

# Comments on West Richland Shoreline Master Program

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## Acronyms

CA Critical Areas .....	11
CAO Critical Areas Ordinance .....	12, 29, 34, 37
CAP SMP Appendix 2: Critical Area Provisions.....	11, 12, 37
PHS Priority Habitat and Species.....	2
RMZ Riparian Management Zone.....	26
SMP Shoreline Master Program.....	1
WAC Washington Administrative Code .....	4
WDFW Washington Department of Fish and Wildlife .....	2
WDOE Washington Department of Ecology.....	4
WMRC West Richland Municipal Code .....	6

## Regulations

City of West Richland, Shoreline Master Program Draft for Planning Commission Public Hearing & Comment Period. September 17, 2020 ( <i>SMP Update</i> ) .....	1, 2
Revised Code of Washington (RCW), Chapter 90.58.....	passim
WAC Chapter 173-26, <i>State Master Program Approval/Amendment Procedures and Master Program Guidelines</i> (SMP Guidelines) .....	passim

## Other Authorities

Benton County, <i>Washington Natural Hazard Mitigation Plan 2019 Revision</i> , found in agenda packet for West Richland City Council Special Meeting, July 30, 2019. <a href="https://www.westrichland.org/download/City%20Council/Packets/2019/07-30-19-Special-Meeting.pdf">https://www.westrichland.org/download/City%20Council/Packets/2019/07-30-19-Special-Meeting.pdf</a> .....	13
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Vermont Fish & Wildlife Department, Agency of Natural Resources, *Guidelines for Protection & Mitigation of Impacts to Great Blue Heron Rookeries in Vermont*. 2002. [https://vtfishandwildlife.com/sites/fishandwildlife/files/documents/Conserve/RegulatoryReview/Guidelines/Guidelines\\_for\\_Protection\\_and\\_Mitigation\\_of\\_Impacts\\_to\\_Great\\_Blue\\_Heron\\_Rookeries\\_in\\_VT.pdf](https://vtfishandwildlife.com/sites/fishandwildlife/files/documents/Conserve/RegulatoryReview/Guidelines/Guidelines_for_Protection_and_Mitigation_of_Impacts_to_Great_Blue_Heron_Rookeries_in_VT.pdf)..... 33

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WDFW, *PHS on the Web*. <https://geodataservices.wdfw.wa.gov/hp/phs/> ..... 2

WDFW, *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications*, Chapter 5: Pollutant Removal. July 2020. .... 28

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WDOE, *Shoreline Master Programs Handbook*, Publication 11-06-010, December 2017 (SMP Handbook) ..... passim

WDOE, *Washington State Wetland Rating System for Eastern Washington* (Ecology Publication No. 14-06-030), 2014, hereafter referred to as *Wetland Ratings* ..... 29

Thank you for this opportunity to comment on West Richland’s periodic update of its Shoreline Master Program (SMP). These comments are based on City of West Richland’s *Shoreline Master Program Draft for Planning Commission Public Hearing & Comment Period* dated September 17, 2020.<sup>1</sup> We have completed our comments on Chapters 1 through 4, Chapter 5 Sections A and B, and the section of Appendix B dealing with Fish and Wildlife Habitat conservations areas; we’ll likely be submitting additional comments on the remaining sections.

## **1 Introduction (SMP.1)<sup>2</sup>**

### **1.1 Purposes of the Shoreline Master Program (SMP.1.C)**

Remove: “The four purposes of the SMP are to: ~~1. Carry out the responsibilities imposed on the City by the SMA;~~”. This is the *reason* the City is preparing the SMP, it is not the *purpose* of the SMP.

### **1.2 Shoreline Master Program Development (SMP.1.D)**

No changes were made to the *Shoreline Inventory and Characterization*, the *Cumulative Impacts Analysis*, the *No Net Loss Report* or the *Restoration Plan*, in 2020, as ~~no changes were necessary~~ *since these documents are not required to be revised for a periodic SMP update (WAC 173-26-090.2.c.iii)*<sup>3</sup>.

This textual change makes clear the reason these documents were updated isn’t because they are necessarily up-to-date but because it isn’t a requirement of the Washington’s Shoreline Management Act (SMA).<sup>4</sup>

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<sup>1</sup> Hereafter referred to as the *SMP Update*.

<sup>2</sup> Each sub-section identifies the heading in the *SMP Update* that we are commenting on. For example, *SMP.1.D* refers to Section D of Chapter 1 of the *SMP Update*.

<sup>3</sup> “...There is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans”.

<sup>4</sup> State of Revised Code of Washington (RCW), Chapter 90.58

Secondly, for substantive public comment, and to meet requirements of your Public Participation Plan<sup>5</sup>, it needs to be clear to the public where these documents are located. We were able to locate the documents after contacting the City, but links from the SMP Update website would be less onerous on the public. Regardless of the requirements for an SMP Update, we note that the *Cumulative Impacts Report*<sup>6</sup> doesn't consider shrub steppe or wildlife corridors. Washington Department of Fish and Wildlife's (WDFW) Priority Habitat and Species (PHS) mapping tool<sup>7</sup> indicates the following occurrences of PHS in Reach 2: Biodiversity Areas And Corridor: Yakima River Delta (extends into West Richland), multiple areas of Freshwater Forested/Shrub Wetland, and (at township level) Townsend Ground Squirrel and Ferruginous Hawk. Reach 1 includes multiple instances of Freshwater Forested/Shrub Wetland, multiple instances of Shrub Steppe and Aquatic Habitat, occurrences of Burrowing Owl, and the possibility of Ferruginous Hawk (in addition to the fish species already identified in the report). Further, the *Restoration Plan*<sup>8</sup> includes no restoration plan for Shrub Steppe, the primary ecosystem of our area.

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<sup>5</sup> "VI. Public Participation Opportunities A. Communication Program: "Website: The City will use their website, [www.westrichland.org](http://www.westrichland.org), to allow for interested citizens to access draft documents and maps, view the project schedule, check for meeting notices and materials, see submitted public comments, obtain contact information, and submit comments." P. 5, *City of West Richland Shoreline Master Program Update Public Participation Plan*, 2020. [https://www.westrichland.org/download/Planning-Community%20Development/shoreline\\_master\\_program/2020\\_update/20200310\\_West\\_Richland\\_SMP\\_Public\\_Participation\\_Plan\\_2190707\\_Revised.pdf](https://www.westrichland.org/download/Planning-Community%20Development/shoreline_master_program/2020_update/20200310_West_Richland_SMP_Public_Participation_Plan_2190707_Revised.pdf).

<sup>6</sup> *City of West Richland Cumulative Impacts Analysis; Yakima River, Revised Draft*. February 14, 2014. [https://www.westrichland.org/download/Planning-Community%20Development/shoreline\\_master\\_program/previous\\_documents/02112014\\_Draft\\_SMP\\_Cumulative\\_Impacts\\_Analysis\\_2120388\\_30.pdf](https://www.westrichland.org/download/Planning-Community%20Development/shoreline_master_program/previous_documents/02112014_Draft_SMP_Cumulative_Impacts_Analysis_2120388_30.pdf)

<sup>7</sup> PHS on the Web. <https://geodataservices.wdfw.wa.gov/hp/phs/>

<sup>8</sup> *Restoration Plan, Shoreline Master Program Update – West Richland, Washington*. August 5, 2014. [https://www.westrichland.org/download/Planning-Community%20Development/shoreline\\_master\\_program/previous\\_documents/20140805\\_Final\\_West\\_Richland\\_Shoreline\\_Restoration\\_Plan\\_2120388.pdf](https://www.westrichland.org/download/Planning-Community%20Development/shoreline_master_program/previous_documents/20140805_Final_West_Richland_Shoreline_Restoration_Plan_2120388.pdf)

### **1.3 Section E. Shoreline Master Program Basics (SMP.1.E)**

In the description of the process for applying for shoreline development permits, it would be informative to the public to add the state agencies that are likely to be involved in the permitting process for shoreline development.

... contiguous floodplain areas landward two hundred (200) feet from such floodways; and additionally all wetlands and river deltas associated with such rivers, streams, lakes, and tidal waters (RCW 90.58.030). ~~Buffers for these associated wetlands and floodplains outside of two hundred (200) feet of the floodway are not included in the City's shoreline jurisdiction.~~ Within the City, the Yakima River, and its associated wetlands and floodways are within SMA shoreline jurisdiction and the Yakima River is a Shoreline of Statewide Significance.

*Buffers for any critical area, including those for associated wetlands and floodplains, outside of two hundred (200) feet of the floodway are not included in the City's shoreline jurisdiction.*

Added text so that all critical area buffers are treated consistently.

## **2 Master Program Elements (SMP.2)**

### **2.1 Conservation Element (SMP.2.G)**

Add a third objective stating:

*c. Identify sites that have potential for shoreline restoration within the shoreline jurisdiction and prioritize for grants*

### **2.2 Historic, Cultural, Scientific, and Educational Element (SMP.2.H.1; Goal)**

Ensure the recognition, protection, preservation, and restoration of areas in the shoreline jurisdiction and create a unique 'sense of place ...

This goal is opaque. The mention of 'public facilities' and 'recreation' seems to imply that development of facilities and recreation opportunities is one of the goals of this section; such development is contrary to the first goal of protection of historical/cultural/educational resources. Either remove this goal or make it clear. Perhaps a statement like: "Foster a "unique sense of place" through public outreach and passive recreational opportunities". Alternately, adopt model



language for this goal from the Washington Department of Ecology’s (WDOE) Shoreline Master Programs Handbook:<sup>9</sup>

*Shoreline features of historic, cultural, archaeological, or scientific value as determined by the Washington Department of Archaeology and Historic Preservation should be protected to prevent the destruction of, or damage to, any site having archaeological, historic, cultural, or scientific value through coordination and consultation with the appropriate local, state and federal authorities, including affected Indian tribes.<sup>10</sup>*

### **2.3 Chapter 2, Section I, subsection 1: Flood Hazard Prevention Element; Goal**

Provide for the statewide interest to prevent and minimize flood damages. ~~Recognize statewide interests over individual interests in the prevention and minimization of flood damages.~~

Our proposed language is based on RCW 90.58.100.2.h: “An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; ...”

## **3 Chapter 3: Environment Designations**

### **3.1 Chapter 3, Section A: Summary**

The intent of a shoreline environment designation is to regulate development in a way that preserves and enhances ecological functions in the shoreline jurisdiction and improves the character of the City’s shoreline...

~~The intent of a shoreline environment designation is to preserve and enhance ecological functions in the shoreline jurisdiction and to encourage development that will improve the present or desired future character of the City’s shoreline jurisdiction. ....~~

The SMP is required to ensure “no net loss of ecological functions necessary to sustain shoreline natural resources”.<sup>11</sup> The intent of environment designations is to ensure “no net loss” to ecological functions in a way that accommodates “appropriate and necessary shoreline uses

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<sup>9</sup> *Shoreline Master Programs Handbook*, Washington Department of Ecology Publication 11-06-010, December 2017, hereafter referred to as *SMP Handbook*.

<sup>10</sup> Appendix B, “Model Language for cultural resources and forest practices”, *SMP Handbook*, P. 2.

<sup>11</sup> Washington Administrative Code (WAC), 173-26-201.c

and development”. That is, the intent of the designations is not to *encourage* development, but instead to ensure that development results in no net loss of ecological function.

Based on the four (4) criteria found in the SMP Guidelines, the SMP establishes ~~four (4)~~ *five* (5) shoreline environments for the City. They ~~include~~ are:

The “natural” environmental designation suggested by the *SMP Guidelines*<sup>12</sup> is missing, even though an early draft of the Shoreline Inventory and Characterization report specifically mentions shoreline that

Reach 1 is currently undeveloped and consists primarily of upland shrub/scrub range land. Irrigated agriculture occurs in the vicinity of Reach 2, though very little land within the shoreline jurisdiction itself is cultivated; the remainder of the reach consists primarily of undeveloped wetlands and their associated buffers.<sup>13</sup>

Further, in its Summary Table, the Draft Inventory Report notes under entries for “Restoration Opportunities” and “Protection/Restoration/Development Areas” for Reach 1 that “Reach is currently undeveloped and therefore provides habitat functions that can be protected...restoration or potentially protection would be appropriate throughout the reach”.

The *SMP Guidelines* state

The purpose of the "natural" environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use.<sup>14</sup>

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<sup>12</sup> WAC Chapter 173-26, *State Master Program Approval/Amendment Procedures and Master Program Guidelines*, hereafter referred to as *SMP Guidelines*.

<sup>13</sup> *Shoreline Inventory and Characterization, Shoreline Master Program Update – West Richland, Washington*, January 17, 2013 Draft from Planning Commission Packet for 2/14/2013, hereafter referred to as *Draft Inventory Report*. <https://www.westrichland.org/download/Planning-Community%20Development/Planning-Commission-Minutes/2013/02%2014%2013%20Planning%20Commission%20Packet.pdf>.

<sup>14</sup> WAC 173-26-211.5.a.i

Further, West Richlands Comprehensive Plan<sup>15</sup> assigns the “Urban Transition” land use to the area upland of Reach 1. This land use “is assigned to lands that are to be held in a transition status during the 20-year planning period of the comprehensive plan...Uses of land designated Urban Transition are intended to be temporary to provide the City a basis to evaluate future needs for additional land in other land use designations.”<sup>16</sup>

This area is part of the urban transition zoning district, which is “intended to be applied to all properties of importance to the future growth of the city but which are outside of the 2017 – 2037 planning horizon... The purpose of the district is to allow those lands which were annexed into the city prior to the adoption of the Growth Management Act to remain within the city and continue to be used for farming and agricultural activities until such time that demand dictates a change in land use.”<sup>17</sup>

By assigning the “Natural” designation to areas within Reach 1, the City can prevent premature development of areas which might better be reserved for open space, wildlife, or parks. The Natural Designation may also be suitable for areas with an associated land use of “Low-Density Residential”, such as the shoreline near the sewage treatment plant.

### **3.2 Shoreline Areas Not Mapped or Designated (SMP.3.B)**

Any undesignated areas of the City’s shoreline jurisdiction in the City are assigned automatically an Urban Conservancy shoreline environment designation. This includes any areas annexed into the City that would fall within the City’s shoreline jurisdiction. ~~Currently no part of the City’s Urban Growth Area (UGA) falls within the shoreline jurisdiction of the SMA.~~ *Currently no part of the shoreline jurisdiction of the SMP falls outside of the City’s Urban Growth Area (UGA).*

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<sup>15</sup>City of West Richland Comprehensive Plan 2017 Update, hereafter referred to as the *Comp. Plan*.

<sup>16</sup> Comp. Plan p. 23.

<sup>17</sup> West Richland Municipal Code (WRMC) 17.23.010.

The modified text provides justification for using “Urban Conservancy” designation as default rather than “Rural Conservancy”, see WAC 173-26-211.2.e. It’s clearly untrue that “no part of the [UGA] falls within the [shoreline jurisdiction]”, see Figure 1.

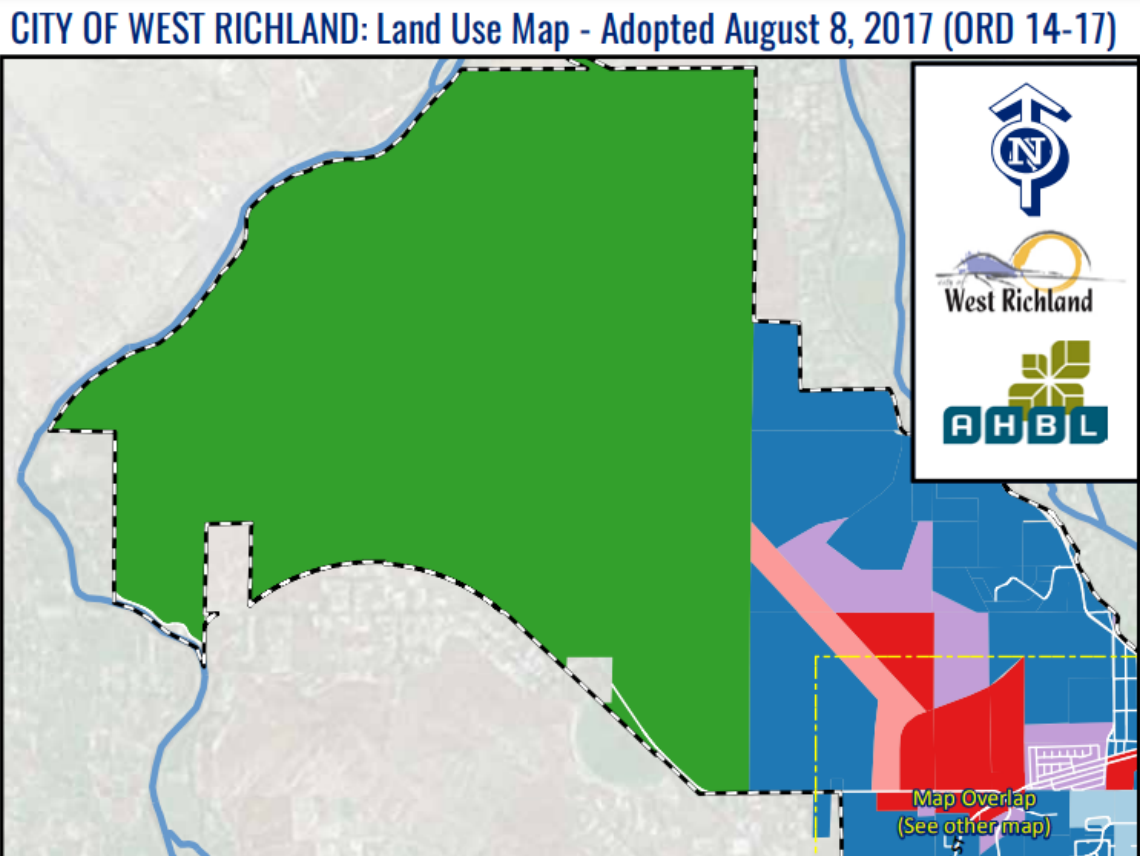


Figure 1. Land Use Map, West Richland comprehensive Plan.

### 3.3 Designations and Policies (SMP 3.E)

#### 3.3.1 (SMP 3.E.1)

##### a. Purpose

The purpose of the High Intensity shoreline environment designation is to provide for high intensity water-oriented commercial and transportation uses while protecting existing ecological functions and restoring ecological functions in areas in the shoreline jurisdiction that have been

~~degraded. Where water dependent uses are not possible within this designation, because the Yakima River is unnavigable, or where this designation is used as a parallel designation that is not adjacent to the ordinary high water mark, the City allows for non water related uses within this designation to meet the requirements of the GMA.~~

The stricken text is more clearly covered in the given policy statements.

### **3.3.1.1.1 Management Policies (SMP 3.E.1.d)**

2. Allow the development of new non-water-oriented uses on sites where ~~there is no direct physical access to the City's shoreline jurisdiction or where~~ the applicant can demonstrate that the use will not conflict with or limit opportunities for water-oriented uses.

The stricken text is confusing even though it appears to be based on the SMP Guidelines.<sup>18</sup>

Not all water-oriented uses--such as aesthetic enjoyment--require direct physical access to the shoreline.

Additionally, add a policy based on WAC 117-26-211.d.2.E:

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

### **3.3.1.2 Natural Environment (SMP 3.E.5?)**

As noted above, the City should include a “natural” environment based on the guidelines given in WAC 117-26-211.5.a. This designation should be used for shoreline that is ecologically intact, especially where the land use is “Urban Conservancy” or “Low-Density Residential”. Add the following language based on the *SMP Guidelines*:

#### *5. Natural Environment*

##### *a. Purpose*

*The purpose of the Natural shoreline environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline*

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<sup>18</sup> WAC 117-26-211.5.d.2.A

*functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes.*

*b. Designation Criteria*

*A Natural environment designation should be assigned to shoreline areas if any of the following characteristics apply*

- 1. The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;*
- 2. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or*
- 3. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.*

*c. Designated Areas*

*The Natural shoreline environment designation is assigned to<sup>19</sup>*

- 1. Those areas in the shoreline jurisdiction within Reach 1 north of Overlook Drive, excluding parcels 130072010729001 and 109074000000000; and*
- 2. Those areas in the shoreline jurisdiction within Reach 2 east of N. 46th avenue and north of the Van Giesen Bridge, excluding parcels 132082013345005, [parcels immediately north of Van Giesen that are already developed or have potential – approximately anything south of the northern most point on Fallon Drive].*

*d. Management Policies*

- 1) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.*
- 2) The following new uses should not be allowed in the Natural environment:*
  - a) Commercial uses.*
  - b) Industrial uses.*
  - c) Non-water-oriented recreation.*
  - d) Roads, utility corridors, and parking areas that can be located outside of Natural designated shorelines.*
- 3) Single-family residential development may be allowed as a conditional use within the Natural environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.*

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<sup>19</sup> These designated areas are a suggested starting point. They include undeveloped portions of the jurisdiction including Fox Island and areas adjacent to shrub steppe. The specified parcels have already been developed.

- 4) *Agricultural uses of a very low intensity nature may be consistent with the natural environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.*
- 5) *Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.*
- 6) *New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.*

## **4 General Regulations (SMP 4)**

### **4.1 Introduction (SMP 4.1.A)**

~~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.~~

These provisions implement the requirements given in the SMP guidelines regarding master program regulations (WAC 173-26-191.2.a.ii).

This given text doesn't make sense in this section. RCW 90.58.100 (2) describes the elements to be addressed by the SMP, which were addressed in SMP Chapter 2. WAC 173-26-186 describes the governing principles of the *SMP Guidelines*—the rules given in WAC 172-26. The revised text points to the WAC that specifies the contents of the regulations an SMP needs to contain.

### **4.2 Policies and Regulations (SMP 4.B)**

#### **4.2.1 Universally Applicable Policies and Regulations (SMP 4.B.1)**

Under policy 4 (“Periodically review conditions...”) add

*f. Ensure adequate shoreline vegetative cover for riparian ecosystem processes to function.*

#### **4.2.2 Archeological and Historic Resources (SMP 4.B.2)**

The given regulations only require that an evaluation be done when work is done in an area “documented to contain archeological resources” but does not specify what is to be done with the result of the regulation. Further, the regulation only applies to tribal resources and does not address other resources identified by the DAHP. Given these and other shortcomings, the City should adopt WDOE’s *Cultural Resources Model Language for Shoreline Master Programs*.<sup>20</sup>

#### **4.2.3 Critical Areas (SMP 4.B.3)**

Make textual change to policy 3:

Promote human uses and values in critical area provisions, such as public access and aesthetic values, provided they do not ~~significantly~~ adversely impact ecological functions.

The SMA doesn’t allow impact to ecological functions or a judgement call as to what is ‘significant’.

##### **4.2.3.1 (Critical Area) Regulations (SMP 4.B.3.c)**

Make textual change:

1. If there is a conflict between the provisions of SMP Appendix 2: Critical Area Provisions (*CAP*) in the Shoreline Jurisdiction and other parts of the SMP, the provisions *most protective of the ecological functions* of the City’s shoreline jurisdiction shall apply, as determined by the City’s Shoreline Administrator.

Add regulations and clarifications regarding buffers for critical areas that lie outside of the shoreline jurisdiction and for Critical Areas (CA) within the shoreline jurisdiction with buffers that extend outside the shoreline jurisdiction. Here’s what my understanding of RCW

36.70A.480.6) results in:<sup>21</sup>

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<sup>20</sup> <https://fortress.wa.gov/ecy/publications/parts/1106010part20.pdf>

<sup>21</sup> Based on our understanding of guidance given in the *SMP Handbook* (<https://fortress.wa.gov/ecy/publications/parts/1106010part18.pdf>). Note that the SMP explicitly



2. *When a Critical Area (CA) within the shoreline jurisdiction requires buffers--as determined by the CAP--that extend outside of the shoreline jurisdiction, then the CA and its buffers are regulated by the Critical Areas Ordinance (CAO) [WRMC 18.25]. In addition, all regulations of the SMP will apply to the portion of the CA and its buffers that occur within the shoreline jurisdiction.*

3. *Any area within the shoreline jurisdiction that is within a buffer for a CA that lies outside the shoreline jurisdiction is subject to the regulations given in the CAO as well as all critical area provisions of the SMP*

Sorry it's so confusing, but you see why this has got to be made clear. And in order to reduce further confusion we should make sure that the CAO is amended to include all the critical areas defined in the SMP Update and require buffers at least as great as those required by the SMP. Otherwise, the SMP might require a buffer outside its jurisdiction that isn't enforced by the CAO.

#### **4.2.4 Environmental Impacts (SMP 4.B.4)**

Modify the regulations;

The environmental impacts of development proposals shall be analyzed. *The analysis will include the impact of the development on the indicators given in Table [indicate accompanying table]* and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the SMP and other applicable regulations. When applicable, development shall meet the requirements of the State Environmental Policy Act of 1971 (SEPA), as amended.

Add table with selected indicators drawn from the *SMP Handbook*<sup>22</sup>; possible indicators include:

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excludes areas required for buffers from the shoreline jurisdiction in Chapter 1, Section E: "Buffers for these associated wetlands and floodplains outside of two hundred (200) feet of the floodway are not included in the City's shoreline jurisdiction." See our comments for that section suggesting that the buffers for all critical areas be treated the same way.

<sup>22</sup> "Potential No Net Loss Indicators for Shoreline Master Programs", Table 4-1, Chapter 4, No Net Loss of Shoreline Ecological Functions, *Shoreline Master Program Handbook*.  
<https://fortress.wa.gov/ecy/publications/parts/1106010part4.pdf>

- “Shoreline stabilization: Linear length or area of bulkheads, revetments, ...” These “interrupt habitat-forming processes [resulting in] loss of nesting sites [and other functions]”.
- “Marine & freshwater riparian vegetation: Linear measurement of mature native riparian vegetation of a given width (buffer width) or percent cover of different vegetation classes”. Removal results in loss of multiple ecological functions, including “capacity of riparian vegetation to filter surface flows, sediment, phosphorous and toxics; subsurface removal or conversion of nitrogen, pathogens”.
- Loss of “Acres of permanently protected areas, with no or limited development”

Other indicators to include are number of overwater structures (increased predation), length of roads and impermeable surfaces (increased sediment and toxins), road crossings (results in channel confinement), water quality measures, levees and dikes (impacts floodplain) and other flood plain impairments, effects on nesting eagles, ospreys, and herons, introduction of invasive vegetation, and loss of wetland acreage.

#### **4.2.5 Flood Hazard Reduction (SMP 4.B.5)**

Note that most areas subject to flooding in West Richland<sup>23</sup> lie in areas which we have proposed to be designated as “Natural” and have little existing development. Also note that in the largest area of flood risk—within Reach 1 north of Van Giesen—the flood plain extends beyond the shoreline jurisdiction. Since flood plains are a critical area, this means any projects in this

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<sup>23</sup> Based on *Benton County, Washington Natural Hazard Mitigation Plan 2019 Revision*, found in agenda packet for West Richland City Council Special Meeting, July 30, 2019. <https://www.westrichland.org/download/City%20Council/Packets/2019/07-30-19-Special-Meeting.pdf>

area are subject to West Richland’s Critical Areas Ordinance in addition to the regulations in the SMP.

#### **4.2.6 Public Access (SMP 4.B.6)**

Modify this text from Policy 3:

Protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water *unobscured by development*, consistent with the overall best interest of the state and the people generally, to the greatest extent feasible.

Note that “view protection does not allow for excessive vegetation removal to create views or enhance existing views.”<sup>24</sup>

#### **4.2.7 Restoration (SMP 4.B.7)**

The City shall prepare a Restoration *Plan* as part of the SMP update process. The plan shall guide the City’s voluntary efforts to achieve overall improvements over time when compared to the baseline condition at the time of the adoption of the SMP update.

This text is inconsistent with the text in SMP 1.D, which says that no changes were made to the Restoration Plan. Perhaps distinguish a *comprehensive* SMP update from a *periodic* SMP update?

The SMP Guidelines stipulate that:

For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals. These master program elements regarding restoration should make real and meaningful use of established or funded nonregulatory policies and programs that contribute to restoration of ecological functions, and should appropriately consider the direct or indirect effects of other regulatory or nonregulatory

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<sup>24</sup> Chapter 9, Shoreline Public Access. *SMP Handbook*, p. 11.  
<https://fortress.wa.gov/ecy/publications/parts/1106010part9.pdf>.

programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.<sup>25</sup>

The Shoreline Inventory Report notes that segments of the Yakima River have been listed as ‘impaired’ by WDOE.<sup>26</sup> The City should include policies and regulations to address these impairments as required by the SMA.

#### **4.2.8 Shoreline Modification (SMP 4.B.8)**

##### **4.2.8.1 Table 1.**

Having a table that says “Clearing and Grading” is Permitted seems like it will lead to trouble. Change the text of the key:

P = Permitted Use, *but only if zoning allows and done in accordance with regulations in SMP Chapter 4.B.10.*

Also, saying something is ‘prohibited’ where it is not possible isn’t very useful. Add an additional key:

N/A = Not Applicable

Change the ‘X’s in the table to ‘N/A’. Also, add a column for Natural Environment, prohibiting Fill, making Clearing and Grading a conditional use, and marking Dredging as Not Applicable.

Under Regulations, correct the following:

The City’s Shoreline Administrator shall base all shoreline modification decisions on **all** available scientific and technical information and a comprehensive analysis of site-specific conditions provided by the applicant as detailed below., ~~as stated in WAC 173-26-231.~~

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<sup>25</sup> WAC 173.26.186.8c

<sup>26</sup> p. 34, City of West Richland, *Shoreline Inventory and Characterization*, October 7, 2013, hereafter referred to as the *Shoreline Inventory*.

Here we added the word “all” to be consistent with RCW 90.58.100: “Utilize *all* available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data”. WAC 173-26-231 does not describe “a comprehensive analysis of site-specific conditions”; it instead specifies what provisions for shoreline modifications must be implemented by the SMP.

#### **4.2.8.2 Dredging (SMP 4.B.8.d)**

Alter regulation:

Proposals for dredging and dredge disposal shall include details on all feasible mitigation measures to protect aquatic habitats. Dredging and dredge disposal shall not create a net loss of ecological functions in the shoreline jurisdiction [as determined by the analysis described in SMP 4.B.4](#). ~~Dredge disposal within CMZs is discouraged, and in the limited instances when it is allowed, requires a shoreline conditional use permit.~~

The stricken text is redundant, already stated in regulation c. in this section.

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#### **4.2.8.3 Fill (SMP 4.B.8.e)**

Add the following policies from the SMP Guidelines:

- a) Fills shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.

Add the following regulations from the SMP Guidelines:

- b) Fills waterward of the ordinary high-water mark shall be allowed only when necessary to support one of the following uses:
  - a. Water-dependent use;
  - b. public access;
  - c. cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
  - d. disposal of dredged material considered suitable under, and conducted in accordance with the dredged material management program of the department of natural resources;

- e. expansion or alteration of transportation facilities of statewide significance currently located on the shoreline, but only upon demonstration that alternatives to fill are not feasible;
- f. mitigation action;
- g. environmental restoration;
- h. beach nourishment; or
- i. enhancement project.

The SMP Guidelines stipulate that “Fills waterward of the ordinary high-water mark for any use except ecological restoration require a conditional use permit.” This is redundant in the code because a conditional use permit is required for all fill activity, but it would be advisable to somehow express that conditional permits for any activity other than ‘ecological restoration’ require special scrutiny.

#### **4.2.8.4 Shoreline Stabilization (SMP 4.B.8.f)**

Add the following design criteria to regulation SMP 4.B.8.f.3.k:<sup>27</sup>

*5) Use measures designed to assure no net loss of shoreline ecological functions.*

#### **4.2.8.5 Piers and Docks (SMP 4.B.8.g?)**

Add a section giving policies and regulations regarding Piers and Docks as a shoreline modification based on the *SMP Guidelines*.<sup>28</sup>:

*e. Piers and docks*

##### *1. Purpose*

*The purpose of these shoreline stabilization general regulations is to prevent impacts to ecological functions and processes that may occur because of installation and maintenance of piers and docks within the City’s shoreline jurisdiction.*

##### *2. Policies*

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<sup>27</sup> See *SMP Guidelines*, WAC 173-26-231.3.a.iii.E, first bullet: “Use measures designed to assure no net loss of shoreline ecological functions”.

<sup>28</sup> WAC 173-26-231.3.b.

- a. *New piers and docks shall be allowed only for water-dependent uses or public access. As used here, a dock associated with a single-family residence is a water-dependent use provided that it is designed and intended as a facility for access to watercraft and otherwise complies with the provisions of this section.*
- b. *Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use.*
- c. *Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of water-dependent uses, provided the minimum size requirement needed to meet the water-dependent use is not violated.*

### 3. Regulations

- a. *New pier or dock construction, excluding docks accessory to single-family residences, will be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses.*
- b. *If a port district or other public or commercial entity involving water-dependent uses has performed a needs analysis or comprehensive master plan projecting the future needs for pier or dock space, and if the plan or analysis is approved by the local government and consistent with these guidelines, it may serve as the necessary justification for pier design, size, and construction.*
- c. *Docks or piers constructed for new residential development of two or more dwellings must provide joint use or community dock facilities rather than allow individual docks for each residence.*
- d. *Piers and docks, including those accessory to single-family residences, shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions, critical areas resources such as fish habitats, and processes such as currents.*
- e. *All docks and piers shall be made of materials that have been approved by applicable state agencies.*

#### **4.2.9 Shorelines of State Significance, Policies (SMC 4.B.9.b)**

Adopt language from the *SMP Guidelines* to further clarify the policies:

- 1. Recognize and protect the statewide interest over local interest.
  - a. Make all information associated with the SMP and proposed amendments publicly available, and consider comments and opinions from groups and individuals representing statewide interests when developing and amending the SMP.

- b. *Consult with applicable state agencies, affected Indian tribes, and statewide interest groups and consider their recommendations in preparing shoreline master program provisions.*
- c. *Recognize and take into account state agencies' policies, programs, and recommendations in developing use regulations.*
- d. *Base public access and recreation requirements on demand projections that take into account the activities of state agencies and the interests of the citizens of the state to visit public shore- lines with special scenic qualities or cultural or recreational opportunities*

2. Preserve the natural character of the City’s shoreline jurisdiction.

- a. *Prepare and administer master program provisions on the basis of preserving the shorelines for future generations;*
- b. *Where natural resources of statewide importance are being diminished over time, include and administer SMP provisions to contribute to the restoration of those resources;*
- c. Designate and administer shoreline environments and use regulations to protect and restore the City’s shoreline jurisdiction’s ecology and character and the diversity of vegetation and habitat associated with areas of the shoreline jurisdiction; and
- d. All development and redevelopment activities within the City’s shoreline jurisdiction should be designed to achieve no net loss of the ecological functions of the shoreline jurisdiction.

...

**4.2.10 Vegetative Conservation (SMC 4.B.10)**

Remove text “(Clearing and Grading)” from heading, since ‘Clearing and Grading’ is not the same thing as “Vegetative Conservation”.

Also, use the concept of ‘buffer’ separately from ‘setback’ as suggested by the *SMP Handbook*.<sup>29</sup> This will allow the City to better regulate vegetation modification where it most affects shoreline ecological functions. Below we suggested prohibiting modifying shoreline riparian buffers where they are required.

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<sup>29</sup> Chapter 11, Vegetation Conservation, Buffers and Setbacks, *SMP Handbook*



## ***Purpose***

The Intent of vegetation conservation in the shoreline jurisdiction is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation in the City’s shoreline jurisdiction. Provisions for vegetation conservation in the shoreline jurisdiction include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and non-native species.

~~Clearing and grading includes the activities associated with developing any kind of development. Clearing involves the removal of vegetation and /or topsoil, while 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.~~

Definitions for “clearing” and “grading” are given in SMP 7; having definitions in multiple places is inconsistent. While the definition of clearing in SMP 7 includes the removal of woody debris, this definition doesn’t. Note that the SMP Guidelines direct that

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and Management Recommendations for Washington's Priority Habitats, prepared by the Washington state department of fish and wildlife where applicable.<sup>30</sup>

And that WDFW recommends cities should:

Prohibit removal, relocation, or modification of large woody debris in aquatic habitats and adjacent banks except when posing an immediate threat to public safety or critical facilities. Assessments of safety threat posed by LWD should be determined in consultation with a qualified geomorphologist.<sup>31</sup>

### ***a. Policies***

1. Allow clearing and grading only in concert with permitted development in the shoreline jurisdiction.
2. Require clearing and grading activities to be minimized to the extent necessary to accommodate the scope of work within the City’s shoreline jurisdiction.

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<sup>30</sup> WAC 173-26-221.5.b, p. 79.

<sup>31</sup> “Large Woody Debris Recruitment Management Recommendations”, Table 3.2.6 in WDFW, *Land Use Planning for Salmon, Steelhead and Trout*, WDFW, October 2009. Hereafter referred to as *Planning for Salmon*. p. 59. .

3. Require that BMPs be utilized during clearing and grading activity consistent with the City’s stormwater management program and the SMP.
4. Prohibit speculative clearing, grading, or vegetation removal within the *shoreline jurisdiction* ~~required shoreline setback from the ordinary high water mark.~~

Clearing and grading is to be done only as part of approved development plan or activity.

5. Conserve native riparian vegetation in the shoreline jurisdiction by restricting clearing and grading within shoreline setback from the ordinary high water mark to maintain ecological functions in the shoreline jurisdiction.
6. Allow clearing activities associated with dike or levee maintenance as necessary to provide protection from flood hazards.
7. Explore opportunities for weed management to eliminate invasive non-native vegetation invasives and encourage the planting and enhancement of native vegetation along the Yakima River.

***c. Regulations***

~~1. Allow clearing and grading as a permitted or conditional use in all shoreline environments as noted in SMP Chapter 4: General Regulations, Section B.8 Table 1: Shoreline Modifications.~~

...

This is a policy, not a regulation. Also, doesn’t make clear that clearing is only allowed as part of an approved development plan or activity.

1. *When replanting is required under the provisions of the SMP, the following requirements must be met:*
  - a. *Only native plant materials that are equivalent to those which would typically occur with respect to size, structure, and diversity at maturation shall be used;*
  - b. *Replanted areas in the shoreline jurisdiction shall be planned and maintained such that, within three (3) years, the vegetation is at least ninety (90) percent reestablished, and that the reestablished vegetation is monitored and maintained in perpetuity.*

The city needs some way to ensure that the replantings are done properly and maintained; added this here so it didn’t have to be repeated everywhere replanting is required. Also making sure the provisions given below in regulation (11) apply to all replanting.

2. Clearing and grading shall be minimized in the shoreline jurisdiction and areas cleared of vegetation and not developed shall be replanted as soon as possible
3. Clearing and grading activities associated with the necessary maintenance of flood hazard prevention structures for the purposes of maintaining flood protection are allowed.
4. During construction, vegetation in the shoreline jurisdiction shall be protected by placement of a temporary barricade at the location of the shoreline setback from the ordinary high water mark and implementation of appropriate erosion and sedimentation controls.
5. Surface water runoff related to clearing and grading associated with development in the shoreline jurisdiction shall be minimized and comply with the City's stormwater management program and all applicable regulations.
6. *Outside of riparian buffers*, normal maintenance, if found to comply with SMP Chapter 6: Administration, including pruning and trimming of vegetation, shall be allowed within the City's shoreline jurisdiction *subject to the following regulations*:
  - a. *Topping of trees shall not be allowed;*
  - b. *Pruning does not affect ecological functions;*
  - c. *Pruning shall comply with the National Arborist Association pruning standards; and*
  - d. *No more than twenty percent (20%) of the limbs on any single tree may be removed and no more than twenty percent (20%) of the canopy cover in any single stand of trees may be removed in a given five-year period, unless the tree is a hazard tree as certified by an arborist and approved by the Shoreline Administrator.*

These regulations are meant to ensure that pruning doesn't alter the nature of the shoreline; adapted from Island County's SMP.

7. Clearing of invasive non-native vegetation in the shoreline jurisdiction as identified by the State of Washington and/or Benton County as a noxious weed is allowed in the City's shoreline jurisdiction *when replaced with native vegetation meeting the requirements of 4.B.10.c.1 under an approved and monitored mitigation plan.*
8. Removal of invasive non-native vegetation in the shoreline jurisdiction is allowed if only hand-held equipment is used and native vegetation *meeting the requirements of SMP 4.B.10.c.1* is promptly reestablished in the disturbed area *under an approved and monitored mitigation plan.*

9. Clearing and grading activities and related alteration of the natural landscape shall only be allowed in association with a permitted use or development in the shoreline jurisdiction or a letter of exemption with limited exceptions as set forth below:
  - c. Removal of noxious weeds as listed by the state in WAC Chapter 16-750, provided such activity must be conducted in a manner consistent with BMPs and the City's engineering standards and stormwater management program. Native vegetation shall be promptly reestablished in the disturbed area *as specified in SMP 4.b.10.c.1 under an approved and monitored mitigation plan.*; ~~or~~

(The hanging 'or' probably left over from a previous draft)

- d. Pruning consistent with accepted arboricultural practices, maintenance of existing ornamental landscapes and other activities allowed pursuant to these regulations *outside of riparian buffer zones.*; ~~if said~~ Modifications *must be* conducted in a manner consistent with the SMP and results in no net loss to ecological functions or critical fish and wildlife habitats.
- e. ~~Mosquito abatement activities specifically authorized by the Benton County Mosquito Control District.~~

These activities shouldn't require clearing. If they do, then the activity should be mitigated under normal SEPA processes.

10. Restoration of any part of the shoreline jurisdiction that has been disturbed or degraded shall use native plant materials, unless such restoration occurs within a developed and maintained ornamental landscape, in which case non-invasive plant materials, similar to that which most recently occurred on-site, may be used.
11. Surfaces cleared of vegetation and not developed must be replanted with native species as specified in SMP 4.b.10.c.1. ~~or by other species as approved by the City's Shoreline Administrator within one (1) year. Replanted areas in the shoreline jurisdiction shall be planned and maintained such that, within three (3) years, the vegetation is at least ninety (90) percent reestablished.~~
12. Aquatic vegetation control shall only occur where native plant communities and associated habitats are threatened or where an existing water-dependent use is restricted by the presence of weeds. Aquatic vegetation control shall occur in compliance with all other applicable laws and standards, including Washington State Department of Fish and Wildlife (WDFW) requirements.
13. *Natural features such as snags, stumps, logs, drift logs, beaver dams, or uprooted trees shall be left undisturbed to support fish and other aquatic systems, except where they would adversely affect navigation or represent a human health or safety risk.*

- 14. A shoreline permit or written statement of exemption shall not mandate, nor guarantee, unobstructed horizontal or lateral visibility of the water, shoreline, or any specific feature near or far.*
- 15. Subdivision of property shall be in a configuration that will not require significant vegetation removal or shoreline modification and that will not adversely impact ecological functions. Each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.*
- 16. Clearing and grading shall be timed to minimize disturbance to nesting birds,*
- 17. Clearing and grading in critical area or shoreline buffers is prohibited.*

These last provisions clarify that downed wood can't be cleared and that cutting for 'views' is not allowed. While the provisions in this section apply to all areas of the shoreline jurisdiction, areas designated as buffers should be left alone in order to ensure ecological functions are maintained. Also ensure that new plats are examined to make sure that they won't require excess removal of vegetation.

## **5 Use Specific Regulations (SMP 5)**

### **5.1 Allowed Shoreline Uses (SMP 5.B)**

#### **5.1.1 Table 2: Permitted, Conditional, and Prohibited Uses**

Add a key for Not Applicable and add a column for 'Natural' Environment. Result will be like Table 1.

Shoreline Uses (1,2)					
	High Intensity	Shoreline Residential	Urban Conservancy	Aquatic (3)	Natural
<b>Agriculture</b>	P	P	P	✗ N/A	C
<b>Aquaculture</b>	✗ N/A	✗ N/A	✗ N/A	C	N/A
<b>Boating Facilities – Boat Launches and Docks</b>	C	C	C	C	X
<b>Civic</b>	P	P	C	✗ N/A	C
<b>Commercial (6)</b>	P	X	X(7)	✗ N/A	X
<b>Forest Practices</b>	X	X	X	✗ N/A	X
<b>In-Stream Structures</b>					
As Part of a Fish Habitat Enhancement Project	✗ N/A	✗ N/A	✗ N/A	C	N/A
<b>Industry</b>	X	X	X	X	X
<b>Mining</b>	X	X	X	X	X
<b>Parking (4)</b>	P	P	P	✗ N/A	C
<b>Recreational Development</b>					
Water-Oriented	P	P	P	P(5)	C
Non-Water-Oriented	C	C	C	✗ N/A	X
<b>Residential Development (6)</b>	P	P	P	✗ N/A	C
<b>Signs</b>	P	P	P	✗ N/A	C
<b>Transportation Facilities</b>					
New Roads related to Permitted Activities in the Shoreline Jurisdiction	P	P	P	P	C
Bridges for Motorized and Non-Motorized Uses	C	C	C	C	C
Expansions of Existing Circulation Systems outside of New Roads related to Permitted Activities in the Shoreline Jurisdiction	C	C	C	X	X
<b>Utilities (Primary)</b>					
Solid Waste Disposal or Transfer Sites	X	X	X	X	X
Other	C	C	C	C	C
<b>Utilities (Accessory)</b>					
Local Public Water, Electric, Natural Gas Distribution, Public Sewer Collection, Cable and Telephone Service, and Appurtenances	P	P	P	C	C

Table 1. Modified Use Matrix

## 5.2 Basic Shoreline Development Standards (SMP 5.C)

### *1. Riparian Buffers and Setbacks*

*a.* Interpretation of the Minimum Shoreline Setback from the Ordinary High Water Mark Table

...

[Note that the formatting and headings of this section differs from the others, we've made it bold here, since that's the way other headings at this level are formatted.]

*b. Unless otherwise specified in Table 3, the Riparian Buffer Width is 150 ft. from the OHWM and the required setback is 20 feet landward of the riparian buffer.*

### **5.2.1 Table 3 – Minimum Shoreline Setbacks from the Ordinary High Water Mark**

Modify the table, adding the key '- = *unspecified*'. Add a column for 'Natural', and set most entries to 'N/A', since development should be limited in natural areas. Entries for Shoreline Residential, Urban Conservancy, and Natural should be '-' for the following rows (where the current entry isn't 'N/A'): 'New agricultural activities only', all rows with labels containing 'Non-water-oriented structures', 'Off-Street Parking Lots or Structures as an Accessory Use', and 'Freestanding Sign Structures'.

### **5.2.2 Riparian Management Zones (RMZ), Buffer widths, and Setbacks**

This section provides the argument for 150-foot Riparian buffers with additional setbacks. This buffer width should be used for areas designated 'Urban Conservancy' and 'Natural'. It might be possible to decrease the buffer for Shoreline Residential if development density is controlled, but any reduction should be justified by WDFW management recommendations. Note that the 150-foot buffer width is also consistent with recommendations from the *SMP Handbook*:<sup>32</sup>

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<sup>32</sup> WDOE, *SMP Handbook*, Chapter 11 Vegetation Conservation, Buffers and Setbacks, p. 27. <https://fortress.wa.gov/ecy/publications/parts/1106010part11.pdf>

- Undeveloped shorelines with largely intact ecological functions should be protected with buffers of 150 feet to 200 feet...
- Rural residential development, where houses and appurtenances such as garages and sheds cover about 25 – 35 percent of the ground, some area is landscaped, and the rest is in native vegetation, would likely need buffers of 150 feet to protect existing functions.

We treat the width of the ‘riparian buffer’ separately from ‘setback’ as suggested by the *SMP Handbook*.<sup>33</sup> This will allow the City to better regulate vegetation modification where it most affects shoreline ecological functions.

The SMP Guidelines require that

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and *Management Recommendations for Washington's Priority Habitats*, prepared by the Washington state department of fish and wildlife where applicable.<sup>34</sup>

The latest recommendations from WDFW regarding riparian areas<sup>35</sup> state that the goal of regulations should be “avoiding and minimizing activities within the RMZ”. The RMZ is measured from the ordinary high-water mark or channel migration zone.<sup>36</sup> However, where “reestablishing a functional forest is currently impossible, we suggest protecting and restoring existing riparian functions”.<sup>37</sup> Note, however, that “the RMZ is the area in which full riparian function can potentially occur, and is thus not synonymous with *buffers* ... The RMZ differs

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Chapter 11, Vegetation Conservation, Buffers and Setbacks, *SMP Handbook*

<sup>34</sup> WAC 173-26-221.5.b.

<sup>35</sup> *Riparian Ecosystems, Volume 2: Management Recommendations, Public Review Draft*, WDFW, May 2018. No link on currently on WDFW’s site, available at <https://drive.google.com/file/d/1ZzsnP0FDMq5U1gFflkoc4-P2guI-gt2O/view?usp=sharing>; hereafter referred to as *Riparian Ecosystems*.

<sup>36</sup> *Ibid.*, p. 33.

<sup>37</sup> *Ibid.*, p. 24.



from buffers in one important way. Buffers are established through policy, whereas the RMZ a scientifically based description of the area adjacent to rivers and streams that has the potential to provide full function based on the SPTH200 conceptual framework.”<sup>38</sup>

As for the width of the RMZ, WDFW “recommends the width of RMZs in the Columbia Plateau ecoregion be based on the widest of three riparian functions: shade, wood (large and small), or pollutant removal.”<sup>39</sup> The recommendations use “site potential tree height” (SPTH) as a measurement of the ‘wood’ function. We weren’t able to determine a value for SPTH for West Richland given the methods outlined in *Riparian Ecosystems*; the best we could find was about 150 ft: the average 3<sup>rd</sup> quartile of this measurement in eastern Washington counties for which data was available.<sup>40</sup>

For pollutant removal, although *Riparian Ecosystems* states that “runoff containing excess nitrogen is a concern and a 95% removal efficacy is desired, then a 220 ft wide RMZ may be needed”, we did our best to plow through WDFW’s analysis of the science<sup>41</sup> and couldn’t convince ourselves that an RMZ wider than 150 ft. is required.

The recommendations do not seem to provide an easy answer to the question of buffer widths, but only provide general guidelines like: “buffers, which are often vegetated, protect the stream from the impact of adjacent land uses and should be established within the RMZ. The best buffer provides riparian functions similar to old forest conditions.”<sup>42</sup>

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<sup>38</sup> Ibid., p. 20, emphasis added.

<sup>39</sup> Ibid, p. 22.

<sup>40</sup> Ibid., p. A2-20.

<sup>41</sup> WDFW. July 2020. *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications*, Chapter 5: Pollutant Removal.

<sup>42</sup> Ibid., p. 28.

Recommendations regarding *setbacks* are more straightforward: “Include a building setback of at least 15 feet from habitat buffers”.<sup>43</sup>

## 6 Critical Area Provisions in the Shoreline Jurisdiction (SMP A.2)

### 6.1 Wetlands – Identification and delineation (SMP A.2.E)

The inclusion of the definitions of wetland rating categories is redundant and might become inconsistent with the categories given in WDFW’s rating system,<sup>44</sup> which the SMP includes by reference as the rating system to be used.

### 6.2 Wetlands – Regulated activities (SMP A.2.F)

c. Draining, flooding, or disturbing the water level or water table;

d. *Driving, piling or placing obstructions;*

‘Driving, piling, or placing obstructions’ prohibited by CAO 22.10.070

e. ~~Constructing, reconstructing, demolishing, ...~~

f. Destroying or altering native vegetation through clearing, harvesting, cutting, intentional burning, shading, or planting ~~non-native~~ ~~vegetation~~ that would negatively alter the functions of the wetland; and

Text from CAO 22.10.070 ensures that *native* plants that would alter the functions of the wetland aren’t introduced.

g. *Activities that result in significant changes in water temperature, physical or chemical characteristics of wetland water sources, introduction of pollutants, including water quantity and quality as stated in Chapter 90.03 RCW and Chapter 173-201 WAC;* ~~Activities from construction or development that result in significant, adverse changes in water temperature, physical or chemical characteristics of wetland water sources, including quantity and pollutants~~

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<sup>43</sup> *Planning for Salmon*, p. 86.

<sup>44</sup> *Washington State Wetland Rating System for Eastern Washington* (Ecology Publication No. 14-06-030), 2014, hereafter referred to as *Wetland Ratings*.  
<https://fortress.wa.gov/ecy/publications/documents/1406030.pdf>.

- h. *Activities from construction or development that result in significant, adverse changes in water temperature, physical or chemical characteristics of wetland water sources, including quantity and pollutants*
- i. *Any other activities affecting a wetland or wetland buffer not otherwise exempt from the provisions of this section*

Regulate all actions that cause damage, not just construction or development; ensure storm-water doesn't alter wetlands; make sure you haven't missed something.

Buffers shall be measured from the wetland edge as delineated using the 1987 Army Corps of Engineers Wetlands Delineation Manual and the Arid West Regional Supplement, as may be amended. Buffers shall be marked in the field.

### **6.3 Wetlands – Buffer areas (SMP A.2.J)**

Add buffer widths for “Wetlands of High Conservation Values” as specified by *Wetland Ratings*.<sup>45</sup> Buffer widths should be specified as 125 ft. for low impact uses, 190 ft. for Medium impact, and 250 ft. for High impact uses.

[We're skipping ahead to FWHCA, will submit comments on the remaining provisions regarding wetlands later...]

### **6.4 Critical Fish and Wildlife Habitat Conservation Areas (SMP A.2.R)**

Many of our recommendations in this section are based on the City of Richland's Critical Area Ordinance, which was revised after a review by the Growth Management Board.

Critical ~~F~~ish and ~~W~~ildlife ~~H~~abitat ~~C~~onservation ~~A~~reas (*FWHCA*) are those areas identified as being of critical importance in the maintenance and preservation of fish, wildlife, and natural vegetation. Areas that are identified or classified as FWHCA ~~critical fish and wildlife habitat conservation areas~~ shall be subject to the requirements of this section.

'Fish and Wildlife Habitat Conservation Area' is the term used in the GMA; reduces confusion. Be more precise about what is listed by federal and state:

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<sup>45</sup> *Wetland Ratings*, p. 6.

a. Areas with which federal or state endangered, threatened, and sensitive species of fish or wildlife have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term;

*1) Federal designated endangered and threatened species are those fish, wildlife and plant species identified by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that are in danger of extinction or threatened to become endangered. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service should be consulted as necessary for current listing status.*

*2) State designated endangered, threatened and sensitive species are those fish, wildlife and plant species native to the state of Washington identified by the State Department of Fish and Wildlife and/or State of Washington Natural Heritage Program that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. The state of Washington's Department of Fish and Wildlife and/or Natural Heritage Program maintains the most current listings and should be consulted as necessary for current state listing status;*

The GMA requires that plant species be protected. Better to define “areas associated” with these species as FWHCA; the determination of what alterations might cause a loss of ecological function is done when an action is proposed that may affect the FWHCA, otherwise you’ll be going around in circles.

b. *Areas associated with h*Habitats and species of local importance, ...

...

*2) Priority Habitats and Species (PHS) identified by the Washington State Department of Fish and Wildlife*

The purpose of this section is to define critical areas, and a ‘species of local importance’ is not an area. The GMA requires a determination what habitats and species are to be considered as “of local importance” must be based on the Best Available Science (BAS), and that WDFW is a recognized source of BAS.

c. *The areas listed as a national wildlife refuge, national park, natural area preserve or any preserve or reserve designated under WAC 332-30-151;*

d. *Documented habitat, other than accidental presence, of threatened or endangered species;*

e. Naturally occurring ponds ...

~~f. Waters of the state, including lakes, rivers, ponds, streams, inland waters, underground waters, and all other surface waters and watercourses within the jurisdiction of the state of Washington, as classified in WAC 222-16-031;~~

The term ‘Waters of the state’, defined by WAC 173-226-030.27, is not limited to ‘surface waters’, so this definition is inconsistent. Since ‘Waters of the State’ is one of the areas required by the GMA to be declared a FWHCA, it’s probably best to leave it as ‘Waters of the state’ to stay in compliance.

g. Lakes, ponds and streams planted with fish by a governmental agency, agency-sponsored group, or tribal entity;

i. State natural area preserves and natural resource conservation areas *and state wildlife areas*.

Many of the definitions of FWHCA that the City is required to protect under the GMA are given in WAC 365-190-130.

2. Mapping. *To determine the location and extent of fish and wildlife habitat conservation areas, the city shall use best available science.* The following documents, ...

This text makes sure the City examines science documenting existence of FWHCA, if available, and not just the WDFW and WDNR maps.

~~3. Regulation. Critical fish and wildlife habitat conservation areas are to be managed by maintaining the subject species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not mean maintaining all critical habitat or individuals of all species at all times, but does mean coordinated planning and development to ensure no net loss of ecological function.~~

The stricken text might be appropriate for a policy statement, but isn’t a regulation and is unnecessary here.

a. Habitat Assessment. *When development is proposed within a fish and wildlife habitat conservation area or its buffer, or where development is proposed to be located adjacent to a fish and wildlife habitat conservation area or its buffer or close enough to the FWHCA so as to likely impact critical area ecosystem functions and values, a habitat assessment report, prepared by a qualified wildlife biologist, shall be submitted. for any development activity proposed on a site which contains or is within: (A) 200 feet of a site or area that the City’s*

~~Shoreline Administrator has reason to believe that critical fish and wildlife habitat exists on or within, or (B) 300 feet of documented habitat for threatened, endangered, or sensitive fish or wildlife species.~~

The Growth Management Hearing Board found the City of Richland non-compliant with the GMA when they used language similar to what we replaced here. The problem is that the specified distances are not necessarily enough to ensure the identification of all FWHCAs that might be affected by the proposed development; Nesting Great Blue Herons, for example, can be disturbed by activity at distances up to 1300 feet.<sup>46</sup> While the language we propose is not as precise, in practice it allows the administrator to consult with WDFW biologists and others to ensure that FWHCAs are properly assessed so that the timing and scope of projects can be modified.

The habitat assessment shall include, at a minimum, the following:

- 1) An analysis and discussion of FWHCA which may have impacts to critical ecosystem function and values as a result of the project ~~critical species or habitats known or suspected to be located on or within 200 feet (or within 300 feet, as applicable) of close enough to the project site~~
- 2) A site plan that clearly delineates the critical fish and wildlife habitats which may have impacts to critical ecosystem functions and values as a result of the project. ~~found on or within 200 (or within 300 feet, as applicable) feet of the site.~~

Again, putting an artificial limit on which critical areas are assessed isn't acceptable under the GMA.

b. Habitat Assessment Review. The habitat assessment review shall be forwarded for review and comment to agencies with expertise or jurisdiction on the proposal, including, but not limited to, the:

- 1) WDFW;

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<sup>46</sup> p. 8, *Guidelines for Protection & Mitigation of Impacts to Great Blue Heron Rookeries in Vermont*, Vermont Fish & Wildlife Department, Agency of Natural Resources. 2002.  
[https://vtfishandwildlife.com/sites/fishandwildlife/files/documents/Conserve/RegulatoryReview/Guidelines/Guidelines\\_for\\_Protection\\_and\\_Mitigation\\_of\\_Impacts\\_to\\_Great\\_Blue\\_Heron\\_Rookeries\\_in\\_VT.pdf](https://vtfishandwildlife.com/sites/fishandwildlife/files/documents/Conserve/RegulatoryReview/Guidelines/Guidelines_for_Protection_and_Mitigation_of_Impacts_to_Great_Blue_Heron_Rookeries_in_VT.pdf)

2) United States Fish and Wildlife Service, if any federal endangered or threatened species are involved.

Comments received by the requested review agencies within 45 days of the submittal of the assessment shall be considered by the City's Shoreline Administrator. If it is determined, based upon the comments received, that *the project will have no impact on the critical ecosystem functions and values of an FWHCA* ~~critical fish and wildlife habitat does not occur on or within 200 feet of the site;~~ the development may proceed without any additional requirements under this section. ~~If it is determined that a critical fish and wildlife habitat is on or within 200 feet of the site,~~ *Otherwise,* a habitat management plan shall be prepared.

c. Habitat Management Plan. Habitat management plans required under this section shall be prepared by a qualified wildlife biologist. The habitat management plan must be prepared in coordination with and reviewed by the WDFW, and if any federal endangered or threatened species are involved, by the United States Fish and Wildlife Service. A habitat management plan shall contain, at a minimum, the following:

- 1) Analysis and discussion on the project's effects on critical fish and wildlife habitat;
- 2) An assessment and discussion on special management recommendations that have been developed for *FWHCA that have critical ecosystem functions and values which the project might impact* ~~critical species or habitat located on the site~~ by any federal or state agency;
- 3) *A discussion of measures, including avoidance, minimization and mitigation proposed to preserve existing habitats or restore any habitat that was degraded prior to the current proposed land use activity and to be conducted in accordance with WAC 197-11-768 (mitigation sequencing);* ~~Proposed mitigation measures that could minimize or avoid negative impacts;~~

...

Mostly want to make sure that mitigation sequencing is considered.

The City of Richland's CAO includes a set of 'performance standards' for development within an FWHCA. The SMP could adopt some or all of these standards:

#### *4. Performance standards.*

*Development or any regulated activity occurring within a designated habitat conservation area or within its respective protection buffer, or development or any regulated activity proposed to occur adjacent to, or close enough to, a habitat conservation area so as to likely impact critical area ecosystem functions and values, shall only be permitted in accordance with the conditions of an approved habitat conservation area report. Such report shall be based on the following standards using the best available science:*

*a. Consider habitat in site planning and design;*

- b. Locate buildings and structures in a manner that preserves and minimizes adverse impacts to important habitat areas, including use of bird-friendly building design and use of dark sky lighting standards;*
- c. Integrate retained habitat into open space and native plantings, consistent with the provisions of all open space and landscaping requirements;*
- d. Activity within or close to a habitat conservation area shall not result in the degradation of the functions and values of the habitat;*
- e. Nonindigenous species shall not be introduced into a habitat conservation area;*
- f. Contiguous corridors through a project area shall be maintained. Measures necessary to mitigate impacts within a habitat conservation area shall attempt to achieve contiguous functioning habitat corridors in order to minimize the isolating effects of development on habitat;*
- g. Identify habitat contiguous to other habitat areas, open space or landscape areas to contribute to a continuous system or corridor that provides connections to adjacent habitat areas and allows movement of wildlife;*
- h. Use native species in any landscaping of disturbed or undeveloped areas and in any enhancement of habitat areas;*
- i. Emphasize heterogeneity and structural diversity of vegetation in landscaping and food producing plants beneficial to wildlife;*
- j. Width of riparian corridors shall be in accordance with buffer widths suggested by BAS, including WDFW publication Riparian Ecosystems, Volume 2: Management Recommendations, May 2018, or as revised. Riparian corridors shall also meet the minimum requirements as established in RMC Title 26 and wetland buffer requirements as established in RMC 22.10.110;*
- k. Activities within a habitat conservation area shall be conditioned as identified in the habitat conservation area report to avoid, minimize, or mitigate potential adverse impacts. Conditions shall include protective buffers based on the State of Washington Department of Fish and Wildlife management recommendations for Washington's priority species modified for local conditions and the recommendations of the Department of Fish and Wildlife biologists and may include, but are not limited to, the following measures:*
- 1) Establishment of undisturbed habitat areas;*
  - 2) Staking of undisturbed habitat areas prior to any construction, including clearing, grading and filling taking place on site;*
  - 3) Fencing of undisturbed habitat areas;*
  - 4) Temporary erosion and sedimentation controls, pursuant to an approved plan, shall be implemented during construction;*
  - 5) Preservation of critically important vegetation;*



- 6) *Supplemental planting of native tree or shrub cover;*
- 7) *Removal and/or control of any noxious or undesirable species of plants and animals;*
- 8) *Preservation of significant trees and/or snags, preferably in groups, consistent with achieving the objectives of these standards;*
- 9) *Replanting of disturbed areas and/or areas where noxious weed species were removed with native vegetation types, including ongoing plans for weed control and irrigation as appropriate;*
- 10) *Limitation of access to an identified habitat area, including fencing to deter unauthorized access;*
- 11) *Seasonal restriction on construction activities;*
- 12) *Implementation of a schedule for periodic review of completed mitigation measures for a specified time period;*
- 13) *Posting of a bond or other financial surety to ensure completion and success of proposed mitigation measures. Such bond or other security device shall be required to assure successful establishment of required planting for an appropriate monitoring period. The amount of the bond or other security device shall equal 125 percent of the cost of the mitigation project for a period of five years. The administrator may agree to reduce the bond in phases in proportion to work successfully completed over the period of the bond.*

Richland also has a section dealing with alteration of FWHCA. This might be useful especially for situations where the alteration was done without notifying the City:

5. *Fish and wildlife habitat conservation area alteration.*
  - a. *Adverse impacts to habitat functions and values shall be mitigated to the extent feasible and reasonable. Mitigation actions by an applicant or property owner shall occur in the following preferred sequence:*
    - 1) *Avoiding the impact altogether by not taking a certain action or parts of actions;*
    - 2) *Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts;*
    - 3) *Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;*
    - 4) *Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;*
    - 5) *Compensating for the impact by replacing, enhancing, or providing similar substitute resources or environments. Preference shall be given to measures that replace the impacted functions on site or in the immediate vicinity of the impact;*

*6) Monitoring the impact over time and taking corrective measures to minimize additional impacts.*

*b. Where impacts cannot be avoided, the applicant or property owner shall seek to implement other appropriate mitigation actions in compliance with the intent, standards and criteria of this section. In an individual case, these actions may include consideration of alternative site plans and layouts, reductions in the density or scope of the proposal, and/or implementation of the performance standards listed in [above].*

We appreciate West Richland’s desire to go beyond the minimum required by the state in the protection of habitat. However, the text below has several issues. The first is trivial: the references to other sections of the CAP weren’t updated when this was copied from the CAO. Secondly, there are matters of terminology. If these lands are ‘included as fish and wildlife habitat and species of local importance’ then they are, by definition, FWHCA and the GMA would require them to be fully protected from impacts to their ecological functions and values. So, the City can’t classify them as FWHCA without making them subject to all regulations that protect those values and functions. We think you need to use a new term for these lands. We use the term ‘Wildlife Habitat Conservation Lands’ below, but other terms might be as good or better.

*6. Wildlife Habitat Conservation Lands* ~~Government and Conservation Land~~— Protection. In addition to the critical fish and wildlife habitat conservation areas protected in subsection ~~A~~ *I* of this section, the city of West Richland hereby recognizes the benefit of undeveloped government and conservation lands that may not otherwise qualify as critical fish and wildlife conservation areas, but which still provide beneficial wildlife habitat. The land development patterns of Section 6 and Section 8 of Willamette Heights, combined with the undeveloped government-owned land in those sections and elsewhere throughout the city, contribute significantly to the habitat inventory and wildlife corridors of several species that are not endangered, threatened, or sensitive, but which are listed as state candidate and state monitored species. To recognize the benefit of these lands, the following areas are *designated as Wildlife Habitat Conservation Lands* ~~included as fish and wildlife habitat and species of local importance:~~

a. Lands owned by a government entity or conservation group that have all of the following characteristics:

1) Are not ~~otherwise~~ classified as critical fish and wildlife habitat;

- 2) Are not public road right-of-way;
- 3) Have a primary association with a federal candidate species, state candidate species, federal species of concern, or state monitored species, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term; and
- 4) Are mapped as “Government and Conservation Land” on the city of West Richland’s map titled “Critical Fish and Wildlife Habitat Conservation Areas.”

The lands so classified are not subject to the provisions of subsections ~~A~~ through ~~D~~ of this section. However, if development of the government land is proposed, a habitat assessment shall be performed by a qualified wildlife biologist to help the city determine if the property, or a portion thereof, must be protected for the purpose of serving as a wildlife corridor or habitat to prevent the likelihood of the subject species from becoming listed as endangered, threatened, or sensitive. Private lands adjacent to such government and conservation lands shall observe a 35-foot setback and buffer.

#### **6.4.1 Requirements for Mitigations for FWHCA**

While the SMP currently requires mitigation when the functions of values of FWHCA are affected by a project, the requirements are not nearly as specific as they are for wetland mitigations. Here’s some possible text to address that shortcoming (Drawn from Island County’s SMP):

- 9. When compensatory mitigation measures are required, all of the following shall apply:*
  - a. The quality and quantity of the replaced, enhanced, or substituted resources shall be the same or better than the affected resources;*
  - b. The mitigation site and associated vegetative planting shall be nurtured and maintained such that healthy native plant communities can grow and mature over time;*
  - c. The mitigation shall be informed by pertinent scientific and technical studies, including but not limited to the Shoreline Inventory and Characterization Report, the Shoreline Restoration Plan and other background studies prepared in support of this Shoreline Master Program;*
  - d. The mitigation shall replace the functions as quickly as possible following the impacts to ensure no net loss; and*
  - e. The mitigation activity shall be monitored and maintained to ensure that it achieves its intended functions and values.*