-211 (4) and (5)). The state guidelines provide a recommended classification system. Local governments may establish a different designation system or may retain their current environment designations (WAC 173-26-211(5), 211(4)(c)(i)).

The SEDs that reflect the findings of the 2010 shoreline inventory and of current shoreline uses as well as to allow for management of the shorelines under the new state guidelines. The SED categories are Aquatic (AQ), Urban Conservancy (UC), Shoreline Residential (SR), and Mixed Use (MU). These SEDs closely reflect the state standards but minor revisions to the state standard designation criteria and management policies have been incorporated.

The AQ designation is intended for work within and over the water. The UC designation provides emphasis on public access, vegetation conservation and restoration. The SR designation is used for residential areas. The MU designation recognizes the importance of commercial areas to the community.

In the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and Chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.



## **2.2 Aquatic Environment**

### **2.2.1 Purpose**

The purpose of the “aquatic” environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high water mark.

### **2.2.2 Designation Criteria**

The "aquatic" environment designation is to lands waterward of the ordinary high-water mark.

### **2.2.3 Management Policies**

Allow new over-water structures only for water-dependent uses, public access, or ecological restoration. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use. All developments and uses should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions. Allow for maintenance and expansion of existing flood control facilities needed to protect the community. Maintenance activities include dredging and levee maintenance. Allow consideration of in-stream modifications to retain water for habitat, recreation, and aesthetics. Permitting for activities and structures within the aquatic environment shall comply with all state and federal laws, including coordination with applicable agencies.

## **2.3 Urban Conservancy Environment**

### **2.3.1 Purpose**

The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

### **2.3.2 Designation Criteria**

The "urban conservancy" environment designation is to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or or commercial or industrial "rural areas of more intense development" if any of the following characteristics apply:

- a. They are suitable for water-related or water-enjoyment uses.
- b. They are open space, flood plain or other sensitive areas that should not be more intensively developed.
- c. They have potential for ecological restoration.
- d. They retain important ecological functions, even though partially developed; or
- e. They have the potential for development that is compatible with ecological restoration.

### **2.3.3 Management Policies**

1. Uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

2 Allow continuation of existing low intensity agricultural uses.

3 Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

4 Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

5 Water-oriented uses should be given priority over non-water oriented uses.

## **2.4 Shoreline Residential Environment**

### **2.4.1 Purpose**

The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

### **2.4.2 Designation Criteria**

The "shoreline residential" environment designation is to shoreline areas if they are predominantly single-family or multifamily residential development or are planned and platted for residential development

### **2.4.3 Management Policies**

1. Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.

2. Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities.

3. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

## 2.5 Mixed Use Environment

### 2.5.1 Purpose

The purpose of the “mixed use” environment is to accommodate mixed use development including residential, commercial, institutional, utility and industrial development that is consistent with the shoreline management act, creates a unique urban waterfront environment, enhances aesthetic appeal, provides public access, and allows compatible uses. This environment is intended to provide an environment similar to the **Shoreline** Residential Environment but allowing for non-residential uses.

### 2.5.2 Designation Criteria

The “” environment designation is to shoreline areas that are predominately nonresidential in nature. Areas that are predominately non-residential commercial but not developed, and that abut State Route 278 (or 1st Street in Rockford), or have been developed in the past but are not currently in productive use should be considered for this designation. Established parcels containing ongoing or anticipated commercial developments as identified during the Visioning Process should be afforded this environmental designation.

### 2.5.3 Management Policies

1. Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "mixed use" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

2. Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

3. Water-oriented uses should be given priority over non-water oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority

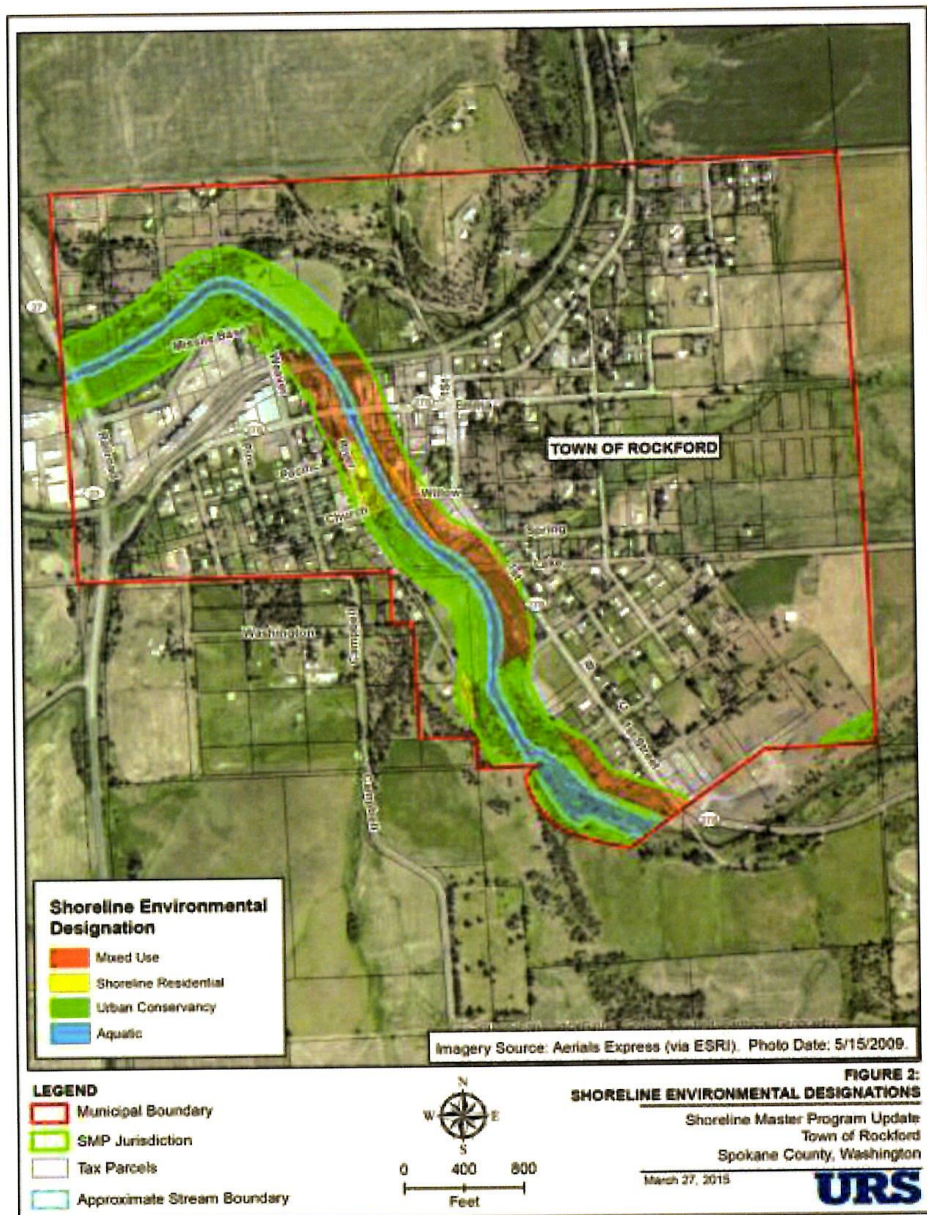
4. Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include restoration of the shoreline to comply with any relevant state and federal law.

5. Where feasible, visual and physical public access should be required as provided for in WAC 173- 26- 221(4)(d).

6. Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

7. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

Figure 2 - Shoreline Environmental Designations Exhibit



## SECTION 3 – GOALS AND POLICIES

### 3.1 Introduction

This Chapter of the Shoreline Master Program provides the goals and policies that guide the SMP regulations.

### 3.2 General Goals and Policies

**Goal SMP 1: Enhance and maintain the Town’s shorelines by establishing and implementing goals, policies, and regulations that promote a mixture of reasonable and appropriate shoreline uses that improve the Town’s character, foster its historic and cultural identity, provide for economic development, provide flood protection, and conserve environmental resources.**

#### Policies

##### **SMP 1.1 Coordinated Planning**

Coordinate shoreline planning between the Town, agencies with jurisdiction, adjoining jurisdictions, the State of Washington, and the State of Idaho into which the river basin extends, and consider the plans of non-government organizations (NGO’s) and/or special interest groups.

##### **SMP 1.2 Consistency with Other Plans and Programs**

Ensure that the Town’s Shoreline Master Program is consistent with the Washington State Shoreline Management Act and Growth Management Act, the basic concepts, goals, policies, and land use plan of the Town’s Comprehensive Plan and development regulations, the Town’s Critical Areas Ordinances, and the Shoreline Master Programs of adjacent jurisdictions.

##### **SMP 1.3 No Net Loss of Ecological Functions**

Ensure that shoreline use and development is regulated in a manner that guarantees no net loss of shoreline ecological functions.

##### **SMP 1.4 Public Interest and Property Rights**

Protect the interests of the public in attaining the goals of the Shoreline Master Program in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

##### **SMP 1.5 Shoreline Designated Environments**

The shoreline environment designation for the Town’s shorelines are consistent with the Comprehensive Plan land uses, existing land uses and zoning, shoreline management practices, and shoreline inventory.

##### **SMP 1.6 Use preferences for all Shorelines**

Give preference to those shoreline activities which fulfill long range Comprehensive Plan goals and the Shoreline Management Act policy priorities, as listed and discussed in RCW 90.58.020.

##### **SMP 1.7 Flood Control**

Provide provisions to allow maintenance of levees and floodways to reduce flooding risk to downtown Rockford.

##### **SMP 1.8 Economic Development**

Provide provisions to utilize Rock Creek and associated shorelines for economic development while maintaining and enhancing shoreline ecological function.

### 3.3 Economic Development

**Goal SMP 2: Encourage and support water dependent, water oriented, and water related economic activities within the shoreline jurisdiction of the Town that will be an asset to the economy of the area, will reduce flooding to downtown, and that will protect, maintain and enhance the ecological functions of the shoreline environment.**

#### Policies

##### **SMP 2.1 Location and Design for Economic Development**

Give preference to economic development within the shoreline jurisdiction that is particularly dependent on location or use of the shoreline.

Development should be designed to minimize the impacts to the shoreline aesthetic through architectural, landscape, and other design features. Encourage design that seeks to restore damaged or compromised shoreline and provides flood protection for the Town. Design and locate commercial developments in a manner so that surface waters, wetlands, steep slopes, and erodible soils are duly considered, and so that new developments comply with storm water management criteria and applicable Critical Areas Ordinance regulations, (**see NE-P7-8 Rockford Comprehensive Plan**);

##### **SMP 2.2 Provisions for Physical and Visual Availability to Water**

Historic sites, overlook points, structures, and points of public access to the waterfront should be incorporated in economic development site-planning.

##### **SMP 2.3 Encourage Regional Tourism**

Strengthen regional tourism by expanding and developing commercial, neighborhood and regional linkages and improvements that use the shoreline areas, including those uses associated with the Southeast County Fair and fairgrounds.

##### **SMP 2.4 Promote Recreational Uses**

Promote recreational uses of the shorelines to contribute to the economic attractiveness of the Town. Seek opportunities to identify and partner with public and private property owners to establish public recreational opportunities in the shoreline including pathways, parks, viewpoints, and beaches.

##### **SMP 2.5 Provisions for Shoreline Protection**

Require that development provide provisions for the protection of water quality, erosion control, native vegetation, aesthetic characteristics, fish and wildlife habitat, views, archaeological sites, public use, and flood protection

### 3.4 Public Access Element

**Goal SMP 3: Provide reasonable and adequate public access to the Shorelines of the State consistent with the natural shoreline character, private property rights, public rights under the Public Trust Doctrine, and public safety.**

#### Policies

##### **SMP 3.1 Shoreline Development by Public Entities**

Require public entities, including local governments, state agencies and public utility districts, to include public access as part of each development project unless such access is incompatible due to reasons of safety, security or impact to the shoreline environment.

##### **SMP 3.2 Shoreline Development by Private Entities**

Require the dedication and improvement of public access in new developments for water-enjoyment,



water-related and non-water-dependent uses and for the subdivision of land into more than four parcels, with exceptions as allowed by WAC 173-26-221(4)(d)(iii).

### **SMP 3.3 Design of Access Measures**

Require that public access measures have a design appropriate to the site, adjacent property, and general nature of the proposed development, while protecting and providing views. Public access facilities should be designed with provisions for persons with disabilities, where appropriate. Access design and spacing of access points should be based on the biophysical capabilities of the shoreline features and should protect fragile shoreline environments.

## **3.5 Recreation Element**

### **Goal SMP 4: Preserve and increase recreational opportunities on the Town's shorelines.**

#### **Policies**

#### **SMP 4.1 Promote and Preserve Shorelines for Public Recreational Use**

Encourage development of recreation opportunities along the shorelines, particularly on publicly owned properties. Encourage private commercial development to incorporate a recreational element in the design if appropriate.

#### **SMP 4.2 Recreational Areas Protect Shoreline Ecological Functions**

Recreational areas should be located, designed, developed, managed and maintained in a manner that protects shoreline ecological functions and processes and results in no net loss of ecological functions.

#### **SMP 4.3 Linkages to Recreation Areas**

Hiking paths, bicycle paths, easements and scenic drives should link shoreline parks, recreation areas and public access points.

#### **SMP 4.4 Adequate Support Facilities**

Create adequate support facilities such as parking areas, maintenance buildings, and rest rooms to meet shoreline recreational demands.

#### **SMP 4.5 Non-Motorized Recreation**

Preference shall be given to non-motorized recreational activities.

## **3.6 Circulation Element**

### **Goal SMP 5: Provide a safe, convenient, and multimodal circulation system which will provide for vehicular traffic needs and vehicular and pedestrian access, but minimize disruption to the shoreline environment.**

#### **Policies**

#### **SMP 5.1 Transportation Access**

Ensure that a system of roads and pathways adjacent to and within the shoreline jurisdiction provide appropriate access to Rock Creek in a way that meets the needs and desires of the community as reflected in the (**see TG-4 Rockford Comprehensive Plan**), and planning goals of the Growth Management Act, RCW 36.70A.020; while also preserving ecological function of the shorelines.

#### **SMP 5.2 Location of New Streets or Street Expansions**

Locate new streets or street expansions outside of the shoreline jurisdiction, unless no other options are available or feasible. In all cases, streets should be on the landward side of development if feasible.

### **SMP 5.3 Consolidation of Road and Utility Corridors**

Encourage the consolidation of transportation and utility corridors crossing the shoreline environment in order to minimize the number of crossings, and encourage the collocation of utilities on bridges or in transportation rights-of-way whenever possible by considering this need during the design of bridge and corridor upgrades.

### **SMP 5.4 Parking Facilities not a Primary Use.**

Parking facilities should only be allowed as necessary to support permitted shoreline uses, and not as a primary use, and must be located outside of the shoreline jurisdiction area if other options are available and feasible. Minimize the environmental and visual impacts of parking facilities where allowed.

### **SMP 5.5 Retain Unused Public Rights-of-way for Visual and Physical Access**

Retain unused public rights-of-way within the shoreline area to provide visual and physical access to the shoreline, and of rights-of-way for public access which are not in use and would be impractical or illogical to develop (**see TG-4 Rockford Comprehensive Plan**).

## **3.7 Shoreline Use Element**

**Goal SMP 6: Consider the use and development of shorelines and adjacent land areas for housing, business, industry, transportation, recreation, education, public buildings and grounds, utilities and other categories of public and private land uses in relation to the natural environment.**

### **Policies**

#### **General Use**

#### **SMP 6.1 Shoreline Use Priorities**

Give preference to water-orientated and single family residential uses that are consistent with preservation of shoreline ecological functions and processes and flood protection

#### **SMP 6.2 Protect Shoreline Ecological Functions**

Ensure no net loss of ecological functions through the use of specific standards for setbacks, buffers, density, and shoreline stabilization.

#### **SMP 6.3 Preserving Fish and Wildlife Habitat**

Encourage new development to contribute to the creation or preservation of open space and/or fish and wildlife habitat along the shorelines.

#### **SMP 6.4 Nonconforming Use and Development**

Legally established uses and developments that were erected and maintained in lawful condition prior to the effective date of this Master Program, shall be allowed to continue as legal nonconforming uses provided that future development or redevelopment does not increase the degree of nonconformity with this program.

### **Residential Use**

#### **SMP 6.5 Public Access in Development**

Ensure that shoreline development includes promotes and preserves visual and physical public access to the shorelines, while avoiding, minimizing, or mitigating negative impacts to the shoreline including views.



## **SMP 6.6 Subdivided Lots**

Require new subdivided lots to be designed, configured, and developed to:

- Prevent the net loss of ecological functions at full build-out.
- Prevent the need for new shoreline stabilization or flood hazard reduction measures.
- Be consistent with applicable environmental designations and standards; and,
- Prohibit over-water residences.

## **Commercial Use**

### **SMP 6.7 Priorities for Commercial Use**

Give preference to new commercial uses in the following order:

1. First priority is given to water-dependent commercial uses.
2. Second priority is given to water-related and water-enjoyment commercial uses.

### **SMP 6.8 Water Dependent and Water Related Commercial Uses**

Water dependent and water related commercial uses within the shoreline jurisdiction should be discouraged in areas that are susceptible to erosion and flooding and where there are impacts to ecological functions unless appropriate flood control measures can be implemented.

### **SMP 6.9 Agricultural Uses**

Ongoing agricultural uses are exempt from this SMP. Agricultural activities include the cultivation of the soil, production of crops, and/or raising of livestock, including incidental preparation of these products for human use (agricultural activities are commercial uses; and specific agricultural meanings are provided in WAC173-26-020).

## **Industrial Uses**

### **SMP 6.10 Priorities for Industrial Use**

Give priority to industrial uses in the following order:

1. First priority is given to water-dependent industrial uses.
2. Second priority is given to water-related industrial uses.

### **SMP 6.11 Water Dependent and Water Related Industrial Uses**

Water dependent and water related industrial uses within the shoreline jurisdiction should be discouraged in areas that are susceptible to erosion and flooding and where there are impacts to ecological functions unless appropriate flood control measures can be implemented.

## **Shoreline Modifications**

### **SMP 6.12 Shoreline Modifications**

Allow structural shoreline modifications only where they are:

- Demonstrated to be necessary to support or protect an allowed primary structure, or a legally existing shoreline use that is in danger of loss or substantial damage; and,
- Necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.

### **SMP 6.13 Modification Impacts and Limitations**

Reduce the adverse effects of allowed shoreline modifications and, as much as possible, limit allowed

shoreline modifications in number and extent. Base shoreline modification regulations on scientific and technical information of reach conditions for Rock Creek.

#### **SMP 6.14 Appropriate Modifications**

Allow only shoreline modifications that are appropriate to the shoreline environment designations and environmental conditions for which they are proposed.

#### **SMP 6.15 Modifications and No Net Loss of Ecological Functions**

Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions by:

1. Giving preference to those types of shoreline modifications that have the least impact on ecological function; and,
2. Requiring mitigation of identified impacts resulting from shoreline modifications.

### **Piers and Docks**

#### **SMP 6.16 Dock Restrictions**

Allow new docks only for single-family residences and public access on Rock Creek. For new residential development of more than two dwellings a joint use or community use dock will be allowed, rather than individual docks.

#### **SMP 6.17 Design and Construction**

Piers and docks shall be permitted only when a specific need is demonstrated, shall be the minimum size necessary to serve that need, and shall be designed and constructed to avoid, minimize and mitigate impacts to shoreline ecological processes and functions.

### **Shoreline Fill**

#### **SMP 6.18 Design and Location**

Shoreline fills shall be designed, located and constructed to protect shoreline ecological function and ecosystem-wide processes, including channel migration, wildlife habitat, water quality, water currents, and surface water drainage. Shoreline fills necessary for economic development of commercially zoned areas shall require a conditional use permit and shall be required to mitigate environmental impacts to the shoreline, provide and mitigate for flood protection, both upstream and downstream of the development and shall provide public access.

#### **SMP 6.19 Limitations on Fill**

Fill waterward of the Ordinary High-Water Level shall require a conditional use permit and shall only be allowed under limited circumstances, including expansion or alteration of transportation facilities, flood protection for the Town, and environmental restoration.

### **Shoreline Stabilization**

#### **SMP 6.20 Integrated Approach to Shoreline Stabilization**

Select and design streambank stabilization measures using an integrated approach requiring an analysis of the reason for the erosion; fish and wildlife habitat characteristics, needs and potential; and the current and future risks associated with erosion and bank protection to property, infrastructure, fish and wildlife habitat and public safety.

#### **SMP 6.21 Shoreline Stabilization Protection Measures**

Prohibit new streambank protection measures except when necessity is documented through an integrated approach analysis of the site and shoreline characteristics.

**SMP 6.22 Design and Location of New Development**

Locate and design new development and lots created through subdivision, particularly those located on steep slopes and bluffs, to prevent the need for future streambank stabilization measures during the life of the structure(s).

**SMP 6.23 Public Access**

Incorporate ecological restoration and public access as part of publicly funded streambank protection projects.

**SMP 6.24 Soft Structure Stabilization Measures**

Encourage the use of soft structure stabilization measures in the construction of erosion controls, and to preserve stream function.

**Dredging****SMP 6.25 New Dredging**

Dredging and dredge disposal shall avoid or minimize shoreline ecological impacts. Site and design new development to avoid the need for new and maintenance dredging. Dredging for fill materials prohibited except for habitat restoration approved by a Conditional Use Permit.

**SMP 6.26 Maintenance Dredging**

Maintenance dredging for flood control shall be allowed but restricted to areas that have been previously maintained.

**SMP 6.27 Disposal of Dredging Materials**

Disposal of dredged materials within the shorelines and the channel migration zone is discouraged. In limited circumstances disposal in these areas may be allowed by a Conditional Use Permit.

**In-stream Structures****SMP 6.28 In-Stream Structures**

Site in-stream structures to protect and preserve ecosystem-wide processes, ecological functions, and cultural resources, including but not limited to fish and fish passage, wildlife and water resources, shoreline critical areas, hydro-geological processes, and natural scenic vistas.

**SMP 6.29 In-Stream Structure Location**

Consider the full range of public interests, watershed functions and processes, and environmental concerns when planning and locating in-stream structures, with special emphasis on protecting and restoring priority habitats and species.

**Habitat and Natural Systems Enhancement Projects****SMP-6.30 Habitat and Natural Systems Enhancement Projects**

Advocate and foster habitat and natural system enhancement projects which restore the natural character and function of the shoreline provided they are consistent with the Restoration Plan.

**3.8 Conservation**

Goal SMP 7: Preserve for the future those natural resources, including the unique, fragile and scenic qualities of the shoreline, which cannot be replaced. Achieve no net loss of ecological functions of the shoreline.

## **Policies:**

### **SMP 7.1 Areas to be Preserved**

Areas that provide open spaces, scenic vistas, contribute to shoreline aesthetics, natural vegetation and, fish and wildlife habitat should be preserved.

### **SMP 7.2 Protect Vegetative Buffers and Setbacks**

Protect existing vegetation and shoreline ecological function by designating buffers and setbacks that are supported by the 2012 Shoreline Inventory and Characterization Report.

### **SMP 7.3 Vegetation Management**

1. Native vegetation shall be protected.
2. Remove and manage non-native and noxious plants.
3. Selective pruning of trees for safety and view protection is allowed.
4. Provide standards for chemical control of noxious and non-native vegetation.
5. Allow limited use of goat/sheep in shoreline jurisdiction to manage non-native and noxious plants.

## **3.9 Historical, Cultural, Scientific & Educational Element**

Goal SMP 8: Goal: Protect the historic, cultural, scientific or educational sites within the shoreline that reflect our community's unique heritage and create or contribute to the collective sense of place.

## **Policies**

### **SMP 8.1 Sites and Structures**

Identify, preserve, and manage shoreline sites and structures having historical, cultural, scientific or educational value, and develop regulations that avoid, minimize, or mitigate any adverse impacts to these resources.

### **SMP 8.2 Development Impacts**

Encourage public or private development and redevelopment activities on any site, area, or building identified as having historical, cultural, educational or scientific value to maintain the inherent historical, cultural, educational or scientific value.

**SMP 8.3 Cooperation and Consultation** Ensure constant cooperation and consultation with affected agencies and tribes for projects that could potentially impact cultural and historical resources.

### **SMP 8.4 Inventory of Sites**

Work with tribal, state, federal and local governments as appropriate to maintain an inventory of all known significant local historic, cultural, and archaeological sites in observance of applicable state and federal laws protecting such information from public disclosure.

### **SMP 8.5 Site Inspection and Evaluation**

Ensure early and continuous site inspection, consultation or evaluation by a professional archaeologist in coordination with affected tribes for all permits issued in areas documented to contain archaeological resources.

### 3.10 Flood Hazard Reduction Element

Goal SMP 9: Prevent and reduce flood damage to public and private property, infrastructure, and promote economic development.

NE-P5

#### Policies

##### **SMP 9.1 Development within the Shoreline**

Prohibit development within the shorelines that would intensify flood hazards or result in cumulative significant adverse effects to other properties (see **NE-P5 Rockford Comprehensive Plan**).

##### **SMP 9.2 Coordination among agencies**

Coordinate flood hazard reduction planning among the applicable agencies, (e.g., Department of Ecology, Department of Fish and Wildlife and the U.S. Corps of Engineers).

##### **SMP 9.3 Alteration of Watercourses/Expanded Levee System**

Notify Ecology and the Department of Fish and Wildlife prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Insurance Administration.

Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

##### **SMP 9.4 Structural Flood Hazard Reduction**

Allow new structural flood hazard reduction\* measures only:

- Where scientific and engineering analysis has demonstrated it to be necessary to protect existing developments and new developments that contribute to the long-term economic vitality of the town, when non-structural methods are infeasible, and mitigation is accomplished.
- Landward of associated wetlands and buffer areas except where no alternative exists as documented in an engineering analysis.
- When consistent with current best management practices using natural materials whenever feasible; and
- When public access is provided.

\*An example of a structural flood hazard reduction measure is a structure placed by humans within a stream or river waterward of the ordinary high-water level such as, but not limited to, a diversion or modification of water flow to control flooding.

##### **SMP 9.5 Maintain and Protect the Integrity and Function of the Flood Protection Structures (levees/dikes) through maintenance activities.**

Vegetation removal from the dikes shall be allowed when necessary for dike structural stability or to maintain channel flow. Limited dredging within channel bottom to maintain the channel capacity.

##### **SMP 9.6 Natural Vegetative Buffers**

Maintain, protect, and restore natural vegetative buffers that are within the floodway of Rock Creek that function to stabilize the banks.

##### **SMP 9.7 Substantial Modification.**

Realignment and straightening within the stream channel migration zone should be discouraged as a means of flood protection.

### 3.11 Utilities Element

Goal SMP 10: Goal: Maintain and provide adequate utility services within the shoreline environment while preserving and maintaining the natural environment and ecology of the shoreline.

#### Policies

##### **SMP 10.1 Location**

Design, locate, and maintain utilities to assure no net loss of shoreline ecological functions. Locate new public and private facilities and utilities, including, but not limited to, utility production, processing, distribution, and transmission facilities, outside of the shoreline jurisdiction whenever feasible.

##### **SMP 10.2 Existing Rights-of-way**

Require new utilities and facilities to be located in existing rights-of-way whenever possible. Give preference to established utility corridors and rights-of-way for upgrades and reconstruction of existing utilities and facilities, unless a location with less potential to impact the shoreline environment is available.

##### **SMP 10.3 Maintenance Design**

When existing utilities located within shoreline jurisdiction require maintenance or other improvements, the maintenance/improvement should be designed and implemented to minimize additional impacts on the shoreline.

##### **SMP 10.4 Stormwater Facilities**

Stormwater facilities will be designed and located as to minimize environmental impacts within the shoreline jurisdiction. If located within the shoreline jurisdiction they shall require the use of best management practices (e.g., bio-filtration measures), and landscaping with native vegetation to provide habitat, ecological restoration, and aesthetic improvements. All stormwater facilities must protect water quality, manage runoff and address erosion control and sedimentation.

### 3.12 Critical Areas Element

Goal SMP 11: Preserve and protect existing ecological functions and ecosystem-wide processes within wetlands, fish and wildlife habitat conservation areas, geologically hazardous areas and frequently flooded areas. Ensure no net loss of ecological function within these critical areas.

#### Policies

##### **SMP 11.1 Consistency with Critical Areas Goals and Policies**

Ensure the critical area goals and policies for the Shoreline Master Program are consistent with the critical areas goals and policies contained in the Comprehensive Plan.

##### **SMP 11.2 No net loss of ecological function**

Ensure regulatory protection measures developed for the shoreline area ensure “no net loss of shoreline ecological functions” necessary to sustain shoreline natural resources as defined by Department of Ecology guidelines adopted pursuant to RCW 90.58.060.

##### **SMP 11.3 Preserve and protect critical areas defined as wetlands through protective measures**

Rate wetlands based on the quality of the wetland and the ecological function they serve. Develop protective measures (i.e. buffer setbacks) tailored to the wetland quality and function, and consider the characteristics and setting of the buffer and the impacts on adjacent land use.

**SMP 11.4 Preserve and protect critical areas defined as wetlands through mitigation sequencing**

Base wetland mitigation on the wetland rating and require mitigation sequencing. Only allow compensatory mitigation after mitigation sequencing has been applied and higher priority means of mitigation have been deemed infeasible. Mitigation sequencing is further identified in section 4.6.2.

**SMP 11.5 Wetland Elimination**

Wetland elimination as the result of fill or grading as part of a conversion to commercial or residential use shall be discouraged.

**SMP 11.6 Protect people and property from risk associated with critical areas defined as Geologically Hazardous Areas**

Limit development that would cause foreseeable risk from geological conditions to people or property. Do not allow development that will require structural shoreline stabilization except in the limited cases where it is necessary to protect an allowed use and no alternative location is available. Allow structural shoreline stabilization to protect existing homes only when relocation or reconstruction is infeasible. Do not allow structural shoreline stabilization that will result in a net loss of ecological function.

**SMP 11.7 Preserve and protect critical areas defined as Critical Area fish and wildlife habitat conservation areas**

Develop measures that assure no net loss of ecological functions of river, lake and stream corridors associated with fish and wildlife habitat. Integrate the protection of fish and wildlife habitat with flood hazard reduction and other fish and wildlife management provisions. Develop measures that authorize and facilitate habitat restoration projects.

**SMP 11.8 Preserve and protect critical areas defined as Critical Aquifer Recharge Areas.**

Protect the hydrologic connections between water bodies, water courses, and associated wetlands. Integrate the protection of critical aquifer recharge areas with jurisdictional and non-jurisdictional aquifer protection measures such as Watershed Management Plans, Wellhead Protection Plans, Department of Natural Resources Forest Practices, and others as appropriate.

**SMP 11.9 Protect people and property from risk associated with critical areas defined as Frequently Flooded Areas**

Limit development that would cause foreseeable risk to people and property from frequent flooding. Ensure frequently flooded areas are fully addressed in the goals and policies of the Flood Hazard Reduction element in this plan.

## **SECTION 4 – GENERAL SHORELINE REGULATIONS**

Based on the Goals and Policies established for the Shoreline Master Program (SMP), the following regulations apply to all new uses, developments, and activities within the Town’s Shoreline Jurisdiction regardless of Environmental Designation.

These regulations are in addition to other adopted ordinances and rules. Where conflicts exist between regulations, those that provide more substantive protection to the shoreline area shall apply. These regulations are intended to make shoreline development responsive to specific needs and opportunities within the Town’s shorelines, protect the public’s interest in the shorelines’ recreational and aesthetic values and assure, at a minimum, no net loss of ecological functions necessary to sustain shoreline natural resources. These provisions address the elements of a SMP as required by RCW 90.58.100(2) and implement the governing principles of the SMP Guidelines as established in WAC 173-26-186.

### **4.1 Archaeological and Historic Resources**

#### **4.1.1 Applicability**

The following provisions apply to archaeological and historic resources that are either recorded at the state historic preservation office and/or by local jurisdictions or have been inadvertently uncovered. Archaeological sites located both in and outside shoreline jurisdiction are subject to chapter 27.44 RCW (Indian graves and records) and chapter 27.53 RCW (Archaeological sites and records). Development or uses that may impact such sites shall comply with chapter 25-48 WAC as well as the provisions of this chapter.

#### **4.1.2 Regulations**

1. Developments that propose to alter historic or culturally significant resources identified by the National Trust for Historic Preservation, the State Department of Archeology and Historic Preservation, the Town, or resources that could potentially be designated as historically or culturally significant, shall follow applicable Federal, State, County, or local review processes.
2. If historic, cultural, and/or archaeological resources are uncovered during excavation, developers and property owners shall immediately stop work and notify the Town, the Washington State Department of Archeology and Historic Preservation and affected Tribes.
3. Permits issued in areas with probable or documented cultural and archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination and consultation with affected Indian tribes.

### **4.2 Critical Areas**

#### **4.2.1 Applicability**

This shoreline master program provides for the management of critical areas designated under RCW 36.70A.170 (1)(d) located within the shoreline jurisdiction pursuant to the provisions of RCW 90.58.090(4) and 36.70A.480(3) as amended by Chapter 107, Laws of 2010 (EHB 1653).



## 4.2.2 Regulations

Critical areas within the shoreline jurisdiction are managed through the provisions of this Shoreline Master Program.

### 4.2.2 Wetlands

**Critical area regulations pertinent to shorelines are included in Appendix A.**

## 4.3 Flood Hazard Reduction

### 4.3.1 Applicability

The provisions of this subsection apply to actions taken within that portion of the 100-year floodplain that is located within the Town's Shoreline Jurisdiction. This subsection regulates uses, development, and shoreline modifications to reduce flood damage or hazard and that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and storm water management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program and RCW 86.12. Most flood hazard reduction projects will require additional permits from state and federal agencies.

### 4.3.2 Regulations

1. Development in flood plains should not significantly or cumulatively increase flood hazard or be inconsistent with an adopted comprehensive flood hazard management plan.

2. New development or new uses in the shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway unless there is a community benefit related to flood protection, economic development, or for critical municipal uses.

3. The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:

a. Actions that protect or restore ecosystem-wide processes or ecological functions.

b. Actions that reduce flood hazard including dredging for flood management purposes and repair and maintenance of existing dikes including vegetation removal if needed for dike stability or to maintain the design river flow. Flood hazard reduction measures must be included in an adopted comprehensive flood hazard management plan.

c. Existing and ongoing agricultural practices provided that no new restrictions to channel movement occur.

d. Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes.

e. Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.

f. Modifications or additions to an existing nonagricultural legal use, provided that channel

migration is not further limited and that the new development includes appropriate protection of ecological functions.

- g. Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

4. New structural flood hazard reduction measures are allowed in the shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing structures or provide a community benefit related to flood protection, economic development, or for critical municipal uses, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC 173-26-221(5).

5. New structural flood hazard reduction measures are allowed landward of associated wetlands, and vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through an engineering and scientific analysis.

6. New structural public flood hazard reduction measures, such as dikes and levees, shall dedicate and improve public access unless public access improvements are considered infeasible in accordance with Section 4.5.2(7).

7. The Town may require from the applicant as appropriate during its review of shoreline flood management projects and programs the following information:

- a. Stream channel hydraulics and floodway characteristics, up and downstream from the project area;
- b. Description of existing shoreline stabilization and flood protection works within the area;
- c. Physical, geological, and soil characteristics of the area;
- d. Biological resources and predicted impact to the ecology, including fish, vegetation, and animal habitat;
- e. Predicted impact upon area, shore, and hydraulic processes, adjacent properties, and shoreline and water uses; and
- f. Analysis of alternative flood protection measures, both non-structural and structural.

8. The Town shall require engineered design of flood protection works where such projects may cause interference with normal geo-hydraulic processes, off-site impacts, or adverse effects to shoreline resources and uses. The town may retain consultants at the applicant's expense to assist in the review of the technical studies if needed.

## **4.4 Public Access**

### **4.4.1 Applicability**

Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

### **4.4.2 Regulations**

1. Public access shall be required for all public shoreline development and uses, except where it is demonstrated to be infeasible.

2. Dedicated and improved public access sites shall be required for all new development and for subdivisions of land into more than four parcels except:

- a. Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.
- b. For individual single-family residences not part of a development planned for more than four parcels.

3. New development shall consider visual public access to the shorelines from public right of ways and shall minimize blocking views from a substantial number of residences.

4. Public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.

5. Requirement of public access to shorelines does not confer the right to enter upon or cross private property, except for within dedicated and marked public easements.

6. Public access sites shall be designed to result in no net loss of shoreline ecological functions.

7. Public access may be considered infeasible if the Applicant can show that a shoreline development or use demonstrates and the Town determines that one or more of the following provisions apply:

- a. Unavoidable health or safety hazards to the public;
- b. Inherent security requirements of the development or use cannot be satisfied through alternative design;
- c. The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the development;
- d. Unacceptable environmental harm will result from the public access which cannot be mitigated; or
- e. Significant undue and unavoidable conflict between the proposed access and adjacent uses will occur and it cannot be mitigated.

## 4.5 Shoreline Vegetation Conservation

### 4.5.1 Applicability

Per WAC 173-26-221(5), Vegetation conservation includes activities to protect and restore vegetation along or near shorelines that contribute to shoreline ecological functions. Vegetation conservation also protects human safety and property, increases the stability of river banks, reduces the need for structural shoreline stabilization measures, improves the visual and aesthetic qualities of the shoreline, protects plant and animal species and their habitats, and enhances shoreline uses. Vegetation conservation regulations do not apply retroactively to existing uses and structures, activities related to the establishment or maintenance of yards or gardens associated with residential development, noxious weed removal, or dead or hazardous tree removal.

### 4.5.2 Regulations

1. Vegetation conservation standards shall comply with the implement the principles in WAC 173- 26- 221 (5)(b).
2. Clearing and grading activities and related alteration of the natural landscape shall only be allowed in association with a permitted shoreline use or development with limited exceptions as set forth below:
  - a. Removal of noxious weeds as listed by the state in Chapter 16-750 WAC, provided such activity shall be conducted in a manner consistent with best management practices. Native vegetation shall be promptly reestablished in the disturbed area.
  - b. Removal of vegetation along flood control dikes if needed for dike stability or to maintain the design river flow.
3. Visual access to Rock Creek may consist of the development of a view corridor. An established view corridor may include a physical access trail or walking path to enable an approach to Rock Creek. To create or establish a view corridor, vegetation clearing would be allowed up to a 20' wide corridor per individual parcel. Vegetation clearing shall not result in a change of the natural topography, except in the case where it involves the development of a physical access trail in conjunction with the view corridor. Clearing of native vegetation shall be limited to the minimum necessary to accommodate a view corridor and/or physical access trail.
4. Pruning consistent with accepted arboricultural practices, maintenance of existing ornamental landscapes and other activities are allowed pursuant to these regulations, if said modification is conducted in a manner consistent with this Master Program and results in no net loss of ecological functions.
5. The design, construction and location of new development and uses shall, wherever feasible, avoid and minimize the removal or damage of existing native vegetation.
6. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Significant trees and other vegetation shall be replaced at an appropriate ratio to assure no net loss is achieved. The Town may require a re-vegetation plan and a report prepared by a qualified professional to assure impacts are mitigated for new development. The following re-vegetation requirements shall be followed:
  - a. Surfaces cleared of vegetation and not developed must be replanted with native species or other species as approved by the Town within one (1) year. Replanted areas shall be planned and maintained such that within three (3) years the vegetation is at least ninety (90) percent established.

- b. In all cases where clearing is followed by re-vegetation, native plants shall be required. Native vegetation with similar species in quantities designed to achieve no net loss of ecological function shall be required for re-vegetation of cleared areas that contain existing native vegetation. Existing ornamental landscapes, including grass, may be replaced with similar species, unless mitigation is necessary to address project impacts.

7. The application of herbicides or pesticides in lakes, rivers, streams, wetlands, or ditches requires a permit from the Washington Department of Ecology and may require preparation of a SEPA checklist for review by other agencies. The individual(s) involved must obtain a pesticide applicator license from the Washington State Department of Agriculture.

## **4.6 Mitigation Sequencing**

### **4.6.1 Applicability**

The provisions of this section are intended to achieve no net loss of shoreline ecological functions for all proposed uses, modifications, or developments with the shoreline jurisdiction. All proposals shall analyze the impacts on shoreline ecological functions and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with these regulations or other applicable regulations including the Washington State Environmental Policy Act (SEPA).

### **4.6.2 Regulations**

1. Mitigation shall occur in the following prioritized order:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action.
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- c. Rectifying the impact by repairing, rehabilitating or restoring the affected environments;
- d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- e. Compensating for the impact by restoring, rehabilitating, or enhancing substitute shoreline environments; or
- f. Monitoring the impacts and the compensation project and taking appropriate corrective measures.

2. Mitigation may include a combination of the measures in 1(a) through 1(f) above.

3. As a condition of any permit or approval allowing alteration of shoreline ecological functions, the applicant shall engage in the restoration, rehabilitation, or enhancement of the shoreline environment in order to offset the impacts resulting from the applicants actions.

## **4.7 Water Quality, Stormwater, and Nonpoint Pollution**

### **4.7.1 Applicability**

The provisions of this subsection apply to all development and uses in shoreline jurisdiction that affect water quality.

### **4.7.2 Regulations**

1. All shoreline development, both during and after construction, shall minimize impacts related to surface runoff through control, treatment and release of surface water runoff such that there is no net loss of receiving water quality in the shoreline environment.

2. Stormwater control and discharges shall be in compliance and maintained consistent with municipal critical areas regulations ([see CF-P12 Rockford Comprehensive Plan](#)).

3. Shoreline use and development shall minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils and adverse effects on shoreline ecological functions and values.

4. Shoreline development and uses shall adhere to all required setbacks and buffers. Low impact stormwater facilities may be allowed within the shoreline setback.

5. The release of oil, chemical, or hazardous materials onto or into the water is prohibited. Equipment for the transportation, storage, handling, or application of such materials shall be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected. During construction, vehicle refueling, and vehicle maintenance shall occur outside of regulated shoreline areas.

6. The bulk storage of oil, fuel, chemical, or hazardous materials, on either a temporary or a permanent basis, is prohibited, except for uses allowed by the zoning classification. For the purpose of this section, heating oil, small boat fuel, yard maintenance equipment fuel, propane, sewage sumps, and similar items common to single family residential uses are not included in this definition.

## **4.8 Introduction - Specific Shoreline Uses**

The regulations of this section apply to specific common uses and types of development within the shoreline jurisdiction area. The regulations provide criteria to implement the goals, policies and intent of the SMA and this shoreline master program when evaluating shoreline permit applications.

### **4.9 General Use Provisions:**

#### **4.9.1 Applicability**

The provisions in this section apply to all uses and development within the shoreline jurisdiction.

#### **4.9.2 Regulations**

1. All shoreline uses will result in no net loss of shoreline ecological function.
2. Shoreline uses are allowed only if the underlying zoning allows the use.
3. All existing uses are allowed per WAC 173-27-080.
4. Uses on adjacent lands outside of the immediate shoreline jurisdiction area shall protect the preferred shoreline uses from being impacted by incompatible uses in accordance with RCW 90.58.340.

5. All development and uses shall conform to Table 4.1 Shoreline Uses unless otherwise stated.

6. All uses not explicitly covered in this Shoreline Master Program require a Conditional Use Permit. The Town may impose conditions on such projects to ensure that the proposed development meets the intent of this Shoreline Master Program.

7. Shorelines not otherwise designated are assigned an Urban Conservancy designation.

#### **4.9.3 Shoreline Uses and Dimensional Standards Tables**

Table 4.1 identifies typical shoreline uses and the level of approval required for shoreline uses and activities described in this Shoreline Master Program as well as dimensional standards and limits for height, buffers, and building setbacks for each shoreline Environmental Designation. Requirements related to each use are described subsequently.

**Table 4.1 – Shoreline Uses**

<b>KEY</b> E = Exempted Use (subject to requirements of the underlying zoning; shoreline permits are not required) SD = Shoreline Substantial Development Permit Required CU = Conditional Use Permit Required X = Prohibited N/A = Not Applicable				
	<b>Shoreline Environmental Designation</b>			
<b>SHORELINE USES</b>	<b>Shoreline Residential</b>	<b>Mixed Use</b>	<b>Urban Conservancy</b>	<b>Aquatic</b>
<b>Commercial</b>				
Water-dependent commercial uses	X	SD	X	CU
Water-related commercial uses	X	SD	X	X
Water-enjoyment commercial uses	X	SD	X	X
Non-water oriented commercial uses	X	SD	X	X
<b>Industrial Development</b>				
Water-dependent industrial uses	X	SD	X	CU
Water-related industrial uses	X	SD	X	X
Non-water oriented industrial uses	X	SD	X	X
<b>Residential Development</b>				
Single-family residences	E	E	E	X
Multifamily residences	SD	SD	X	X
<b>Recreational Development</b>				
Water-dependent recreation	SD	SD	SD	CU
Water-related recreation	SD	SD	SD	CU
Water-enjoyment recreation	SD	SD	SD	CU
Non-water oriented recreation	SD	SD	CU	X
<b>Agriculture (New)</b>	X	E	E	X
<b>In-Stream Structures</b>	CU	CU	CU	CU
<b>Transportation</b>				
New arterial streets and bridges	CU	CU	X	CU
New local access streets or street expansions	SD	SD	SD	X



<b>KEY</b> E = Exempted Use (subject to requirements of the underlying zoning; shoreline permits are not required) SD = Shoreline Substantial Development Permit Required CU = Conditional Use Permit Required X = Prohibited N/A = Not Applicable				
	<b>Shoreline Environmental Designation</b>			
<b>SHORELINE USES</b>	<b>Shoreline Residential</b>	<b>Mixed Use</b>	<b>Urban Conservancy</b>	<b>Aquatic</b>
Pedestrian and bicycle linkages to existing or planned transportation networks	SD	SD	SD	X
Maintenance roads accessory to a permitted use	SD	SD	SD	X
New railroad lines	X	SD	X	X
Expansion of existing railroad lines and bridges	X	SD	X	CU
<b>Parking</b>				
Commercial parking or parking facility as primary use	X	X	X	X
Parking, accessory to a permitted use	SD	SD	SD	X
<b>Utilities</b>				
Primary	SD	SD	CU	CU
Accessory	E	E	E	X
Routine Maintenance Activities	E	E	E	E
<b>Shoreline Dimensional Standards(1)</b>				
Maximum Building Height	35 feet	35 feet	35 feet	N/A
Shoreline Buffer (2)(3)	50 feet	25 feet	100 feet	N/A
Building setback from shoreline buffer	10 feet	10 feet	15 feet	N/A

**Notes**

- (1) Wetlands located within the shoreline jurisdiction shall comply with section 11.20.050 of the Spokane County Critical Areas Ordinance.
- (2) The shoreline buffer is measured horizontally from the ordinary high water mark.
- (3) Shoreline buffers may be reduced via a variance if a hardship exists per section 5.3.3 and the property precludes, or significantly interferes with, reasonable use of the property of these buffer widths and mitigation sequencing as described in Section 4.6 is followed.

## **4.10 Commercial Development**

### **4.10.1 Applicability**

Commercial development means those uses that are involved in wholesale, retail, service and business trade. The provisions in this section apply to all commercial uses permitted within the Mixed Use environmental designation. Commercial development in other environmental jurisdictions is prohibited.

### **4.10.2 Regulations**

1. Commercial development shall not result in a net loss of shoreline ecological functions, to the greatest extent feasible, or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation, and public access.

2. Commercial uses shall be required to provide public access where feasible based on Section 4.5 Public Access.

3. Non-water oriented commercial uses shall be prohibited unless:

- a. The use is part of a mixed-use project that includes a water-oriented use and provides a public benefit with respect to the SMA's objectives such as providing public access or ecological restoration; or
- b. The site is physically separated from the shoreline by another property or public right of way.

## **4.11 Industrial Development**

### **4.11.1 Applicability**

Industrial developments are facilities for processing, manufacturing and storage of finished or semi-finished goods and food stuffs. The provisions in this section apply to all industrial uses permitted within the Mixed Use shoreline jurisdiction. Industrial development is prohibited in other environmental designations. These provisions also apply to critical municipal uses not described elsewhere in this shoreline master program.

### **4.11.2 Regulations**

1. Industrial development shall not result in a net loss of shoreline ecological functions, to the greatest extent feasible, or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation, and public access.

2. Applicants for industrial uses shall incorporate public access, with exceptions noted in Section 4.5 Public Access or as provided in WAC 173-26-221(4).

3. New industrial uses and redevelopment shall be encouraged to locate where environmental cleanup and restoration of impacted sites can be accomplished where feasible.

4. New nonwater-oriented industrial development shall be prohibited unless:

5. The use is part of a mixed-use project that includes water-oriented uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

6. The site is physically separated from the shoreline by another property or public right-of-way.
7. Industrial activity shall utilize the best techniques in design and siting to prevent the release of contaminants into the adjoining water bodies in order to comply with the water quality standards promulgated under the provisions of RCW 90.48 and Section 2.6 Water Quality, Stormwater, and Nonpoint Pollution.

## **4.12 Residential Development**

### **4.12.1 Applicability**

Residential development means one or more buildings, structures, lots, parcels, or portions thereof, which are designed for and used or intended to be used to provide a place of abode for human beings. This includes the creation of new residential lots through land division and single family residences and other detached dwellings together with accessory uses and structures normally applicable to residential uses located landward of the OHWM, including, but not limited to, swimming pools, garages, sheds, fences and saunas. Single-Family and Multi-Family development is limited to those underlying zones that allow it and subject to the requirements therein.

A Shoreline Substantial Development Permit is not required for construction by an owner, lessee or contract purchaser of a single-family residence for his own use or the use of his family. However, such construction and all normal accessory structures must otherwise conform to this Shoreline Master Program.

### **4.12.2 Regulations**

1. Single family residential development is permitted in all shoreline environments subject to the standards of the underlying zoning regulations and the General Shoreline Regulations of this shoreline master program.
2. New residential development, including accessory uses and structures, shall be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect structures and uses.
3. All additions to residential structures must comply with standards in this shoreline master program.
4. Uses and facilities associated with residential development, which are identified as separate use activities in this Shoreline Master Program, such as land disturbing activities, are subject to the regulations established for those uses.
5. New single-family residential accessory structures, excluding accessory dwelling units, may be located waterward of the shoreline building setback provided that all of the following criteria are met:
  - a. The combined building footprint of all accessory structures does not exceed ten (10) percent of the lot area;
  - b. Structures are located outside of wetlands, streams, and their associated buffers; and
  - c. Potential impacts are managed consistent with this Shoreline Master Program. Where environmental impacts cannot be otherwise avoided or mitigated in compliance with this Shoreline Master Program, mitigation sequencing in accordance with Section 4.7 Mitigation Sequencing shall be implemented.

6. Residential development shall be located and designed to avoid the need for structural shore defense and flood protection works.

7. Storm drainage facilities shall include provisions to prevent the direct entry of uncontrolled and untreated surface water runoff into receiving waters (see CF-P12 Rockford Comprehensive Plan).

8. Subdivisions and planned unit developments of more than four (4) waterfront lots/units shall dedicate, improve, and provide maintenance provisions for a pedestrian easement that provides area sufficient to ensure usable access to and along the shoreline for all residents of the development.

#### **4.13 Recreational Development**

##### **4.13.1 Applicability**

Recreational uses include passive activities, such as walking, viewing and fishing and active uses, such as swimming, boating, and other outdoor recreation uses. This section applies to both public and private noncommercial shoreline recreational facilities (excluding private residences). Commercial recreational development shall be consistent with the provisions for commercial development as water orientated use.

##### **4.13.2 Regulations**

1. All recreational developments should make adequate provisions for:
  - a. Vehicular and pedestrian access, both on-site and off-site;
  - b. Proper water, solid waste, and sewage disposal methods;
  - c. Security and fire protection for the use itself and for any use-related impacts to adjacent private property;
  - d. The prevention of trespass onto adjacent properties, including but not limited to landscaping and fencing; and
  - e. Buffering of development from adjacent private property or natural areas.
2. Valuable shoreline resources and fragile or unique areas, such as wetlands and accretion shore forms, shall be used only for low impact and nonstructural recreation activities.
3. For recreation developments that require the use of fertilizers, pesticides, or other chemicals, the property owner shall submit plans demonstrating the methods to be used to prevent these chemical applications and resultant leachate from entering adjacent water bodies.
4. No recreational buildings or structures shall be built waterward of the OHWM, except water dependent and/or water-enjoyment structures such as bridges, viewing platforms, and nonmotorized boat ramps.
5. Recreational buildings and structures shall be the minimum size necessary to support the structures and intended uses.
6. Proposals for recreational development shall include adequate facilities for water supply, sewage, and garbage disposal.

## **4.14 Agriculture**

### **4.14.1 Applicability**

Agriculture includes, but is not limited to, the commercial production of horticultural, viticulture, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, or Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140; or livestock, that has long-term commercial significance as well as the other definitions of agricultural use found in WAC 173-26-020(3). In all cases, the use of agriculture related terms shall be consistent with the specific meanings provided in WAC 173-26-020. This master program applies only to new agricultural activities, and shall not require modification of or limit existing and ongoing agricultural activities within the shoreline jurisdiction, consistent with WAC 17-26-241.

### **4.14.2 Regulations**

1. Ongoing agricultural uses are exempt from this Shoreline master program.
2. New agricultural uses or a change in agricultural use within the shoreline jurisdiction is not exempt and are subject to the requirements identified in WAC 173-26-241.
3. Agricultural development shall conform to applicable state and federal policies and regulations, provided they are consistent with the SMA and this shoreline master program.
4. All agricultural activities shall occur outside of the established shoreline buffer and setback.
5. The removal of native vegetation within the shoreline buffer and setback to accommodate agricultural activities shall be prohibited.
6. A buffer of natural or planted permanent native vegetation not less than 20 feet in width, measured perpendicular to the shoreline, shall be maintained between areas of new development for crops, grazing, or other agricultural activity and adjacent waters and associated wetlands.
7. Water withdrawals from regulated water bodies for irrigation purposes shall be subject to Ecology rules and regulations.

## **4.15 In-stream Structures**

### **4.15.1 Applicability**

For the purposes of this Shoreline Master Program, “in-stream structure” means a structure placed by humans within a stream or river waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. Instream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, recreation or other purpose.

### **4.15.2 Regulations**

1. In-stream structures shall provide for the protection and preservation of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas.
2. The location and planning of in-stream structures shall give due consideration to the full

range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring or enhancing priority habitats and species.

3. In-stream structures shall be sited and designed consistent with appropriate engineering principles, including guidelines of the Washington Department of Fish and Wildlife, Natural Resource Conservation Service, the U.S. Army Corps of Engineers, and this Shoreline Master Program.

4. In-stream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters.

5. Natural in-stream features such as snags, uprooted trees or stumps should be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages.

6. In-stream structures shall allow for normal ground water movement and surface runoff.

7. In-stream structures shall preserve or enhance valuable recreation resources and aesthetic values.

8. No in-stream structure may be constructed without the developer having obtained all applicable federal, state, and local permits and approvals.

## **4.16 Transportation**

### **4.16.1 Applicability**

Transportation facilities are those structures and developments that aid in land, air, and water surface movement of people, goods, and services. They include roads and highways, bridges (including pedestrian bridges), bikeways, trails, railroads, and other related facilities.

### **4.16.2 Regulations**

1. New road and bridge construction in the shoreline jurisdiction shall be allowed only when related to and necessary for the support of permitted shoreline activities.

2. Transportation facilities and services shall utilize existing transportation corridors wherever possible.

3. Shoreline transportation facilities shall be located and designed to avoid steep or unstable areas and fit the existing topography to minimize cuts and fills.

4. New transportation facilities shall be located and designed to minimize or prevent the need for shoreline modifications.

5. All bridges must be built large enough to allow the passage of water and debris during a 100-year return storm event. Bridge abutments and piers shall be located outside of the floodways if feasible.

6. Where feasible bridges and transportation corridors shall be designed to support multiple uses including utilities and pedestrian use.

7. Expansion of existing transportation facilities within the shoreline jurisdiction shall be allowed only when the applicant demonstrates that:

a. No alternative route is feasible.

- b. The roadway is constructed and maintained to cause the least possible adverse impact on the land and water environment; and
  - c. The roadway is found to be in the public interest.
8. Transportation facility development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement.

#### **4.17 Parking**

##### **4.17.1 Applicability**

Parking is the temporary storage of automobiles or other motorized vehicles. The following provisions apply only to parking that is accessory to a permitted shoreline use. Parking as a primary use and parking which serves a use not permitted in shoreline jurisdiction is prohibited.

##### **4.17.2 Regulations**

1. Parking areas within the shoreline jurisdiction shall be located outside shoreline buffers and setbacks for the applicable Shoreline Environmental Designation.
2. Parking in the shoreline jurisdiction must directly serve an approved shoreline use.
3. Parking shall be located on the landward side of the development if feasible.
4. Landscape screening is required between the parking area and adjacent shorelines and properties and shall consist of native vegetation.
5. The requirement for screening may be waived if screening would obstruct a significant view from public property or public roadway.
6. Parking or storage of recreational vehicles or travel trailers as a primary use shall be prohibited in the shoreline jurisdiction.

#### **4.18 Utilities**

##### **4.18.1 Applicability**

Utilities are services and facilities that produce, transmit, store, process or dispose of electric power, gas, water, sewage, and communications. Utilities in this SMP are divided into primary and service based on type of use.

Primary utilities include substations, pump stations, treatment plants, sanitary sewer outfalls and lift stations, high voltage electrical transmission lines & facilities, water, sewer or storm drainage mains greater than eight (8) inches in diameter, gas and petroleum transmission lines, and submarine telecommunications cables.

Service utilities are the smaller utilities that provide service to permitted uses. Service utilities include water, electric, natural gas distribution, public sewer collection, cable and telephone service, and appurtenances.



#### **4.18.2 Regulations**

1. Utility development shall provide for compatible, multiple use of sites and rights-of-way when feasible.
2. Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are nonwater-oriented, are prohibited in shoreline jurisdiction. If no other feasible option is available, these uses may be permitted as a conditional use.
3. New solid waste disposal sites and facilities are prohibited.
4. For new primary utilities in areas where no current utility corridors exist, or the substantial expansion of existing utility corridor rights of way, undergrounding is preferred. Existing utility corridors within the shoreline jurisdiction can be used for upgrades to facilities, if the right of way corridors are not altered.
5. Transmission and distribution facilities shall cross the shoreline jurisdiction by the shortest most direct route feasible, unless such route would cause increased environmental damage.
6. Utilities shall be located and designated so as to avoid the use of any structural or artificial shoreline modification.
7. Underwater utilities are discouraged if other feasible alternatives exist.

#### **4.19 Unclassified Uses and Activities**

##### **4.19.1 Applicability**

In the event that a proposed shoreline use or activity is not identified or classified in this Shoreline Master Program, the following regulations shall apply.

##### **4.19.2 Regulations**

All uses and activities proposed in the Shoreline Management Area that are not classified by provisions in this Shoreline Master Program shall require a conditional use permit.

#### **4.20 Introduction - Shoreline Modifications**

Shoreline modification activities are those actions that modify the physical configuration or qualities of the shoreline area. Shoreline modification activities are, by definition, undertaken in support of or in preparation for a permitted shoreline use. A single use may require several different shoreline modification activities.

Shoreline modification activity policies and regulations are intended to assure, at a minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to prevent, reduce and mitigate the negative environmental impacts of proposed shoreline modifications consistent with the goals of the SMA.

##### **4.20.1 Applicability**

The following provisions apply to shoreline modification activities. Additional permits and requirements from state and federal agencies may apply. Where a general standard, environment standard or use standard conflicts with provisions contained in this shoreline master program, the more restrictive shall apply.

37

##### **4.20.2 Regulations**

1. Shoreline modifications must be in support of a permitted shoreline use or provide for human health and safety.



2. Shoreline development shall be located and designed to prevent or minimize the need for shoreline modification activities.

3. In reviewing shoreline modification permit applications, the Town shall require mitigation to reduce significant ecological impacts in accordance with Section 4.7 Mitigation Sequencing.

4. The Town shall base all shoreline modification decisions on available scientific and technical information and a comprehensive analysis of site-specific conditions provided by the applicant, as stated in WAC 173-26-231.

5. Shoreline uses and modifications not specifically identified in Table 4.1 and Table 4.2 shall be evaluated as a shoreline conditional use and consistent with the management policies and character of the shoreline environment in which they are proposed.

#### **4.20.3 Table of Shoreline Modification Activities**

**Table 4-2** identifies shoreline modifications and the required level of approval needed. See the standards following the table for an explanation of activities and required conditions for permitted modifications.

**Table 4-2 – Shoreline Modifications**

<b>KEY</b> <b>E</b> = Exempted Use (subject to requirements of the underlying zoning; shoreline permits are not required) <b>SD</b> = Shoreline Substantial Development Permit <b>CU</b> = Conditional Use <b>X</b> = Prohibited <b>N/A:</b> Not Applicable				
Shoreline Modification Activity	Shoreline Environmental Designation			
	Shoreline Residential	Mixed Use	Urban Conservancy	Aquatic
<b>Shoreline Stabilization</b>				
“Hard”, such as bulkheads	CU	CU	CU	CU
“Soft”, such as bioengineering	SD	SD	SD	CU
<b>Land Disturbing Activities</b>				
<b>Piers and Docks</b>	SD	CU	X	CU
<b>Fill</b>				
Fill upland of OHWM	CU	CU	CU	X
Fill waterward of OHWM	CU	CU	CU	CU
<b>Breakwaters, Jetties, Groins, and Weirs</b>	X	CU	X	CU
Clearing and Grading	SD	SD	X	CU
Dredging & Disposal	CU	CU	CU	CU
Maintenance Dredging <sup>(1)</sup>	X	SD	X	SD
<b>Shoreline Habitat and Natural Systems Enhancement Projects</b>	SD	SD	SD	SD

Notes: 1. Maintenance dredging only applies to previously dredged areas within Rock Creek. Dredging activities must be limited to the minimum extent deemed necessary. Dredging spoils shall not be deposited within shoreline jurisdiction.

## **4.21 Shoreline Stabilization**

### **4.21.1 Applicability**

Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods. “Hard” structural stabilization measures refer to those with solid, hard surfaces, such as concrete bulkheads, while “soft” structural measures rely on less rigid materials, such as bioengineered vegetation measures. Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, and planning and regulatory measures to avoid the need for structural stabilization.

### **4.21.2 Regulations**

#### **New Development**

1. New development, including subdivision of land, shall be designed and located to prevent the need for future shoreline stabilization, based upon hydrological or geotechnical analysis.
2. New development on steep slopes or bluffs shall be set back from the slope to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.
3. New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas shall be prohibited.
4. Subdivision of property that would require significant vegetation removal or shoreline modification that adversely impacts ecological functions shall be prohibited.

### **4.21.3 Regulations**

#### **New Structural Stabilization**

1. New structural stabilization measures shall not be allowed except when necessary as demonstrated in the following manner:
  - a. To protect existing primary structures.
  - b. New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, which demonstrates that the structure is in danger from shoreline erosion. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.
  - c. The erosion control structure will not result in a net loss of shoreline ecological functions.
  - d. To protect existing development from flooding. Flooding needs to be documented and new structural stabilization structures need to be identified in the town’s flood management program.
  - e. The proposed stabilization shall not result in a net loss of ecological functions or impact sediment transport.

2. New stabilization structures in support of projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to RCW 70.105D shall be allowed when consistent with the environmental designation or when all of the following conditions apply: nonstructural measures, planting vegetation, or installing on-site drainage improvements are not feasible or not sufficient; and the stabilization structure shall not result in a net loss of shoreline ecological functions.

3. Shoreline stabilization structures shall be limited to the minimum size necessary. Soft approaches shall be used unless demonstrated not to be sufficient to protect structures, dwellings, and businesses.

4. Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high water mark subject to state and federal approvals.

5. Public access shall be required as part of publicly financed shoreline erosion control measures except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions.

6. Professional engineering design of all shoreline stabilization or modification structures is required per WAC 173-26-231(3)(iii).

## **4.22 Land Disturbing Activities**

### **4.22.1 Applicability**

All land disturbing activities shall only be allowed in association with a permitted shoreline development.

### **4.22.2 Regulations**

1. All land disturbing activities shall be limited to the minimum necessary for the intended development, including any clearing and grading approved as part of a landscape plan. Clearing invasive, non-native, shoreline vegetation listed on the Spokane County Noxious Weed List is permitted, provided best management practices are used as recommended by a qualified professional, and native vegetation is promptly reestablished in the disturbed area.

2. Mature native trees and intact stands of native vegetation shall be retained if feasible. If infeasible the native vegetation shall be replaced at a 2:1 ratio of the stems. Native plant areas and trees shall be shown on the project site plan.

3. All shoreline development and activities shall use measures identified in the Spokane Regional Stormwater Manual, Spokane County, April 2008. Stabilization of exposed surfaces subject to erosion along shorelines shall, whenever feasible, utilize soil bioengineering techniques.

4. For land disturbing activities that require a shoreline permit, a plan prepared by a qualified professional shall be provided that addresses species removal; revegetation; irrigation; erosion and sedimentation control; and methods of shoreline protection.

## **4.23 Piers and Docks**

### **4.23.1 Applicability**

Piers and docks are structures which abut the shoreline and are used as a landing or moorage place for

recreational watercraft. Piers are built on fixed platforms supported by piles above the water, while docks generally, float upon the water. Docks serving four or fewer single-family residences are excluded from these regulations. Viewing platforms that are built above or which float upon the water are regulated per the requirements below.

Piers for private. Noncommercial pleasure craft, common to a single-family residence, and costing less than ten thousand (10,000) dollars are exempt from the requirement for a Shoreline Substantial Development Permit pursuant to RCW 90.58.030(3)(e)(vii) and WAC 173-27-040(20)(h). The ten thousand (10,000) dollar threshold may be adjusted for inflation by the State Office of Financial Management. Any changes to this monetary threshold adopted by the State Office of Financial Management are hereby incorporated by reference.

#### **4.23.2 Regulations**

1. New piers, viewing platforms, and docks shall only be allowed to provide for public water dependent uses, public access, and single-family residences.
2. New piers and docks will be permitted only when a specific need is demonstrated except for docks accessory to single family residences.
3. New piers and docks are restricted to the minimum size necessary to serve a proposed water dependent use based upon a needs analysis provided by the Applicant.
4. Location, design and construction of all new piers, viewing platforms and docks shall result in no net loss of ecological processes and functions, to the greatest extent feasible, and avoid, minimize and mitigate for ecological impacts.
5. Wood treated with toxic compounds shall not be used for decking or other in water components.

#### **4.24 Fill**

##### **4.24.1 Applicability**

Fill is the placement of soil, sand, rock, gravel, sediment, earth retaining structure or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

##### **4.24.2 Regulations**

1. Fill proposals must demonstrate, at a minimum, that they will result in no net loss of shoreline ecological functions.
2. Fills waterward of the OHWM shall be restricted to the minimum necessary to:
  - a. Support water-dependent uses.
  - b. Provide public access.
  - c. Allow for the remediation and disposal of contaminated sediments as part of an interagency clean-up plan.
  - d. Provide for the expansion or alteration of transportation facilities when no other alternatives are feasible; and,

- e. Accomplish mitigation actions, environmental restoration and enhancement projects, and only when other solutions would result in greater environmental impact.
3. Fills shall be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area.
4. Fills shall be located, designed and constructed to protect ecological functions including channel migration.
5. Fills shall be subject to the provisions of **Section 4.7 Mitigation Sequencing**.
6. All perimeters of fills shall be provided with vegetation and bank stabilization to provide erosion control and sediment capture.
7. Fill shall be permitted only where it is demonstrated that the proposed action will not:
  - a. Result in significant damage to water quality, fish, aquatic habitat, and/or wildlife habitat; or
  - b. Adversely alter natural drainage and circulation patterns, or significantly reduce flood water holding capabilities.
8. Any placement or removal of materials landward of the OHWM shall comply with the provisions of the Shoreline Vegetation Conservation section of this SMP.

#### **4.25 Dikes and Levees, Groins, and Weirs**

##### **4.25.1 Applicability**

Dikes and levees are flood protection structures placed generally parallel to the stream flow. Groins are obstructions projecting into a stream that control deposition and scour by deflecting current away from the bank. Weirs are structures that control water elevation and measure and regulate flow.

##### **4.25.2 Regulations**

1. Dikes and levees, groins and weirs located waterward of the OHWM shall be allowed only where necessary to support flood protection, water-dependent uses, public access, shoreline stabilization, or publicly owned and/or maintained projects which do not degrade natural channel morphology or river processes, or cause adverse impacts to aquatic and terrestrial wildlife.
2. Dikes and levees, groins, and weirs are allowed only with a shoreline conditional use permit, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams.
3. Dikes and levees shall be limited to the minimum height required to protect adjacent lands from predicated flood stage as identified in the flood management plan or as required by FEMA for dike recertification.
4. Levees, groins and weirs shall be designed to protect critical areas and shall provide for mitigation according to Section 4.7 Mitigation Sequencing.

## 4.26 Dredging and Dredge Material Disposal

### 4.26.1 Applicability

Dredging is the removal or displacement of earth or sediments such as gravel, sand, mud or silt and/or other materials or debris from any stream, or lake and associated shorelines, side channels, and wetlands.

### 4.26.2 Regulations

1. Dredging shall be permitted only for activities associated with shoreline or aquatic restoration, remediation or flood control.

2. No in-stream work may be initiated without having obtained all applicable federal, state, and local permits and approvals.

3. Maintenance dredging associated with a water dependent use or flood control shall be restricted to maintaining previously authorized dredging areas for the same location, depth and width.

4. New development siting and design shall avoid the need for new and maintenance dredging.

5. Dredging for the primary purpose of obtaining fill or construction material is prohibited, except for projects associated with MTCA or CERCLA habitat restoration, or for other approved restoration efforts.

6. Dredging and dredge spoil disposal shall not occur in wetlands unless for approved maintenance or enhancement.

7. Dredging shall be timed so that it does not interfere with aquatic life.

8. Depositing dredge materials waterward of the OHWM shall be prohibited.

9. Dredge material disposal shall be permitted in the shoreline jurisdiction only as part of an approved shoreline habitat and natural systems enhancement or fish habitat enhancement or watershed restoration project or for flood control.

10. Dredging and spoil disposal shall be permitted only where it is demonstrated that the proposed actions will not:

- a. Result in significant damage to water quality, fish, and other essential biological elements;
- b. Adversely alter natural drainage and circulation patterns, currents, or reduce floodwater capacities;
- c. Adversely impact properly functioning conditions for proposed, threatened, or endangered species; or
- d. Adversely alter functions and values of the shoreline and associated critical areas and the channel migration zone.

## **4.27 Shoreline Habitat and Natural Systems Enhancement Projects**

### **4.27.1 Applicability**

Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing shoreline habitat. Such projects may include shoreline modification actions such as modification of vegetation, removal of nonnative or invasive plants, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.

### **4.27.2 Regulations**

1. Shoreline habitat and natural systems enhancement projects, including those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for listed species in shorelines, are encouraged, provided such projects' primary purpose is clearly enhancing or restoring the shoreline natural character and ecological functions. The project shall address legitimate enhancement or restoration needs and priorities and facilitate implementation of the restoration plan developed pursuant to WAC 173-26-201(2)(f) and with applicable federal and state permit provisions.

2. Watershed restoration projects as defined in WAC 173-27-040 (2)(o) are exempt from substantial development permitting.



## SECTION 5 - ADMINISTRATIVE PROCEDURES

### 5.1 Purpose and Applicability

Local governments have the authority and responsibility to enforce master program regulations on all uses and development in the shoreline area. The Shoreline Management Act's provisions are intended to provide for the management of all development and uses within its jurisdiction, whether or not a shoreline permit is required. Its effect is generally on future development and changes in land use. "All proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, and this master program." Where inconsistencies or conflicts with other sections of the **Town of Rockford Zoning and Development Regulations** occur, this section shall apply.

A permit, or an exemption declared by the Administrator for a shoreline permit, is required for any development within the Shoreline Management Area. Per WAC 173-27-040(1)(b), "an exemption from the substantial development permit process is not an exemption from compliance with the act or the local Master Program, nor from any other regulatory requirements. A development or use that is listed as a conditional use pursuant to the local Master Program or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. 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 variance."

### 5.2 Program Administrator

**The Town's Shoreline Administrator is hereby vested with:**

- Overall responsibility for administering the SMA and this SMP;
- Authority to approve, approve with conditions, or deny shoreline permit revisions in accordance with the policies and provisions of this SMP; and,
- Authority to grant statements of exemption from shoreline substantial development permits in accordance with the policies and provisions of this SMP.

**The duties and responsibilities of the Shoreline Administrator shall include:**

1. Preparing and using application forms deemed essential for the administration of this SMP.
2. Advising interested citizens and applicants of the goals, policies, regulations, and procedures of this SMP.
3. Making administrative decisions and interpretations of the policies and regulations of this SMP and the SMA.
4. Collecting applicable fees, as established by the Town.
5. Determining that all applications and necessary information and materials are provided.
6. Conducting field inspections, as necessary.
7. Reviewing, insofar as possible, all provided and related information deemed necessary for appropriate applications needs.

8. Determining if a shoreline substantial development permit, conditional use permit or variance permit is required.
9. Providing copies of permit applications to relevant staff and agencies for review and comment.
10. Conducting a thorough review and analysis of shoreline exemption applications; reviewing other staff and agency comments; making written findings and conclusions; and approving, approving with conditions, or denying such exemptions.
11. Submitting shoreline substantial development permit, shoreline variance and conditional use permit applications and written recommendations and findings on such permits to the Planning Commission and Town Council for their consideration and action.
12. Submitting shoreline redesignation permit applications and written recommendations and findings on such permits to the Planning Commission for recommendation to the Town Council.
13. Assuring that proper notice is given to appropriate persons and the public for all hearings.
14. Providing technical and administrative assistance to the Planning Commission and Town Council as required for effective and equitable implementation of this program and the Act.
15. Investigating, developing, and proposing amendments to this SMP as deemed necessary to achieve its goals and policies more effectively and equitably.
16. Enforcing and seeking remedies for alleged violations of this program, the provisions of the SMA and this SMP or of conditions of any approved shoreline permit issued by the Town. The Shoreline Administrator may delegate these enforcement duties to a designated representative.
17. Acting as the primary liaison between local and state agencies in the administration of the SMA and this SMP.
18. Forwarding shoreline permits to Ecology for filing or action.

### **5.3 Relief from Shoreline Master Program Development Standards and Use Regulations**

#### **Purpose of section.**

**This section incorporates statutory direction from RCW 90.58.580. In adopting RCW 90.58.580, the legislature found that restoration of degraded shoreline conditions is important to the ecological function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline restoration project shifts shoreline management act regulations into areas that had not previously been regulated under the act shifts the location of required shoreline buffers. The intent of this section is to provide relief to property owners in such cases, while protecting the viability of shoreline restoration projects.**

#### **Conditions and criteria for providing relief**

**The Town of Rockford may grant relief from shoreline master program development standards and use regulations within urban growth areas when the following apply:**

- 1. A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:**

- a. Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or
  - b. Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable shoreline master program; and
  - c. Application of shoreline master program regulations would preclude or interfere with the use of the property permitted by local development regulations, thus presenting a hardship to the project proponent;
2. The proposed relief meets the following criteria;
    - a. The proposed relief is the minimum necessary to relieve the hardship;
    - b. After granting the proposed relief, there is net environmental benefit from the restoration project;
    - c. Granting the proposed relief is consistent with the objective shoreline project and consistent with the shoreline master program; and
    - d. Where a shoreline restoration project is created as mitigation to obtain a development permit, the project is required to perform the mitigation is not eligible for relief under this section;
  3. The application for relief must be submitted to the Department of Ecology for written approval or disapproval. This review must occur during Ecology's normal review of a Shoreline Substantial Development Permit, Conditional Use Permit, or Variance. If no such permit is required, then Ecology shall conduct its review when the Town of Rockford provides a copy of a complete application and all supporting information necessary to conduct the review.
    - a. Except as otherwise provided in subsection (3) of this section, Ecology shall provide at least twenty days notice to parties that have indicated interest to Ecology in reviewing applications for relief under this section, and post the notice on its website.
    - b. Ecology shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from the Town of Rockford if additional public notice is not required.
  4. The public notice requirements of subsection (2)(c) of this section do not apply if the relevant shoreline restoration project was included in the Town of Rockford shoreline master program, provided:
    - a. The restoration plan has been approved by ecology under applicable shoreline master program guidelines;
    - b. The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and

- c. The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when and how it would be applied.**
- 5. A Substantial Development Permit is not required on land within urban growth areas as defined in RCW 36.70.A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.**
- 6. The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.**
- 7. For the purposes of this subsection, “Shoreline restoration project” means a project designed to restore impaired ecological function of a shoreline.**

## **Permit Types**

### **5.4 Shoreline Substantial Development Permit**

The Purpose of the Shoreline Substantial Development Permit is to ensure that substantial development within the shoreline area is accomplished in a manner that protects the shoreline ecology consistent with the this SMP and the Shoreline Management Act, this section establishes criteria for determining the process and conditions under which a shoreline substantial development permit may be acted upon by the Administrator.

A shoreline substantial development permit is subject to the specific review procedure established in 5.4 - SMP Permit Procedures, and the conditions which may be imposed to assure compliance with all applicable regulations. A request for a shoreline substantial development permit use may be disapproved if the administrator finds the shoreline development is inconsistent with these shoreline regulations, the comprehensive plan or the Shoreline Management Act.

Substantial development as defined by RCW 90.58.030. No use, modification, or development shall be undertaken in the shoreline jurisdiction without first obtaining a shoreline substantial development permit from the Administrator, unless the use or development is specifically identified as permitted or exempt.

Where a substantial development is proposed which would be partly within and partly outside of the shoreline jurisdiction, a shoreline substantial development permit shall be required for the entire development.

An application for a shoreline substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all of the requirements of these shoreline regulations and shall follow the time period for public comment in 5.4.4 – Permit Process. For purposes of this section, a limited utility extension means the extension of a utility service that:

- a. is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;
- b. will serve an existing use in compliance with these shoreline regulations; and,
- c. will not extend more than two thousand five hundred linear feet within the shoreline jurisdiction.

Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

### 5.4.1 Shoreline Conditional Use Permit

The purpose of a conditional use permit is to allow greater flexibility in administering the use and modification regulations of these shoreline regulations in a manner consistent with the policy of RCW 90.58.020. In authorizing a shoreline conditional use, special conditions may be attached to the permit by the Town or the Department of Ecology to control any undesirable effects of the proposed use.

Uses or modifications not listed in shoreline use table (Chapter 4) may only be authorized as a shoreline conditional use.

Uses which are identified in these shoreline regulations as requiring shoreline conditional use approval, and other uses which, although not expressly mentioned in lists of permitted uses, are permitted in the underlying zones and are not prohibited in the shoreline jurisdiction, may be approved, approved with conditions or denied by the Town Council in specific cases based on the criteria in 5.4.3 – Decision Criteria, as now constituted or hereafter amended, and any additional criteria given in these shoreline regulations. Upon transmittal of the Town Council’s decision to the Department of Ecology (Ecology), Ecology reviews and the permit may be approved, approved with conditions, or denied by Ecology.

### 5.4.2 Shoreline Variance Permit

The purpose of the Variance permit is to grant relief to specific bulk or dimensional requirements set forth in these shoreline regulations and any associated standards appended to these shoreline regulations such as critical areas or buffer requirements where there are extraordinary or unique circumstances relating to the property such that the strict implementation of these shoreline regulations would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020. Use restrictions may not be varied.

### 5.4.3 Exemption

**1.Requirements to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other review to implement the Shoreline management Act do not apply to the following:**

- i. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to Chapter 70/105D RCW, or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW.**
- ii. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national p-oluttant discharge elimination system storm water general permit.**
- iii. WSDOT facility maintenance and safety improvements. Pursant to RCW m90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter or exemption, or other local review.**
- iv. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.**
- v. Projects authorized through the Energy Facility Site Evaluation Control process, pursuant to Chapter 80.50**

The Administrator is hereby authorized to approve or deny requests for written statements of exemption from the substantial development permit requirement for uses and developments within the Shoreline

Management Area that are specifically listed in RCW 90.58.030(3)(e) and WAC 173-27-040. The written statement shall indicate the specific exemption of the Master Program that is being applied to the development, and shall provide a summary of the Administrator analysis of the consistency of the project with this Master Program and the Act. The statement shall include any conditions required to assure compliance with the Act or this Master Program.

The burden of proof that a development or use is exempt from the permit process is on the applicant.

If any part of a proposed use, modification, or development is not eligible for exemption, then a shoreline substantial development permit is required for the entire proposed project.

When a development meets the exemption criteria as listed in this section and WAC 173-27-040, and is subject to a United States Army Corps of Engineers Section 10 or Section 404 permit, a copy of the written exemption shall be sent to the Department for approval.

Before issuing an exemption, the Administrator shall review the Master Program to determine if the proposed development requires a variance and/or a conditional use permit.

An exemption from the substantial development permit requirements does not constitute an exemption from the policies and use regulations of the Shoreline Management Act, the provisions of this Master Program or other applicable town, state, or federal requirements. A formal written statement of exemption is required pursuant to WAC 173-27-050.

Exempt developments include (A complete list of exemptions is provided in WAC 173-27-040.):

- a. Any development of which the total construction cost or fair market value, whichever is higher, does not exceed **seven thousand and forty-seven (\$7,947)** dollars (as adjusted by the Washington State Office of Financial Management according to RCW 90.58.030(3)(e) (2017 calculation, and does not materially interfere with public use of the water or Shorelines of the State. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on Shorelines of the State;
- b. For maintenance outside utility easements: Normal maintenance or normal repair of existing structures or developments, including damage by accident, fire, or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance, and the replacement does not cause substantial adverse effects to shoreline resources or environment;
- c. For maintenance within utility easements: Normal utility maintenance includes operation, maintenance, or repair activities that do not require construction permits. Activities that do not further alter or increase impacts to, or encroach further within the Shoreline Management Area or Native Conservation Area, and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such actions are part of regular ongoing

maintenance, do not expand further into the Shoreline Management Area or Native Conservation Area and are not the result of an expansion of the structure of utility and do not directly impact endangered species. Normal utility maintenance activities are not subject to new or additional mitigation when they do not expand further into the Shoreline Management Area or Native Conservation Area, are not the result of expansion of the structure or utility, or do not directly impact endangered species.

- d. Construction of a normal protective bulkhead common to single family residences. A "normal protective bulkhead" is constructed at or near the ordinary high water mark to protect an existing single family residence, and is for protecting land from erosion, not for the purpose of creating dry land. Where an existing bulkhead is being replaced, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings;
- e. Emergency construction necessary to protect property from damage by the elements. Flooding or other seasonal events that can be anticipated and may occur, but are not imminent, are not an emergency;
- f. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;
- g. Construction, installation, or modification of navigational aids such as channel markers and anchor buoys;
- h. Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his/her own use or for the use of his/her family, when the residence does not have a building height that exceeds thirty-five (35) feet above average grade and meets all requirements of the Town of Rockford Zoning and Development Regulations and this chapter;
- i. **Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of one or more single and/or multi-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities, or other appurtenances. This exception applies if the fair market value of the dock does not exceed**
  - i. **Twenty-two thousand five hundred dollars (\$22,500) for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or**
  - ii. **Eleven thousand two hundred (\$11,200) dollars for all other docks constructe in fresh water. However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter;**



- j. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;
- k. The marking of property lines or corners, when such marking does not significantly interfere with the normal public use of the surface waters;
- l. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
- m. Any project with certification from the Governor of the State of Washington, pursuant to Chapter 80.50 RCW;
- n. Watershed restoration projects as defined in WAC 173-27-040. The Town shall review the projects for consistency with the Master Program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration;
- o. Site exploration and investigation activities that are a prerequisite to preparation of an application for development authorization under this chapter, if:
  - i. The activity does not interfere with the public use of the surface waters;
  - ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values;
  - iii. The activity does not involve the installation of any structure and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
  - iv. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local
  - v. The activity is not subject to the permit requirements of RCW 90.58.550;
- p. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW.
- q. **The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the American with Disabilities Act of 1990 (42 U.S.C. sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.**
- r. **A public or private project that is designed to improve fish or wildlife habitat or fish passage when all of the following apply:**
  - 1. The project has been approved by the Department of Fish & wildlife.**
  - 2. The project has received hydraulic project approval by the Department of Fish n& Wildlife pursuant Chapter 77.55 RCW; and**
  - 3. The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.**



**4. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs.**

**5.4.4 Shoreline Substantial Development Permit Letter of Exemption Procedure**

State law and the shoreline master program specifically exempt certain types of development from the requirement of obtaining a shoreline substantial development permit. The types of development that are exempted are listed in 5.3.4 – Exemption and WAC 173-27-040. No exempt development, use or activity shall be undertaken within the jurisdiction of the Shoreline Management Act (chapter 90.58 RCW or its successor) and the shoreline master program unless a statement of exemption has been obtained from the Administrator. Burden of proof that a development or use is exempt from the permit process is on the applicant.

Application procedure for a letter of exemption from a shoreline substantial development permit is the same as for any shoreline permit as defined in 5.4.2 – Application Requirements with these additional application materials:

- a. Written explanation of exemption type as defined in 5.3.4 – Exemption and WAC 173-27-040.
- b. A contractor's bid to verify the total cost or fair market value of the proposal including labor and material, if the proposed exemption category is below the dollar threshold defined in WAC 173- 27-040.
- c. A statement from a structural engineer licensed by the State of Washington to verify the need for immediate action, in order to address the imminent threat to public health and safety on the property, if proposed exemption category is for emergency construction as defined in WAC 173- 27-040.

All development within the shoreline, even when an exemption from the requirement of a substantial development permit is granted, must be consistent with the policies of the Shoreline Management Act and the shoreline master program. Conditions may be attached to the approval of a shoreline exemption in order to assure consistency of the project with the Shoreline Management Act and the shoreline master program (WAC 173-27-040).

A letter of exemption from a shoreline substantial development permit is not always an exemption from a shoreline conditional use permit or a shoreline variance. A development or use that is listed as a conditional use pursuant to the SMP regulations or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. 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 variance (WAC 173-27-040).

In the case of shoreline projects with federal permit review and upon completion of a letter of exemption, the administrator must submit to Ecology:

- a. Letter of exemption;
- b. Site plan;
- c. What is being approved; and,
- d. Conditions of approval.

It must also state the specific exemption provision from WAC 173-27-040 and 5.3.4 – Exemption and provide a summary of analysis of the consistency of the project with the SMP and the SMA. It shall contain any SEPA determination made and include the permit data sheet and transmittal letter form (WAC 173- 27-990 Appendix A).

The administrator shall review watershed restoration projects as defined in WAC 173-27-040 for consistency with the SMP and shall issue a decision along with any conditions within forty-five days of receiving from the applicant all materials necessary to review the request for exemption. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as defined in WAC 173-27-040.

## **5.5 SMP Permit Procedures**

### **5.5.1 General**

Procedures for obtaining a shoreline substantial development permit, exemption from a shoreline substantial development permit, shoreline conditional use permit, shoreline variance permit, permit and application revisions, and other procedures pertaining to shorelines are contained in section.

Permits required under this chapter shall be processed consistent with the provisions of and the criteria in this subchapter.

No permit shall be approved unless the proposed development is consistent with the provisions of this Master Program, the Shoreline Management Act, and the rules and regulations adopted by the Washington State Department of Ecology.

Applications for shoreline permits shall also demonstrate compliance with the provisions of this subchapter.

All uses and development shall be carried out in a manner consistent with the Town of Rockford Zoning and Development Regulations and the Shoreline Master Program regardless of whether a substantial development permit, written statement of exemption, variance, or conditional use permit is required.

### **5.5.2 Application Requirements**

1. A complete application for a substantial development, conditional use, or variance permit shall contain, as a minimum, the following information as identified in WAC 193.27.180:

- a. The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
- b. The name, address and phone number of the applicant's representative if other than the applicant.
- c. The name, address and phone number of the property owner, if other than the applicant.
- d. Location of the property. This shall, at a minimum, include the property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
- e. Identification of the name of the shoreline (water body) that the site of the proposal is

- f. associated with. This should be the water body from which jurisdiction of the act over the project is derived.
- g. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
- h. A general description of the property as it now exists including its physical characteristics and improvements and structures.
- i. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
- j. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:
  - i. The boundary of the parcel(s) of land upon which the development is proposed.
  - ii. The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.
  - iii. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such a contours approximated for that area.
  - iv. A delineation of all wetland areas that will be altered or used as a part of the development.
  - v.. A general indication of the character of vegetation found on the site.
  - vi. The dimensions and locations of all existing and proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
  - vii. Where applicable, a landscaping plan for the project.
  - viii. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.
  - ix. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.

- x. Quantity, composition and destination of any excavated or dredged material.
- xi. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
- xii. Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
- xiii. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

2. It is the applicant's responsibility to provide proof that the proposed development is consistent with the permit criteria requirements per 5.4.3 – Decision Criteria.

3. The Administrator may approve, or approve with conditions, substantial development applications and written exemptions from substantial development as long as they comply with criteria imposed by the Master Program and the Shoreline Management Act.

4. The Administrator may attach to a permit any suitable and reasonable terms or conditions necessary to ensure the purpose and objectives of this Master Program and the Shoreline Management Act.

5. The Administrator shall deny any application that does not comply with and cannot be conditioned to comply with, the criteria, policies, or requirements of the Master Program or the Shoreline Management Act.

6. The Administrator may require a financial guarantee to assure full compliance with the terms and conditions of any substantial development permit, variance or conditional use permit. The guarantee shall be in an amount to reasonably assure the Town that permitted improvements will be completed within the time stipulated.

### **5.5.3 DECISION CRITERIA**

The purpose of the following sections is to establish the decision criteria for shoreline substantial development, conditional use, and variance permit types regardless of whether the decision is made by the administrator, planning commission, or town council, as applicable.

The burden is upon the applicant to present sufficient evidence relevant to the appropriate criteria in support of the application. The decision-maker must make affirmative findings of fact relative to each criterion or the application must be denied.

#### ***1. Shoreline Substantial Development Permit.***

A substantial development permit shall be granted only when the development proposed is consistent with the following:

- a. The chapter 90.58 RCW (Shoreline Management Act) and chapter 173-27 WAC (Permits for Development on Shorelines of the State);
- b. Applicable state regulations; and

- c. The map, goals, policies and regulations of the towns shoreline master program.

## ***2. Shoreline Conditional Use Permit.***

The purpose of a shoreline conditional use permit is to provide a system within the shoreline master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the Town or Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the shoreline master program.

The Town Council is authorized to issue conditional use permits only when all the criteria enumerated in WAC 173-27-160 are met.

Uses which are classified or set forth in the master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

- a. That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;
- b. That the proposed use will not interfere with the normal public use of public shorelines;
- c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
- d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
- e. That the public interest suffers no substantial detrimental effect.

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. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

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

Uses which are specifically prohibited by the shoreline master program shall not be authorized by conditional use.

## ***3. Shoreline Variance Permit.***

The purpose of a variance is to grant relief from specific bulk, dimensional, or performance standard requirements set forth in the Master Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Master Program would impose unnecessary hardships on the applicant or diminish the policies set forth in RCW 90.58.020.

The Town Council is authorized to approve a variance from the specific bulk, dimensional, or performance standards of this Master Program only when all of the criteria enumerated in WAC 173-27-170 are met.

A variance should be granted in circumstances where denial of the permit would prevent accomplishment of the policies enumerated in RCW 90.58.020.

In all instances, the applicant must demonstrate that extraordinary circumstances exist and the public interest will not suffer substantial detrimental effect.

Before making a determination to approve a variance, the Town Council shall consider issues related to the conservation of valuable natural resources and the protection of views from public lands.

A variance issued per Chapter 6 of the Town of Rockford Zoning and Development Regulations shall not be construed to mean approval of a variance from Shoreline Master Program use regulations.

The applicant for a variance must demonstrate that the variance meets the criteria in WAC 173-27-170.

In the granting of all variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

Variances from the use regulations of the SMP are prohibited.

Variances for development that will be located landward of the OHWM and landward of any wetland within the shoreline jurisdiction may be authorized provided the applicant can demonstrate consistency with the following variance criteria as listed in WAC 173-27-170:

- a. That the strict application of the bulk, dimensional, or performance standards set forth in the SMP precludes, or significantly interferes with, reasonable use of the property.
- b. That the hardship described above 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 SMP and not, for example, from deed restrictions or the applicant's own actions.
- c. That the design of the project is compatible with other permitted activities within the area and with uses planned for the area under the Comprehensive Plan and SMP and will not cause adverse impacts to the shoreline environment.
- d. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.
- e. That the variance requested is the minimum necessary to afford relief.
- f. That the public interest will suffer no substantial detrimental effect.

Per WAC 173-27-170, for developments proposed below the OHWM or in wetlands; in addition to demonstrating the criteria described in (b) through (f), above, applicants must also show:

- a. That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property; and
- b. That the public rights of navigation and use of the shorelines will not be adversely affected.

#### 5.5.4 Permit Process

**Application submittal:** Complete applications for a substantial development permit, variance, and a conditional use permit require a public hearing of the Town Council. The applications will be processed pursuant to the procedures identified in this chapter.

**Public Notice:** For all submitted applications, the following notice procedures, per WAC 173-27-110, shall be followed:

- a. Notification of the public, the department and other agencies with jurisdiction shall be provided for substantial development, conditional use, and variance permits. b. Notice of application shall be provided within fourteen (14) days after the determination of completeness.
- b. Notice of application shall be provided within fourteen (14) days after the determination of completeness.
- c. An open record predecision hearing is required for conditional use permits and variance permits. The notice of application shall be provided at least fifteen (15) days prior to the hearing.
- d. Notice shall be mailed to the latest recorded real property owners within three hundred (300) feet of the property, upon which the development is proposed, plus individuals and organizations that have requested such notification, and agencies with jurisdiction.

**Application Review.** The Shoreline Administrator shall make decisions on shoreline exemptions, and recommendations on applications for substantial development, conditional use and variance permits based upon: (1) the policies and procedures of the SMA and related sections of the Washington Administrative Code and (2) this SMP.

**Public Hearing:** A public hearing shall be held before the Town Council, per Chapter 6.1.12 (for variance) and 6.5.04 (for Conditional Use Permit and Substantial Development Permit) of the Town of Rockford Zoning and Development Regulations.

The Town Council shall make decisions based upon: (1) this SMP; (2) the policies and procedures of the SMA and related sections of the Washington Administrative Code; (3) written and oral comments from interested persons; (4) reports from the Shoreline Administrator; and (5) Section 5.4.3.

**Decision:** For all submitted applications, the Administrator shall provide a timely notification of the department's final decision to those interested persons having requested notification from local government pursuant to **WAC** 173-27-130. Pursuant to RCW 90.58.140(6) the Administrator shall send the final decision, including findings and conclusions to the following State agencies:

1. Washington State Department of Ecology
2. Washington State Attorney General

#### **Department of Ecology Review of Permits:**

**1. After all local permit administration appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the Town of Rockford will mail the permit using return receipt requested mail to the Department of Ecology regional office and/or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.**

- i. The permit and documentation of the final decision will be mailed together with the complete permit application; findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.
- ii. Consistent with RCW 90.58.140(6), the State's Shorelines Hearing Board twenty-one day appeal period starts with the date of filing, which is defined below:
  - a. For projects that only require a Substantial Development Permit; the date that Ecology receives the Town of Rockford decision.
  - b. For a Conditional Use Permit (CUP) or Variance; the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and the Town of Rockford.
  - c. For SDP's simultaneously mailed with a CUP or Variance to Ecology; the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and the Town of Rockford

#### **Special Procedures for WSDOT projects:**

1. Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the legislature established a target of ninety (90) days review time for local governments.
2. Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

#### **5.5.5 Initiation of Development**

**Development pursuant to a substantial development permit shall not be authorized until fourteen (14) from the Washington State Department of Ecology written notice of final action;**

Development for which a variance or conditional use permit is required shall not begin and shall not be authorized until twenty one (21) days after the "date of filing" of the Department of Ecology's decision with the Town Administrator; or

All appeal proceedings before the Shoreline Hearings Board have terminated.

#### **5.5.6 Expiration of Permits**

The Town may specify the length of time a shoreline permit will be effective based on the specific requirements of the development proposal. If a permit does not specify an expiration date, the following requirements apply, consistent with WAC 173-27-090:

- a. Construction, or substantial progress toward completion, must begin within two (2) years after approval of the permits.
- b. The Town may at its discretion, with prior notice to parties of record and the Department, extend the two (2) year time period for the substantial progress for a reasonable time up to one year based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction
- c. If construction or construction activities have not been completed within five (5) years of approval by the Town, the Town will review the permit and, upon showing of good cause, either extend the permit for one (1) year, or terminate the permit.
- d. Prior to the Town authorizing any permit extensions, it shall notify any parties of record and the Department. Only one (1) extension is permitted.



### 5.5.7 Revision to Permits

A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Master Program or the Shoreline Management Act. Changes that are not substantive in effect do not require a permit revision.

An application for a revision to a shoreline permit shall be submitted to the Administrator. The application shall include detailed plans and text describing the proposed changes. The Town shall review and process the request in accordance with the requirements of WAC 173-27-100.

If the director determines that the proposed changes are within the scope and intent of the original permit as defined in WAC 173-27-100(2) and are consistent with the shoreline master program and the Shoreline Management Act, the director may approve a revision.

If the proposed changes are not within the scope and intent of the original permit, the applicant shall apply for a new permit in the manner provided for in this chapter.

### 5.5.8 Rescission of Permits

A permit may be rescinded or modified upon a finding by the Town Council that the permittee has not complied with the conditions of the permit. The Town Council may initiate rescission and modification proceedings by serving written notice of noncompliance on the permittee.

Before a permit can be rescinded or modified, a public hearing shall be held by the Town Council no sooner than ten (10) days following the service of notice upon the permittee. The Town Council shall have the power to prescribe rules and regulations for the conduct of such hearings.

### 5.5.9 Moratorium Authority and Requirements

**Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement this chapter.**

- 1. The Town of Rockford has authority to adopt a moratorium control or other interim control on development under RCW 90.58.590.**
- 2. a. A local government adopting a moratorium or control under this section must:**
  - i. Hold a public hearing on the moratorium or control;**
  - ii. Adopt detailed findings of fact that include, but are not limited to justification for the proposed or adopted actions and explanations of the desired and likely outcomes;**
  - iii. Notify the Department of Ecology of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing required by this subsection;**
  - iv. Provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.**
- b. The public hearing required by this section must be held within sixty (60) days of the adoption of the moratorium or control.**

**3. A moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment is submitted to the Department of Ecology, the moratorium or control must remain in effect until the Department's final action under RCW 90.58.090; however the moratorium expires six months after the date of submittal if the Department has not taken final action.**

**4. Nothing in this section may be construed to modify Town moratoria powers conferred outside this chapter.**

### **5.5.10 Nonconforming Use and Development**

#### ***1. Nonconforming Structures***

- a) Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers or yards, area, bulk, height, or density may continue as legal nonconforming structures and may be maintained and repaired. These structures may be enlarged or expanded provided that said enlargement **does** not increase the extent of nonconformity by further encroaching upon or extending into areas where construction **or use** would not be allowed for new structures, unless shoreline variance permit is obtained.

**A variance is required for expansion of a nonconforming structure that increases the nonconformity. Normal appurtenances are by definition located landward of the OHWM.**

Nonconforming single-family residences that are located landward of the OHWM may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040(2)(g) upon approval of a Conditional Use Permit.

Any nonconforming structures that is moved as far as possible from the shoreline must meet the applicable provisions of the Shoreline Master Program..

In the absence of other more specific regulations, a structure that is being or has been utilized for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

- a. No reasonable alternative conforming use is practical; and
- b. The proposed use will be at least as consistent with the policies and provisions of the Act and Master Program, and as compatible with the uses in the underlying zone as the preexisting use; and,
- c. Conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Act, and to ensure that the use will not become a nuisance or a hazard.

**If a nonconforming development is damaged to an extent not exceeding seventy-five percent (75%) of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that the application is made for permits necessary to restore the development within two years of the date of damage occurred.**

## ***2. Nonconforming Uses***

Uses that were legally established and are nonconforming with regard to the use regulations of the Shoreline Master Program may continue as legal nonconforming uses. In the absence of other more specific regulations in the Shoreline Master Program, such uses shall not be enlarged or expanded, except upon approval of a Conditional Use Permit.

If a nonconforming use which remains unoccupied or unused for a continuous period of 12 months or more, the nonconforming uses may be re-established through a conditional Use Permit.

A legal nonconforming use which remains unoccupied or unused for a continuous period of less than 12 months may be re-occupied only by the same nonconforming use or by a conforming use.

**Water-dependent uses should not be considered “discontinued” when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations.**

## ***3. Nonconforming Lots***

An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM which was established in accordance with Chapter 7.4 of the Town of Rockford Zoning and Development Regulations, and State subdivision requirements prior to the effective date of the Act or the applicable Master Program that does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government, as long as such development conforms to all other requirements of the applicable Master Program and the Act.

### **5.5.11 Appeals to State Shoreline Hearings Board**

Any person aggrieved by the granting or denying of a shoreline substantial development permit, variance, or conditional use permit, the upholding of an exemption appeal, or by the rescinding of a permit pursuant to the provisions of this SMP, may seek review from the State of Washington Shorelines Hearing Board by filing a request for the same within twenty-one (21) days of receipt of the final order and by concurrently filing copies of such request with Ecology and the Attorney General's office. State Hearings Board regulations are provided in RCW 90.58.180 and Chapter 461-08 WAC. A copy of such appeal notice shall also be filed with the Town Clerk.

### **5.5.12 Enforcement**

The Administrator is authorized to enforce the provisions of this chapter and any rules and regulations promulgated hereunder pursuant to the enforcement and penalty provisions of the Shoreline Management Act, specifically Chapter 173-27 WAC, RCW 90.58.200, 210 and 220.

This Program will be enforced by the means and procedures set forth in Section 5 of the Town of Rockford Zoning and Development Regulations.

### **5.5.13 Town Record Keeping**

Documentation of project review actions and changing conditions in shoreline areas. Master programs or other local permit review ordinances addressing shoreline project review shall include a mechanism for documenting all project review actions in shoreline areas. Local governments shall also identify a process for periodically evaluating the cumulative effects of authorized development on shoreline conditions. This process could involve a joint effort by local governments, state resource agencies,

## SECTION 6 - DEFINITIONS

### 6.1 List of Acronyms

cfs	Cubic feet per second
DNR	Washington State Department of Natural Resources
DO	Dissolved oxygen
Ecology	State of Washington Department of Ecology
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
GIS	Geographical Information System
LWD	Large woody debris
MSL	Mean sea level
NRCS	Natural Resources Conservation Service
OHWM	Ordinary High Water Mark
pH	Measure of acidity or alkalinity of a solution
PCBs	Polychlorinated biphenyls
PFC	Proper functioning condition
PHS	Priority Habitat and Species
QAPP	Quality Assurance Project Plan
RCW	Revised Code of Washington
RHA	Riparian habitat areas
RM	River Mile
ROW	Right-of-Way
SCD	Spokane Conservation District
SMA	The State of Washington Shoreline Management Act
SMP	Shoreline Master Program
TMDL	Total Maximum Daily Load
USGS	United States Geological Survey
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife
WDOH	Washington Department of Health
WRIA	Water Resources Inventory Area
WSDOT	Washington State Department of Transportation
WTP	Wastewater Treatment Plant

## 6.2 Definitions

The Shoreline Master Program update process has its own unique vocabulary. The State of Washington has adopted the following terms through WAC 173-26-020:

**"Act"** means the Washington State Shoreline Management Act, RCW 90.58.

**"Adoption by rule"** means an official action by the department to make a local government shoreline master program effective through rule consistent with the requirements of the Administrative Procedure Act, RCW 34.05, thereby incorporating the adopted shoreline master program or amendment into the state master program.

**"Agricultural activities"** means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

**"Agricultural products"** includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

**"Agricultural equipment"** and "agricultural facilities" includes, but is not limited to: (a) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (b) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (c) farm residences and associated equipment, lands, and facilities; and (d) roadside stands and on-farm markets for marketing fruit or vegetables; and

**"Agricultural land"** means those specific land areas on which agriculture activities are conducted as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program land converted to agricultural use is subject to compliance with the requirements of the master program.

**"Amendment"** means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program. **"Approval"** means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the department for review and official action pursuant to this chapter; or an official action by the department to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

**"Channel migration zone (CMZ)"** means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

**"Department"** means the state department of ecology.

**“ Development “ means a use consisting of the construction or exterior alteration of structures; dredging; drilling; 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 stage of water level. :Development” does not include dismantling or removing structures if there is no other associated development or re-development.**

**"Development regulations"** means the controls placed on development or land uses by a county or town, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

**"Document of record"** means the most current shoreline master program officially approved or adopted by rule by the department for a given local government jurisdiction, including any changes resulting from appeals filed pursuant to RCW 90.58.190.

**"Ecological functions"** or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

**"Ecosystem-wide processes"** means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

**"Feasible"** means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions: (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (b) The action provides a reasonable likelihood of achieving its intended purpose; and (c) The action does not physically preclude achieving the project's primary intended legal use. In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

**"Fill"** means the addition of soil, sand, rock, gravel, sediment, earth-retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

**"Flood plain"** is synonymous with one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.

**“Floodway means the area that either: (a) has been established in Federal emergency Management flood insurance rate maps or floodway maps; or (b) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be**

**expected to be protected from 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.**

**"Geotechnical report"** or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers (or geologists) who have professional expertise about the regional and local shoreline geology and processes.

**"Grading"** means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

**"Guidelines"** means those standards adopted by the department to implement the policy of chapter 90.58 RCW 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.

**"Local government"** means any county, incorporated town or town which contains within its boundaries shorelines of the state subject to chapter 90.58 RCW.

**"May"** means the action is acceptable, provided it conforms to the provisions of this chapter.

**"Must"** means a mandate; the action is required.

**"Nonwater-oriented uses"** means those uses that are not water-dependent, water-related, or waterenjoyment.

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

**" Nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; bulk; height or density standards due to subsequent changes to the master program.**

**" Nonconforming use" means an existing shoreline use that was lawfully established prior to the effective date of the act or the applicable master program, but which does not conform to present use regulations due to subsequent changes to the master program.**

**"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:

Comparatively high fish or wildlife density;

Comparatively high fish or wildlife species diversity;

Fish spawning habitat;

Important wildlife habitat;



Important fish or wildlife seasonal range;  
Important fish or wildlife movement corridor;  
Rearing and foraging habitat;  
Refuge habitat;  
Limited availability;  
High vulnerability to habitat alteration;  
Unique or dependent species; or  
Shellfish bed

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 successful 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 non-priority 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.

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 (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

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

Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative 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.

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

**"Provisions"** means policies, regulations, standards, guideline criteria or environment designations.

**"Restore", "Restoration" or "Ecological restoration"** means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to re-vegetation, removal of intrusive shoreline structures and removal or



treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or preEuropean settlement conditions.

**"Shall"** means a mandate; the action must be done.

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

**"Shoreline master program"** or **"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. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or town approved under RCW 90.58 shall be considered an element of the county or town's comprehensive plan. All other portions of the shoreline master program for a county or town adopted under RCW 90.58, including use regulations, shall be considered a part of the Town's development regulations.

**"Shoreline modifications"** means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

**"Should"** means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

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

**"State master program"** means the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department.

**"Substantially degrade"** means to cause significant ecological impact.

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

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

**"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. Where used in this chapter, the term "water quantity" refers only to development and uses

regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, 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: (a) The use has 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 (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

## **APPENDIX A-Shoreline Critical Areas Policies and Regulations**

### **1. General Regulations**

#### **Critical areas regulations – Purpose.**

The purpose of Chapter 7.2 (Environmental Standards in the Town of Rockford Zoning and Development Regulations) is to designate and classify environmentally sensitive and hazardous areas as critical areas and to protect, maintain, and restore these areas and their functions and values; and protect the health, safety, and welfare of the general public; while also allowing reasonable use of public and private property. Critical areas include wetlands, areas of critical recharging effect on aquifers, fish and wildlife habitat conservation areas, special flood hazard areas, and geologically hazardous areas as set forth in WAC [365-196-485](#), as now promulgated or hereafter amended.

The regulations of Chapter 7.2 are intended to implement the goals, policies, guidelines, and requirements of the town's Comprehensive Plan and to protect critical areas in accordance with the Growth Management Act (Chapter [36.70A](#) RCW). Critical areas occurring within the shoreline jurisdiction shall be regulated pursuant to the town's SMP as set forth in Chapter 7.4. When the provisions of Chapter 7.2 conflict with other provisions or with federal or state laws and regulations, the provision that is the most protective of critical areas shall apply.

#### **Applicability.**

A. The provisions of Chapter 7.2 shall apply to any activity, use, modification, or development that is located within or adjacent to a critical area or within its buffer, or is likely to create a net loss of ecological functions necessary to sustain the critical area, or is likely to otherwise detrimentally impact a critical area such as reduce the stability or safety. Except as exempted in Section 7.2.05, critical areas and associated buffers shall not be altered except as consistent with the purposes and requirements of Chapter 7.2.

B. Compliance with the provisions of Chapter 7.2 does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, shoreline substantial development permits, Washington Department of Fish and Wildlife (WDFW) hydraulic project approval permits, U.S. Army Corps of Engineers Section 404 or 401 permits, or National Pollution Discharge Elimination System permits). The applicant is responsible for complying with these requirements apart from the process established pursuant to Chapter 7.2.

#### **Exemptions from critical area review and reporting requirements.**

Activities exempt from critical area review and reporting requirements shall be conducted consistent with performance standards identified in Chapter 7.2, including mitigation sequencing.

A. The following activities are exempt from critical area review and reporting requirements:

1. Conservation or enhancement of native vegetation.
2. Outdoor recreational activities which do not involve disturbance of the resource or site area, including fishing, hunting, bird watching, hiking, horseback riding, and bicycling.

3. Routine maintenance, repair, and minor modifications (such as construction of a balcony or second story) of existing structures where the modification does not extend the structure further into or adversely impact the functions of the critical area;

4. Drilling for utilities/utility corridors under a critical area, with entrance/exit portals located completely outside of the critical area and its buffer; provided, that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column; and

5. In Category III or IV wetlands only, stormwater dispersion outfalls and bioswales associated with stormwater management facilities that are located within the outer 25 percent of the buffer; provided, that no other location is feasible.

B. Any incidental damage to or alteration of a critical area or its buffers resulting from exempt activities shall be restored, rehabilitated, or replaced at the expense of the responsible party within one growing season.

#### **Maps and inventories.**

A. In addition to the critical areas and priority habitats map, the town may review additional reference materials to determine whether a proposed development has the potential to affect a critical area within the town. Reference materials may include, but are not limited to, the following:

1. USDA Soil Survey for Spokane County, Washington, 2012, as amended;
2. USGS 7.5-Minute Series Digital Elevation Model;
3. FEMA Flood Insurance Rate Maps (FIRM) for Spokane County, Washington, and Incorporated Areas, July 6, 2010;
4. USFWS National Wetlands Inventory;
5. Aerial photos;
6. 2015 LiDAR data;
7. DNR stream typing maps;
8. WDFW priority habitats and species and wildlife heritage maps and data; and
9. Town critical area designation maps.

#### **Critical area review.**

If critical area review is applicable to a proposed project, the town:

A. Shall require and review a critical area report for each applicable critical area per Section 7.2.09.

B. Shall determine if the proposed project adequately addresses and mitigates impacts to the critical area and is consistent with the requirements of Chapter 7.2.

C. May consult with agencies with expertise or jurisdiction to assist with project review, analysis, and identification of appropriate performance measures that adequately safeguard critical areas and ensure that measures are properly implemented.

D. May consult with qualified professionals to assist with review of a critical areas report and/or during the implementation of recommended measures. The town may, at its sole discretion, require the applicant to pay for or reimburse the town for such consultant fees incurred by the town.

E. May require mitigation pursuant to Section 7.2.09 and 7.2.10 where there is an impact to the critical area or its buffer that is likely to result in net loss of ecological functions.

**Critical area report requirements for all critical areas.**

Unless otherwise provided in Chapter 7.2, when critical areas review is deemed applicable, the applicant shall submit a critical area report subject to the requirements of Section 7.2.08 and any other additional reporting requirements for each relevant critical area type, as addressed in Section 7.2.17 (wetlands), Section 7.2.23 (fish and wildlife habitats), 7.2.25 (special flood hazards), and Section 7.2.29 (geologic hazards). The following generally applicable standards apply to all critical area reports:

A. All critical area assessments, investigations, studies, plans, and reports shall be completed by a qualified professional.

B. At a minimum, all critical area reports shall contain the following:

1. The name and contact information of the applicant, a description of the proposal, and identification of the permit(s) requested.
2. The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site.
3. A statement from the qualified professional certifying that the report meets the critical area requirements set forth in Chapter 7.2.
4. A description of the proposed use or activity in sufficient detail to allow analysis of such proposal upon identified critical area.
5. List of all references and assumptions.
6. A scaled site plan with dimensions showing:
  - a. Critical areas and their buffers;
  - b. Ordinary high-water mark (as applicable);

- c. Proposed and existing structures and related infrastructure;
- d. Clearing and grading limits and erosion control measures;
- e. Location of temporary and/or permanent construction signage and fencing to protect critical areas and buffers;
- f. Topographic contours at applicable intervals and/or spot elevations that clearly depict the existing and proposed topography;
- g. Fill and material storage locations;
- h. Staging areas;
- i. Proposed and existing drainage facilities and stormwater flow direction arrows; and
- j. Title, date, scale, north arrow, and legend.

7. Identification and characterization of all critical areas, water bodies, and buffers located on site, adjacent, and within 200 feet of proposed project areas. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

8. Any additional information required by the town to adequately evaluate the potential impacts and required mitigation if applicable. The town clerk or designee may modify the required contents of the report where, in the judgment of a qualified professional, more or less information is required to adequately evaluate the potential impacts and required mitigation.

9. The town clerk or designee may limit the scope of the required critical area report to include only that part of a site affected by a development proposal.

C. If a critical area or associated buffer impacts are proposed, or if a project has the potential to indirectly affect a critical area or buffer, such as by changing drainage pathways upslope of a critical area, the critical area report shall also contain the following:

- 1. A mitigation plan that contains a description of the application of mitigation sequencing and offsetting of impacts pursuant to Section 7.2.09 and 7.2.10. The approved plan shall contain clear and measurable standards and a schedule for achieving compliance with the specific provisions of the plan.
- 2. An erosion and sediment control plan and drainage plan to demonstrate minimization of impacts.
- 3. Cost estimate for required mitigation when a financial surety is required pursuant to Section 7.2.10(D).

4. A discussion of the performance standards applicable to the critical area and proposed activity.

5. A mitigation monitoring plan pursuant to Section 7.2.10(C).

**Mitigation sequencing.**

Applicants shall demonstrate that all reasonable efforts have been made to avoid and minimize impacts to critical areas and buffers. When an activity impacting a critical area is proposed, applicants shall follow the mitigation sequencing order of preference below to ensure no net loss of function within the critical area.

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

B. Minimize impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts. All impacts shall be compensated for and monitored as described below.

C. Rectify the impact by repairing, stabilizing, rehabilitating, or restoring the affected area to at least the conditions existing at the time of the initiation of the project so that the impact is temporary in duration.

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

**Compensatory mitigation.**

A. All impacts to critical areas or critical area buffers shall be mitigated to result in no net loss of ecological function. Mitigation shall be based on the most current, accurate, and complete scientific or technical information available and provide an equivalent or better level of protection of ecological functions, affected species, and safety conditions, as applicable to the affected critical area.

B. Unless specifically addressed in Section 7.2.12 through Section 7.2.29, compensatory mitigation is to be provided by any of the following means, in order of preference:

1. Impacts mitigated on or contiguous to the development site through resource expansion, enhancement, protection, or restoration.

2. Off-Site Mitigation

a. Off-site mitigation may be allowed if an applicant demonstrates that mitigation on or contiguous to the development proposal site cannot be achieved and that off-site mitigation achieves equivalent or greater ecological functions.

b. When off-site mitigation is authorized, priority shall be given to the following locations within the same drainage sub-basin as the project site:

- i. Mitigation banking sites and resource mitigation reserves;
  - ii. Private mitigation sites that are established in compliance with the requirements of Section 7.2.10 and approved by the town clerk or designee;
  - iii. Public mitigation sites that have been ranked supported by ecological assessments, including wetland and aquatic areas established as priorities for mitigation in an approved sub-basin or watershed plan; or
  - iv. Off-site mitigation consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication No. 10-06-07, Olympia, WA, November 2010), as the same now exists or may be amended.
- c. Any mitigation site shall be permanently preserved by property restrictions, such as deed restrictions or conservation easements. Such restrictions shall be recorded for mitigation sites to avoid impacts from future development or alteration to the function of the mitigation.

### C. Monitoring

1. The applicant shall monitor the performance of the required mitigation and submit performance monitoring reports annually, or as specified in the permit conditions.
2. A monitoring plan shall:
  - a. Demonstrate compliance with the provisions of Chapter 7.2 and specific permits and approvals;
  - b. Describe the objectives and methods for monitoring and quantifying critical area performance relative to success standards specified by the mitigation plan;
  - c. Provide results with an estimate of statistical precision;
  - d. Identify the reporting requirements;
  - e. Recommend management actions based upon the monitoring results; and
  - f. Provide a contingency plan to address potential unexpected outcomes, circumstances observed during site monitoring, or failure of mitigation.



### 3. Duration

- a. Mitigation monitoring shall be required for a minimum of two years for temporary impact restoration and five years for compensatory mitigation or a time frame as otherwise determined by the town.
  - b. At the end of a monitoring period, a qualified professional shall verify if the mitigation objectives have been satisfied.
  - c. If the mitigation objectives are not obtained within the initial monitoring period, the applicant shall remain responsible for restoration of the natural values and functions until the mitigation goals agreed to in the mitigation plan are achieved.
4. If monitoring reveals a significant deviation from predicted objectives or a failure of mitigation at the end of the duration, the applicant shall implement the approved contingency plan. The contingency plan constitutes new mitigation and is subject to additional monitoring and surety requirements.

### D. Sureties

#### 1. Performance Surety

- a. The applicant shall complete all planned mitigation and improvements prior to the acceptance of the project. If approved by the town, a performance surety may be submitted in lieu of the completion of the required work prior to project acceptance. The performance surety shall be in substantially the same form as provided for in the town's street standards including applicable requirements (completion schedule, amount, etc.) as adopted or hereafter amended.
- b. The performance surety shall be released when the following conditions have been met:
  - i. The installation of the required mitigation is approved by the town; and
  - ii. The applicant has submitted a warranty surety pursuant to Chapter 7.2.10 (D)(2).

#### 2. Warranty Surety

- a. All projects with required mitigation shall submit a warranty surety to ensure the success of the mitigation project, as required by the town. The warranty surety shall be in substantially the same form as provided for in the town's street standards including applicable requirements as adopted or hereafter amended.
- b. The warranty surety shall be for 40 percent of the total mitigation construction, planting costs, and annual maintenance/monitoring for the required duration including, but not limited to: costs for the maintenance and replacement of dead or dying

plant materials; failures due to site preparation, plant materials, and construction materials; installation oversight, monitoring, reporting, and contingency actions expected through the end of the required monitoring period.

c. The warranty surety shall remain in effect for the required duration. The applicant shall have a qualified professional inspect the mitigation site within 30 to 60 days prior to the expiration of the warranty. Any deficiencies noted shall be repaired prior to the release of the surety. If the inspection is not conducted and/or the deficiencies are not repaired, the warranty surety shall be renewed by the applicant until all deficiencies are corrected. The town shall conduct an inspection prior to releasing the warranty surety.

d. If any deficiencies identified while the warranty surety is in effect are not corrected in the time frame specified by the town clerk or designee, the town may choose to conduct the necessary repairs. The town shall then either invoice the applicant or collect from the surety for all costs for the related work, plus a \$500.00 administrative fee.

E. Alternative Mitigation. The town may approve alternative mitigation provided such mitigation is based on the most current, accurate, and complete scientific or technical information available and provides an equivalent or better level of protection of ecological functions, affected species, or safety conditions, as applicable by affected critical area, than would be provided by the strict application of Chapter 7.2. The town manager or designee shall consider the following for approval of an alternative mitigation proposal:

1. The applicant proposes creation or enhancement of a larger system of natural areas and open space in lieu of preserving many individual habitat areas;
2. On-site mitigation is not feasible due to site constraints such as parcel size, stream type, wetland category, or geologic hazards;
3. There is clear potential for success of the proposed mitigation at an alternate proposed site; and
4. The approved plan contains clear and measurable standards for achieving compliance with the specific provisions of the plan.

### **Violations.**

A. The following constitute violations of Chapter 7.2:

1. Failure to comply with any provision of Chapter 7.2 or with any term of any permit condition or approval issued pursuant to Chapter 7.2.
2. Failure to comply with any order issued pursuant to Chapter 7.2 or to remove or deface any sign, notice, complaint, or order required by or posted in accordance with Chapter 7.2.

3. Misrepresentation of any material fact in any application, on plans, or in any other information submitted to obtain any determination, authorization, permit condition, or approval under Chapter 7.2.

B. The town may order mitigation measures at the expense of the person responsible for the violation, which shall include the owner, whenever a critical area or its buffer has been altered or impacted in violation of Chapter 7.2.

C. When a violation of Chapter 7.2 occurs, the person responsible for the violation, which shall include the owner, shall meet the following minimum performance standards to achieve restoration of affected critical area conditions, as applicable:

1. A restoration plan shall be prepared by a qualified professional and shall address the following:

- a. Restoration of historical structural and functional values, including water quality and habitat functions;
- b. Replication of the historical soil types and configuration;
- c. Replacement of native vegetation within the critical area and buffers with native vegetation that replicates the vegetation historically found on the site in species types, sizes, and densities; and
- d. Replication of the historical functions and values at the location of the alteration.

2. The following additional performance standards shall be met for restoration of frequently flooded areas and geological hazards and shall be included in the restoration plan:

- a. The hazard shall be reduced to a level equal to, or less than, the pre-development hazard;
- b. Any risk of personal injury resulting from the alteration shall be eliminated or minimized; and
- c. The hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

3. Restoration plan shall include a monitoring plan pursuant to Section 7.2.10(C) and an implementation schedule.

- a. Annual performance monitoring reports demonstrating compliance with restoration plan requirements shall be submitted for a minimum two-year period.
- b. As-built drawings and other information demonstrating compliance with other applicable provisions of Chapter 7.2 shall be submitted to the town.

4. The town clerk or designee shall, at the violator's expense, seek qualified professional advice to determine if the restoration plan adequately compensates for affected critical area functions and physical resources. Inadequate plans shall be returned to the violator for revision and resubmittal.

D. The town clerk or designee is authorized to make site inspections and take such actions as are necessary to enforce Chapter 7. The town clerk or designee shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

**Reasonable use determination.**

A. The standards and regulations of Chapter 7.2 are not intended and shall not be construed or applied in a manner to deny all reasonable economic use of private property. If an applicant demonstrates to the satisfaction of the town clerk or designee that strict application of the standards of Chapter 7.2 would deny all reasonable economic use of their property, development may be permitted subject to appropriate conditions, derived from Chapter 7.2, as determined by the town clerk or designee.

B. An applicant requesting relief from strict application of these standards shall demonstrate the following:

1. That no reasonable use with less impact on the critical area and buffer or setback is feasible and reasonable;
2. That there is no feasible and reasonable on-site alternative to the activities proposed, considering possible changes in site layout, reductions in density, and similar factors;
3. That the proposed activities, as conditioned, will result in the minimum possible impacts to critical area and buffer or setback;
4. That all reasonable mitigation measures have been implemented or assured; and
5. That the inability to derive reasonable economic use is not the result of the applicant's actions.

C. Decision. The town clerk or designee shall include findings on each of the evaluation criteria listed in Section 7.2.30 (B) in a written decision. The written decision shall be mailed to the applicant and adjacent property owners, including property owners across public rights-of-way or private easements. The written decision shall include conditions necessary to serve the purposes of Chapter 7.2.

**2. Wetlands**

**Wetlands.**

Section 7.2.12 through 7.2.17 apply to all clearing, uses, modifications, or development activities within or adjacent to wetlands, unless specifically exempted pursuant to Section 7.2.05. Wet-

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

### **Delineation and classification.**

A. Delineation. Wetland identification and delineation of wetland boundaries shall be determined by a qualified professional through a field investigation based on the protocols of the 1987 U.S. Army Corps of Engineers Delineation Manual and applicable regional supplement, as adopted by Washington State Department of Ecology (Ecology) and as hereafter amended. Wetland delineations are valid for five years, after which the town shall determine whether a boundary verification study or additional assessment is necessary.

### **B. Classification.**

1. Wetlands shall be rated pursuant to the Ecology wetland rating system as set forth in the Washington State Wetland Rating System for Eastern Washington (Ecology Publication No. 14-06-030, or as amended and approved by Ecology), which contains the definitions and methods for determining wetland categorical ranking and scores based on functions and values.

2. Categories. Wetland categories are defined as follows:

- a. Category I: perform functions at very high levels as evidenced by scoring between 22 and 27 points on Ecology's wetland rating system; includes alkali wetlands, bogs, and forests with stands of aspen.
- b. Category II: provide high levels of some functions, with a rating score between 19 and 21 points; difficult, though not impossible, to replace; includes forested wetlands in the floodplains of rivers, mature and old-growth forested wetlands over one-quarter acre in size with fast-growing trees, and vernal pools.
- c. Category III: provide a moderate level of functions, with a rating score between 16 and 18 points; can be adequately replaced with a well-planned mitigation project.
- d. Category IV: provide lowest level of functions, with a rating score less than 16 points; often heavily disturbed but may provide some important functions including groundwater recharge and the removal of pollutants from surface water.

**Wetland buffer areas.**

A. Wetland buffer areas shall be required adjacent to all wetlands except isolated Category IV wetlands less than 1,000 square feet that:

1. Are not associated with riparian areas or buffers;
2. Are not part of a wetland mosaic (a patchwork of nearby, small wetlands);
3. Do not contain habitat identified as essential for local populations or priority species identified by WDFW or natural heritage plant species identified by the DNR;
4. Are not a vernal pool;
5. Are not an alkali wetland; and
6. Do not contain aspen stands.

B. Wetland buffers shall apply to any wetland created, restored, or enhanced as compensation for approved wetland alterations in the same manner as natural wetlands.

C. Except as otherwise specified or allowed in Section 7.2.14, wetland buffers shall be retained in their natural condition. Where buffer disturbances have occurred before or during construction, revegetation with native vegetation and restoration of the hydrologic condition shall be required.

**D. Buffer Widths.**

1. All buffers shall be measured perpendicular from the wetland boundary.
2. The width of the wetland buffer area shall be determined pursuant to Table 7.2-2 based upon the associated wetland category and impact intensity category of the proposed use. Widths shall be increased pursuant to Section 7.2.14 (D)(3) and may be reduced pursuant to Section 7.2.14 (D)(4). Wetland categories shall be assigned in accordance with Section 7.2.13 (B) and consistent with Ecology's Wetlands in Washington State, Volume 2; Protecting and Managing Wetlands, Guidance on Buffers and Ratios (Appendix 8-D), as may be amended. Land use intensity shall be determined as follows (uses not specifically listed shall be considered based upon the most similar use listed):

**Table 7.2-1 – Wetland Impact Intensity Categories**

<b>Impact Intensity Category (Impact from Proposed Change in Land Use)</b>	<b>Types of Land Use</b>
High Impact	Commercial, industrial, and institutional Residential (more than one unit/acre) High-intensity recreation (golf courses, ball fields, etc.)
Moderate Impact	Residential (one unit/acre or less) Moderate-intensity active open space (parks with biking, jogging, etc.) Paved trails Utility corridor with access/maintenance road
Low Impact	Passive open space (hiking, bird-watching, etc.) Unpaved trails Utility corridor without road or vegetation management

**Table 7.2-2 – Standard Wetland Buffer Widths**

<b>Wetland Category</b>	<b>Minimum Buffer Width (in feet)</b>		
	<b>Low Impact</b>	<b>Moderate Impact</b>	<b>High Impact</b>
I	125	190	250
II	100	150	200
III	75	110	150
IV	25	40	50

3. Increase in Standard Wetland Buffer Width.

a. If the land adjacent to a wetland has an average slope of 30 percent or more, the minimum buffer width shall either:

i. Be extended one and one-half times; or

ii. Extend to the upper break in slope (where the slope gradient is less than 30 percent for 20 feet or more perpendicular to the wetland, whichever is less).

4. Reduction of Standard Wetland Buffer Width.

a. The standard wetland buffer width for wetlands may be reduced to the next, lower land use intensity buffer width (e.g., from high to moderate), or reduced by no more than 25 percent if:

i. A relatively undisturbed vegetative corridor of at least 100 feet in width is protected between the wetland and any other priority habitats and the corridor is preserved by means of easement or covenant; or

ii. All measures identified in Table 7.2-3 are taken to minimize the impact of any proposed land use.

**Table 7.2-3 – Wetland Impact Minimization Measures**

<b>Disturbance</b>	<b>Required Measures to Minimize Impacts</b>
Lights	Direct lights away from wetland.
Noise	Locate activity that generates noise away from wetland.  If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source.  For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10-foot-wide, heavily vegetated buffer strip immediately adjacent to the outer wetland buffer.
Chemical use	Establish covenants limiting use of pesticides within 150 feet of wetland.  Apply integrated pest management.
Stormwater runoff	Route all untreated runoff away from wetland while ensuring wetland is not dewatered.  Retrofit older stormwater facilities to meet current standards.  Prevent channelized flow that directly enters the buffer.  Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns.
Pets and human disturbance	Use privacy fencing or plant dense, thorny vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the town.
Dust	Use best management practices to control dust.
Disruption of corridors or connections	Maintain connections to off-site areas that are undisturbed.  Restore corridors or connections to off-site habitats by replanting.
Vegetation alteration	Protect and maintain native plant communities in buffers.



## 5. Standard Buffer Width Averaging.

a. Standard wetland buffer width may be averaged (reduced in width near a parcel or development but widened elsewhere along the parcel or development to retain the overall area of the standard wetland buffer) if all the following conditions are met:

- i. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland, and decreased adjacent to the lower-functioning or less sensitive portion;
- ii. The total area of the buffer after averaging is equal to or greater than the area required without averaging; and
- iii. The buffer at its narrowest point is never less than 75 percent of the standard buffer width.

b. Standard wetland buffer width may be averaged to allow reasonable use of a parcel when all the following are met:

- i. The averaged buffer does not result in overall degradation of the wetland's functions and values as demonstrated by a report from a qualified professional; and
- ii. The buffer at its narrowest point is never less than 75 percent of the required width, or 75 feet for Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.

### **Signs and fencing.**

#### **A. Temporary.**

1. The outer perimeter of wetland buffers and the clearing limits shall be fenced to ensure that no unauthorized intrusion occurs during construction. Temporary fencing shall be designed and installed to effectively prevent construction and related impacts.
2. Temporary signs and fencing shall be placed prior to beginning permitted activities and maintained throughout construction.

#### **B. Permanent.**

1. The town clerk or designee may require installation of permanent signs and/or fencing along the boundary of a wetland or buffer where public or high traffic pedestrian uses may occur to protect critical areas.
2. Where required, permanent signs shall be made of an enamel-coated metal face and attached to a metal post or another nontreated material of equal durability. Signs shall be posted at an interval of one per lot or every 50 feet, whichever is less, and shall be maintained in perpetuity by the property owner. Any modification of the location or materials

required for permanent signs shall be approved by the town clerk or designee. The obligation to maintain permanent signs shall be recorded against the property in a form acceptable to the town.

3. The signs shall be worded as follows or with alternative language approved by the town clerk or designee:

Protected Wetland Area

Do Not Disturb

Contact the Town of Rockford Regarding Uses, Restrictions, and Opportunities for Stewardship

4. Permanent fence shall be installed around the wetland buffer when domestic grazing animals are present or may be introduced on site.

5. Fencing shall be constructed in a manner that minimizes impacts to the wetland and associated habitat and designed to not interfere with species migration, including fish runs. Fencing materials shall not be made or treated with toxic chemicals.

#### **Wetland mitigation.**

##### **A. Mitigation Ratios.**

1. Impacts resulting from alteration to wetlands shall be mitigated using the ratios specified below:

**Table 7.2.-4 – Wetland Mitigation Area Ratios<sup>1</sup>**

Category I	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

<sup>1</sup>Refer to Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Ecology Publication No. 06-06-011a, March 2006), for further information on wetland creation, reestablishment, rehabilitation, and enhancement.

2. Impacts to buffers shall be mitigated at a 1:1 ratio. Only vegetated buffer areas may be included in mitigation calculations. Lawns, walkways, driveways, and other mowed or developed areas shall be excluded from buffer area calculations.

3. Credit/Debit Method. As an alternative to the mitigation ratios provided in Section 7.2.16, the town clerk or designee may allow mitigation based on the “credit/debit” method

developed by Ecology in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Eastern Washington: Final Report (Ecology Publication No. 11-06-015, August 2012, as adopted or as amended).

## B. Off-Site Mitigation.

1. Wetland mitigation may be permitted off site if the primary drainage basin will not be substantially damaged by the loss of affected wetland hydrologic, water quality, or habitat functions as determined by a qualified professional; and

- a. On-site mitigation is not scientifically feasible due to problems with hydrology, soils, or other factors such as other potentially adverse impacts from surrounding land uses;
- b. Existing functions off site are significantly greater than lost wetland functional values; or
- c. Goals for flood storage, flood conveyance, habitat, or other wetland functions have been established and off-site mitigation is strongly justified by meeting such goals.

## 2. Wetland Mitigation Banks and Fee-in-Lieu Programs.

a. Credits from a wetland mitigation bank or fee-in-lieu program may be approved as off-site mitigation for unavoidable impacts to wetlands when:

- i. The bank or fee-in-lieu program is certified under state rules;
- ii. The town clerk or designee determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
- iii. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument.

b. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument.

c. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions. The use of bank credits out of the established service area of the nearest available bank must be approved by the town, WDFW, and Ecology.

d. When applying for a wetland mitigation bank or fee-in-lieu program, the applicant shall prepare a wetland mitigation bank credit use plan that documents consistency with these criteria and shows how the identified wetland type and associated functions will be compensated for by purchase of the credits.

### C. Design.

1. Design of wetland mitigation projects shall be appropriate for its landscape position. Compensatory mitigation shall result in the creation, restoration, or enhancement of a wetland that matches the geomorphic setting of the site.
2. The design of a wetland that has a different Cowardin or hydrogeomorphic classification than the impacted wetland may be justified if supported by a demonstrated need for, or scarcity of, the wetland type being designed.

### D. Timing.

1. To minimize temporal loss of wetland ecological functions, compensatory mitigation shall be completed prior to activities that disturb wetlands where feasible.
2. Where mitigation cannot be completed prior to wetland impacts, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development.
3. Understanding that construction of mitigation projects should be timed to reduce impacts to existing fisheries, wildlife, and flora, the town may authorize a delay of mitigation when the applicant provides a compelling written rationale for the delay with recommendations from a qualified wetland professional. In such cases, the delay shall not:
  - a. Create or perpetuate hazardous conditions;
  - b. Create environmental damage or degradation; or
  - c. Be injurious to the health, safety, or general welfare of the public.

### **Additional critical area report requirements for wetlands.**

In addition to the critical area report requirements in Section 7.2.08, wetland reports shall include the following:

- A. Documentation of any fieldwork performed on the site, including but not limited to field data sheets for delineations, function assessments, ratings, and baseline hydrologic data;
- B. A description of the methodologies used to conduct the wetland delineations, function assessments, or impact analyses including references;
- C. For each wetland identified on site, adjacent to, and within 200 feet of the project site, provide:
  1. Required buffers;
  2. Wetland rating, hydrogeomorphic classification, Cowardin classification of vegetation communities, on-site wetland acreage, and ecological function of the wetland and buffer

based on a professional survey from the field delineation. All assessments shall be based on entire wetland complexes, not only the portion present on the proposed project site;

3. Estimates of acreage and boundary for the entire wetland area where portions of the wetland extend off site;

4. Description of habitat elements;

5. Soil conditions based on site assessment and/or soil survey information; and

6. To the extent possible, hydrologic information such as location and condition of inlet/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris);

D. A description of the proposed actions and survey and an analysis of site development alternatives including a no-development alternative;

E. An assessment of the probable impacts to the wetlands and buffers resulting from the proposed development, including:

1. An estimation of acreages of impacts to wetlands and buffers based on the field delineation;

2. Impacts associated with anticipated hydroperiod alterations from the project; and

3. Impacted wetland functions;

F. A description of how mitigation sequencing was applied pursuant to Chapter 7.2;

G. A discussion of mitigation measures, proposed to preserve existing wetlands and restore any wetlands that will be degraded by the current proposed land-use activity;

H. Methods to protect and enhance on-site habitat and wetland functions;

I. A site plan, drawn to scale, with the following information:

1. Delineated wetland(s) and required buffer(s) for on-site wetlands as well as off-site critical areas that extend onto the project site;

2. Areas of proposed impacts to wetlands and/or buffers (include square footage estimates); and

3. Proposed stormwater management facilities and outlets for the development, including estimated areas of intrusion into the buffers of any critical areas; and

J. A mitigation plan, if required.

1. The plan shall address mitigation site selection criteria and goals and objectives in relation to the functions and values of the impacted critical area. Details in the mitigation plan shall include, but not be limited to:

- a. The proposed construction method, sequence, timing, and duration;
- b. Grading and excavation details;
- c. Erosion and sediment control features;
- d. Dates for beginning and completion of mitigation activities;
- e. A planting plan, if applicable, specifying plant species, quantities, locations, size, spacing, and density; and measures to protect and maintain plants until established; and
- f. Detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

2. The mitigation plan shall include a monitoring plan to ensure success of the mitigation plan. The plan shall conform to the monitoring requirements outlined in Section 7.2.10.

**3. Fish & Wildlife Habitat Conservation Area**

Section 7.2.18 through Section 7.2.123 apply to all clearing, uses, modifications, or development activities within designated fish and wildlife habitat conservation areas (FWHCAs) and associated buffers

**Designation.**

All areas meeting one or more of the following criteria, regardless of any formal identification, are hereby designated FWHCAs:

A. Areas where the following species and/or habitats have a primary association:

- 1. Federally designated endangered and threatened species. The U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service shall be consulted for current listing status.
- 2. State-designated endangered, threatened, and sensitive species pursuant to WAC [232-12-014](#) (state endangered species) and WAC [232-12-011](#) (state threatened and sensitive species). The WDFW maintains the most current listing and shall be consulted for current listing status.
- 3. State priority habitats and areas associated with state priority species. Priority habitats and species (PHS) are managed by the WDFW. Priority habitat maps are amended from

time to time by WDFW. Within the town, priority habitats include wetlands, open waterways, riparian areas, urban open space, and the habitat associated with individual native species. Priority habitat data is included in the town's Fish and Wildlife Habitat Critical Areas Map.

B. Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from upland areas for mitigation purposes. Naturally occurring ponds do not include ponds deliberately designed and created from dry sites, such as stormwater treatment or detention facilities, wastewater treatment facilities, temporary construction ponds, and landscape amenities. To distinguish between ponds and wetlands, refer to current state or federal definitions and guidance.

C. Ponds or lakes artificially created as a result of mining once mining is complete and the mine reclamation plan has been implemented and deemed complete by DNR.

D. Waters of the State. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and watercourses, including wetlands, within the jurisdiction of the state of Washington, as classified in WAC [222-16-030](#). Water type classifications are as follows:

1. "Type S water" means all waters, within their bankable width, as inventoried as "shorelines of the state" pursuant to Chapter [90.58](#) RCW and the rules promulgated pursuant to Chapter [90.58](#) RCW including periodically inundated areas of their associated wetlands. Type S waters have mean annual flows averaging 20 or more cubic feet per second. Type S waters are regulated pursuant to the town's SMP and Chapter 7.4

2. "Type F water" means segments of natural waters other than Type S waters, which are within the bank full widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of one-half acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:

- a. Waters that are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the town to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less.

- b. Waters that are diverted for use by federal, state, tribal, or private fish hatcheries. Such waters shall be considered Type F water upstream from the point of diversion for 1,500 feet, including tributaries, if highly significant for protection of downstream water quality. The town may allow additional harvest beyond the requirements of Type F water designation provided the town determines, after a landowner-requested on-site assessment by the WDFW, Ecology, the affected tribes, and interested parties that:

- i. The management practices proposed by the landowner adequately protect water quality for the fish hatchery; and

- ii. Such additional harvest meets the requirements of the water type designation that would apply in the absence of the hatchery.

- c. Waters that are within a federal, state, local, or private campground having more than 10 camping units; provided, that the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail, or other park improvement.

- d. Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

- i. The site is connected to a fish habitat stream and accessible during some period of the year; and

- ii. The off-channel water is accessible to fish.

3. “Type Np water” means all segments of natural waters within the bank full width of defined channels that are perennial non-fish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall. However, for the purpose of water typing, Type Np waters include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow. If the uppermost point of perennial flow cannot be identified with simple, nontechnical observations then Type Np waters begin at a point along the channel where the contributing basin area is at least 300 acres.

4. “Type Ns water” means all segments of natural waters within the bank full width of the defined channels that are not Type S, F, or Np waters. These are seasonal, non-fish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and that are not located downstream from any stream reach that is a Type Np water. Type Ns waters must be physically connected by an aboveground channel system to Type S, F, or Np waters.

E. State Natural Area Preserves and Natural Resource Conservation Areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the DNR.

F. Areas of Rare Plant Species and High-Quality Ecosystems. Areas of rare plant species and high-quality ecosystems are identified by the DNR through the Natural Heritage Program.

G. Lands designated on state, regional, or local government agency plans (e.g., parks or transportation) as useful or essential for preserving connections between habitat blocks and open spaces



### **Habitat buffers and riparian management zones.**

A. Buffers to protect shoreline Type S waters are mapped by the town and regulated pursuant to the town's SMP and Chapter 7.4.

B. Buffers to protect state- or federally designated sensitive wildlife FWHCA's shall be based on the recommendations of a FWHCA critical area report prepared by a qualified professional pursuant to Section 7.2.23. Habitat buffers shall not exceed 100 horizontal feet from the edge of the FWHCA.

C. Riparian Management Zones for Waters of the State.

1. Designation. Riparian management zones (RMZs) are based on the water type classification as described in Section 7.2.19 (D). RMZs are measured perpendicular to the ordinary high-water line or bank full channel width boundary of a delineated stream. RMZ widths are summarized as follows:

**Table 7.2-5 – Riparian Management Zones  
Buffer Widths**

<b>Stream Classification</b>	<b>RMZ Width</b>
Type S – Shorelines of the state	See SMP
Type F – Natural waters not classified as shorelines of the state with fish (e.g., Chester and Saltese Creeks)	150'
Type Np – Nonfish, perennial	50'
Type Ns – Nonfish, seasonal	30'

2. RMZ Requirements.

a. RMZs shall be retained or maintained in a natural condition, and vegetation within RMZs shall be conserved as feasible to provide shade, habitat, and water quality functions for the associated stream.

b. Where activities are proposed within a RMZ, mitigation measures shall be specified in a habitat management plan and may include but are not limited to one or more of the following:

i. Fencing of riparian buffer area to protect remaining vegetation.

- ii. Nonnative/noxious weed removal and maintenance; and/or
- iii. Enhancement of RMZ through planting of native vegetation.
- c. Proposed pedestrian/bike trails shall demonstrate through best available science that the location and width of the trail minimizes any adverse impacts on habitat and that measures to reduce effects during construction are implemented.
- d. Off-road motorized vehicle use in riparian management zones is prohibited

**Performance standards.**

All development and uses shall be prohibited within FWHCAs and their buffers, except when they are in accordance with Section 7.2.20.

A. No Net Loss. A FWHCA buffer may be altered only if the proposed alteration of the habitat or the mitigation proposed does not create a net loss of the quantitative and qualitative ecological functions necessary to sustain the FWHCA.

B. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a FWHCA unless authorized by a state or federal permit or approval.

C. Contiguous functioning habitat corridors are preferred to minimize the isolating effects of development on habitat areas.

**D. Vegetation.**

- 1. Vegetation shall be maintained in its natural state and shall be disturbed only as minimally necessary for the development.
- 2. Riparian vegetation shall not be removed unless there are no other alternatives available, as documented in a habitat management plan prepared by a qualified professional. When it is necessary, only those areas of vegetation that are unavoidable may be cleared and shall be re-vegetated with natural riparian vegetation as soon as possible.

**E. The subdivision of land shall comply with the following provisions:**

- 1. Plat area that is located wholly within a FWHCA or its buffer may not be subdivided.
- 2. Plat area that is located partially within a FWHCA or its buffer may be divided; provided, that an accessible and contiguous portion of each new lot is located outside of the FWHCA or its buffer; and
- 3. Access roads and utilities serving the proposal may be permitted within the FWHCA and associated buffers only if the Town determines that no other feasible alternative exists and when consistent with Chapter 7.2.

F. A project may be conditioned to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

1. Establishment of buffer zones;
2. Preservation of critically important vegetation and requirements for re-vegetation of disturbed areas with native plants;
3. Vegetation screenings to reduce the potential for harassment from people and/or domesticated animals;
4. Limitation of access to the habitat area during critical times of the year;
5. Fencing to protect wildlife and deter unauthorized access;
6. Dedication of all or part of the required open space to fish and wildlife habitat conservation; and
7. Seasonal restriction of construction activities.

**G. FWHCAs with Endangered, Threatened, or Sensitive Species.**

1. No development shall be allowed within a FWHCA or buffer where state or federal endangered, threatened, or sensitive species have a primary association without state and federal consultation and approval from WDFW and USFWS, respectively.
2. Approval for alteration of land or activities adjacent to a FWHCA having a primary association with state or federally endangered, threatened, or sensitive species shall not occur prior to consultation with the WDFW.
3. Bald eagle habitat shall be protected consistent with the federal Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act, which may require coordination with the USFWS.

**Adjustment of habitat buffer areas.**

A. Habitat buffer areas may be reduced by the town clerk or designee up to a maximum of 10 percent if the buffer area is enhanced using native plants, including trees and shrubs, according to a habitat management plan prepared in consultation with the Spokane County Conservation District and the WDFW.

B. The habitat buffer width may be averaged (reduced in width near a development but widened elsewhere to retain the overall area of the habitat buffer) if all of the following conditions are met:

1. The FWHCA has significant differences in characteristics that affect its habitat functions, such as a native forested component adjacent to a degraded herbaceous component;
2. The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the FWHCA and decreased adjacent to the lower-functioning or less sensitive portion;

3. The total area of the buffer, after averaging, is equal to or greater than the area required without averaging; and
4. The buffer at its narrowest point is never less than 75 percent of the original habitat buffer width.

C. Reductions for Functionally Isolated RMZ Areas.

1. RMZs shall not extend beyond linear roadways or large paved areas (e.g., parking lots) where the intersecting development results in habitats that are functionally isolated from the stream area by the intervening feature. This applies only to paved roads and gravel roads that receive more than one vehicle per hour average daily traffic (does not apply to infrequently used driveways, trails, etc.).

D. Habitat buffer areas may be increased by the town clerk or designee up to a maximum of 25 percent if:

1. The land adjacent to water is susceptible to severe erosion and other erosion control measures will not prevent adverse impacts; or
2. The land adjacent to the water has minimal vegetative cover or slopes greater than 30 percent.

E. The provisions of Section 7.2.21 shall not apply to areas regulated by the town pursuant to its SMP and Chapter 7.4.

**Fish and wildlife habitat mitigation.**

A. When necessary, fish and wildlife habitat mitigation shall be documented in a habitat management plan (see Section 7.2.23 (A)).

B. Mitigation sites shall be located:

1. Preferably to achieve contiguous-functioning habitat corridors that minimize the isolating effects of development on habitat areas; and
2. Within the same aquatic ecosystem as the area disturbed.

C. Where available, irrigation shall be installed for mitigation plantings to ensure survival during the first two years of plant growth.

D. Landscaping plans shall be informed by local reference riparian and shrub-steppe vegetation conditions and be prepared by a qualified professional or landscape architect. Only native vegetation may be used in habitat mitigation plans, excluding sterile vegetation used for temporary erosion control.

E. Mitigation shall be installed no later than the next growing season after completion of buffer impacts, unless otherwise approved by the town clerk or designee.

F. Mitigation sites shall be maintained to ensure that the mitigation and management plan objectives are successful.

1. Maintenance shall include corrective actions to rectify problems, including rigorous, as-needed elimination of undesirable plants; protection of shrubs and small trees from herbivory and competition by grasses and herbaceous plants; and repair and replacement of any dead woody plants.
2. Areas proposed for mitigation shall be maintained so they have no more than 20 percent total plant cover consisting of invasive species. Invasive species include any species on the state noxious weed list.

G. Monitoring Required. An applicant shall monitor the performance of any required mitigation and submit performance monitoring reports annually to the town.

1. Mitigation sites shall be monitored for a period of time appropriate to the proposed mitigation as determined in a habitat management plan prepared by a qualified professional.
2. At the end of the monitoring period, the qualified professional shall be required to verify that the conditions of approval and provisions in the habitat management plan have been satisfied.
3. Mitigation planting survival shall be 100 percent for the first year and 80 percent for each subsequent year.
4. If the final annual monitoring report clearly demonstrates that the site has achieved all goals and objectives set forth in the approved habitat management plan, the applicant shall be released from additional mitigation obligations. If, however, performance objectives are not met, additional maintenance, adaptive management, and performance monitoring shall be required until all objectives are met.

**Additional critical area report requirements for fish and wildlife habitat conservation areas.**

A. Report Contents. In addition to the critical area report requirements Section 7.2.08, FWHCA reports shall include:

1. Habitat assessment, including:
  - a. Detailed description of vegetation on and adjacent to the project area;
  - b. Identification of any plant or animal species of local importance, PHS, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species;

- c. A discussion of any federal, state, or local special management recommendations, including WDFW habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area;
- d. A discussion of measures, including mitigation sequencing, proposed to preserve existing habitats or restore any habitat that was degraded prior to the current proposed land use activity; and
- e. A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

2. Habitat Management Plan. Any proposal in a FWHCA, associated buffer area, or within one-quarter mile of a priority species den or nest site shall provide a habitat management plan which includes at least the following:

- a. A plan, drawn to scale, that identifies:
  - i. The location of the proposed site;
  - ii. The relationship of the site to surrounding topography and developed areas;
  - iii. The nature and intensity of the proposed use or activity;
  - iv. Proposed improvement(s) locations and arrangements;
  - v. The location of the ordinary high water mark, SMP, and RMZ boundary lines;
  - vi. The legal description and the total acreage of the parcel;
  - vii. Existing structures and landscape features including the name and location of all waters within 300 feet of the proposal; and
  - viii. The location of priority habitat types or priority species point locations within one-quarter mile of the proposal.
- b. An analysis of the effect of the proposed use or activity upon FWHCAs or associated species and riparian habitat area.
- c. A mitigation plan that may include, but is not limited to:
  - i. Establishment of perpetual buffer areas;
  - ii. Preservation and/or restoration of native flora;
  - iii. Limitation of access to habitat area;
  - iv. Seasonal restriction of construction activities;

- v. Clustering of development and preservation of open space;
- vi. Signs marking habitats or habitat buffer areas;
- vii. Use of low impact development techniques;
- viii. Recorded deed, plat, binding site plan or planned unit development covenant, condition, or restriction legally establishing FWHCA for subject property;
- ix. Conservation or preservation easements; and
- x. Dedication or conveyance of title of a FWHCA to a public entity for the purpose of conservation.

d. A summary of consultation with the WDFW. If the habitat management plan recommends mitigation involving federally listed threatened or endangered species, migratory waterfowl, or wetlands, the USFWS shall receive a copy of the draft habitat management plan and their review comments shall be included in the final report. The town clerk or designee shall have the authority to approve habitat management plans or require additional information.

B. Conditions established by an approved habitat management plan shall be included as a condition of approval for a permit.

#### **4. Frequently Flooded Areas**

Special flood hazard areas.

Chapter 7.3 is incorporated by reference herein and governs all uses, activities, and structures within special flood hazard areas.

##### **Additional critical areas report requirements for special flood hazard areas.**

A. In addition to the critical area report requirements in Section 7.2.08, critical area reports for special flood hazard areas shall include a site plan, showing:

1. All areas of a special flood hazard within 200 feet of the project area, as indicated on the currently adopted flood insurance map(s);
2. The 100-year flood elevation, the 10- and 50-year flood elevations (if available), and floodway;
3. Critical areas, buffers, and shoreline areas; and
4. Elevation of the lowest floor (including basement) of all structures, and the level to which any nonresidential structure has been flood-proofed.

B. Alteration of natural watercourses shall be avoided, if feasible. If unavoidable, the critical area report shall include:

1. A description of and plan showing the extent to which a watercourse will be altered or relocated;
2. A maintenance plan that provides maintenance practices for the altered or relocated portion of the watercourse to ensure that the flood-carrying capacity is not diminished and downstream or upstream properties are not impacted; and
3. A description of how the proposed watercourse alteration complies with the requirements of FWHCAs, the SMP, and other applicable state or federal permit requirements.

## **5. Geologically Hazardous Areas**

### **Geologically hazardous areas.**

Section 7.2.25 through Section 2.29 shall apply to all clearing, uses, modifications, or development activities within or possibly impacting designated geologically hazardous areas and associated buffers.

### **Exemptions.**

The following shall be exempt from the provisions of Section 7.2.27 through Section 7.2.29:

A. Operation, maintenance, or repair activities that do not require construction permits and do not alter the topography or the hydrology, and do not significantly alter the vegetation so long as the activity does not further alter or increase impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance or repair.

B. Work directly related to ending a condition that (1) is an immediate threat to the public health, safety, and welfare, or creates an immediate risk of damage to public or private property, and (2) requires remedial or preventive action in a time frame too short to allow compliance with the application provisions of section 7.2.27 through section 7.2.29; provided, that the work is the minimum work necessary to end the condition and the work is consistent with the development standards of Chapter 7.2 to the extent practicable. Once the town clerk or designee determines that the condition no longer meets these criteria, all work is subject to the provisions of Chapter 7.2, including, but not limited to, its application requirements, its development standards, and any requirements for technical reports and reviews for work that was exempt at the time it was performed.

C. Low impact activities such as passive recreation, scientific research, conservation practices, harvesting of wild crops, noxious weed control, and pedestrian/bike trails.

### **Designation and classification.**

A. Areas susceptible to one or more of the following types of hazards shall be classified as a geologically hazardous area:



1. Erosion Hazard. Often associated with steep slopes, unconsolidated soils, severe rill, and interrill erosion potential per U.S. Department of Natural Resource Conservation Service (NRCS), sparse vegetation;

2. Landslide Hazard. Often associated with steep slopes such as 30 percent or greater with vertical relief of 10 or more feet, undercut slopes, groundwater over relatively impermeable substrate, areas of historic failures, Latah formation (sedimentary layers of clay interlain between basalt flows);

3. Seismic Hazard. Often associated with severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting. The town is not in an area of severe risk for seismic hazards; therefore, no designation of these areas is warranted at this time; or

4. Areas subject to other geological events such as surface mine hazards, volcanic hazards, mass wasting, debris flows, rock falls, and differential settlement. Initial research and investigation has determined that these hazards do not currently exist in the town at a level warranting designation.

B. The approximate location and extent of geologically hazardous areas are shown on the adopted critical area maps and data as obtained from pertinent agencies such as the following:

1. U.S. Geological Survey;

2. NRCS;

3. Washington Department of Natural Resources;

4. FEMA flood insurance maps; and

5. Locally adopted maps.

The maps and data sources provide a general level of information and are not intended to pinpoint geologic hazards on individual sites or properties. The town shall maintain a collection of potential geologically hazardous area inventory maps and data or locations of data for purposes of providing information on the general location of geologically hazardous areas. Use of the maps and data shall be for informational purposes only. The geologically hazardous areas maps and data shall be updated as more accurate information becomes available.

C. Areas exhibiting the characteristics of geologically hazardous areas pursuant to Section 7.2.27 (A) that are not designated on the geologic hazard inventory maps Section 7.2.27 (B)) may be designated as critical areas by town staff or a qualified professional at the time of project review.

D. Due to the uncertainties in delineating geological hazards, buffers shall be established from all edges of geologically hazardous areas.

1. The minimum buffer shall be 50 feet and shall extend to the top of the slope above the hazard area.
2. The buffer may be reduced to a minimum of 10 feet when a qualified professional demonstrates that the reduction will adequately protect the proposed development, adjacent developments and uses, and the subject critical area.
3. The buffer may be increased where the town determines a larger buffer is necessary to prevent risk of damage to proposed and existing development.

**Performance standards.**

A. Unless specifically exempt above or otherwise waived by the town, the applicant of any proposed activity in a parcel with boundaries within 50 feet of a geologic hazard area and/or its buffer (if designated) or in area determined by a qualified professional to be a potential geologic hazard, especially those activities that alter the topography, vegetation, or hydrology, shall:

1. Attend a pre-development conference with the town on the project;
2. If applicable, meet the requirements of the Spokane Regional Stormwater Manual (SRSM) and shall apply for and meet the requirements of an engineered grading permit;
3. Retain a geologist currently licensed in Washington State or a qualified geotechnical engineer (a professional engineer currently licensed by the state of Washington with geotechnical engineering as a specialty) to:
  - a. Review all aspects of the project's design (topography, landscaping, stormwater, etc.), construction (clearing, grubbing, grading, erosion, phasing, etc.), operation, and maintenance;
  - b. Provide recommendations, with copies of the review comments and recommendations provided to the town. Recommendations may specify that no activity may occur or that some or all may occur. For any proposed activity that the geologist or geotechnical engineer states may occur, the recommendations shall ensure that the proposed activity both in short term and in long term:
    - i. Minimizes impacts;
    - ii. Shall not result in any damage to other property;
    - iii. Shall not increase the risk or threat of the geological hazard to adjacent properties beyond pre-development conditions;
    - iv. Shall not result in a need for increased buffers on neighboring properties;
    - v. Shall not adversely impact other critical areas;
    - vi. Is designed using best management practices and best available science;

vii. Is designed so that the hazard is eliminated or mitigated to a level equal to or less than pre-development conditions;

viii. Is determined to be safe as designed and under anticipated conditions; and

ix. Locates structures and improvements such that the most critical portion of the site and its natural landforms and vegetation are preserved;

c. Prepare a geotechnical study that addresses the following:

i. A detailed description of the project, its relationship to the geologic hazard(s), and its potential impact upon the hazard area, the subject property, and affected adjacent properties;

ii. A description of the surface and subsurface geology, hydrology, soils, and vegetation found in the project area and in all hazard areas addressed in the report;

iii. Vegetation needing to be retained or removed;

iv. The present stability of the proposed development, stability of the proposed site during construction, stability after all development activity is completed, and a discussion of the relative risks and slide potential relating to adjacent properties during each stage of development;

v. Proposed location of buildings, roadways, and other improvements that reflect careful consideration of geohazards and efforts to avoid or minimize impacts;

vi. Grading and earthwork, including compaction and fill material requirements; use of site soils as fill or backfill, imported fill or backfill requirements; height and inclination of both cut and fill slopes, terracing, and erosion control; and wet weather considerations and/or limitations;

vii. A detailed overview of the field investigations, published data, and references; data and conclusions from past assessments of the site; and site-specific measurements, tests, investigations, or studies that support the identification of geologically hazardous areas;

viii. A description of the vulnerability of the site to seismic and other geologic events;

ix. Recommendations for the minimum no-disturbance buffer and minimum building setback from any geologic hazard based upon the geotechnical analysis;

x. A mitigation plan addressing how the activity maintains or reduces the pre-existing level of risk to the site and adjacent properties on a long-term basis (equal

to or exceeding the projected lifespan of the activity or occupation); specific mitigation measures for impacts to all critical areas and related buffers before, during, and after construction;

xi. Location and methods of drainage and surface water management. A plan and schedule to monitor stormwater runoff discharges from the site shall be included if there is a significant risk of damage to downstream properties or receiving waters;

xii. Locations and methods of erosion control, a vegetation management and/or replanting plan, and/or other means for maintaining long-term soil stability;

xiii. Impacts of landslide run-out on downslope properties;

xiv. Recommendations for building limitations, structural foundations, and an estimate of foundation settlement;

xv. An analysis of proposed surface and subsurface drainage and the vulnerability of the site to erosion; and

xvi. Documents findings, recommendations, and concerns; and

d. Observe and assess mitigation performance during monitoring period.

B. The town shall review the proposals, recommendations, and geotechnical study and may condition the project based upon its review to ensure the applicant provides all necessary mitigation to ensure there are no remaining safety concerns associated with alteration of the geologically hazardous area. To expedite review, the town may hire a qualified professional for this review, which would be paid for at the applicant's expense.

**Additional critical areas report requirements for geologically hazardous areas.**

A. Report Requirements. In addition to the critical area report requirements in Section 7.2.08 geologically hazardous area reports shall include:

1. A site plan showing the following:

a. The location of all geologic hazard areas, springs, seeps, or other surface expressions of groundwater on or within 200 feet of the project area;

b. Location and boundaries of all critical areas and related buffers on the site and on adjacent lands within 25 feet of the site's property lines, noting both total square footage and percentage of site covered by critical areas and related buffers;

c. Location and identification of all riparian corridors and wetlands within 100 feet of the site's property lines;

d. Location and boundaries of all existing and proposed site improvements on the site, on adjacent lands within 25 feet of the site's property lines, and on the full width of abutting public rights-of-way and private easements. This shall include the amount of proposed land-disturbing activities, including amounts of developmental coverage, impervious surfaces, and construction activity areas (noting total square footage and percentage of site occupied);

e. Stormwater-flow characteristics within the site, on adjacent sites within 25 feet of the site's property lines, and on the full width of abutting public rights-of-way and private easements;

f. Location of all grading activities in progress, and all natural and artificial drainage control facilities or systems in existence or on adjacent lands or on the site or within 25 feet of the site's property lines, and in the full width of abutting public rights-of-way and private easements;

g. Location of all existing utilities (water, sewer, gas, electric, phone, cable, etc.), both above and below ground, on the site, on adjacent lands within 25 feet of the site's property lines, and in the full width of abutting public rights-of-way;

h. For a proposal potentially affecting or affected by an erosion or landslide hazard area:

i. The height of slope, slope gradient, and cross section of the project area within the hazard area; and

ii. Stormwater runoff disposal location and flow patterns.

B. Geologically hazardous area reports shall be prepared by a geologist currently licensed in Washington State or a qualified geotechnical engineer (a professional engineer currently licensed by the state of Washington with geotechnical engineering as a specialty).

C. A geotechnical report, prepared within the last five years for a nearby and applicable site, and where the proposed land use activity and surrounding site conditions are unchanged, may be incorporated into the required critical area report for reference. The applicant shall submit a geotechnical assessment detailing any changed environmental conditions associated with the site.