

CITY OF MOUNT VERNON SMP PERIODIC REVIEW: COMMENT RESPONSE MATRIX

SMP Joint Public Comment Period, August 1, 2021 to August 30, 2021

SEPA Comment Period, July 29, 2021 to August 11, 2021

Open Record Public Hearing Before Planning Commission on November 16, 2021

Open Record Public Hearing Before City Council TBD

Introduction to the SMP Public Comment Matrix:

The Planning Commission Public Comment Matrix includes public comments received during the City of Mount Vernon SMP Periodic Update. The Department is in receipt of one comment letter dated October 14, 2021, attached to this matrix as a reference. Each comment applicable to a specific section of the SMP is assigned numbers 1 through 13.

Planning Commission Public Comment Matrix: SUMMARY AND RESPONSE			
Comment Number	Comment Topic and Section Number (Citation)	Comment	Department Response and Rationale
1.	Clarification to Shoreline Modifications Table 2 Regarding "Fill."	<p>Clarification to Shoreline Modifications Table 2 Regarding "Fill." To enhance the clarity of the information contained in Table 2 "Shoreline Modifications" in Section V ("Shoreline Use, Modification, and Development Standards Tables"), the SMP should clearly state that "Fill," where allowed in a particular shoreline designation, is allowed in critical areas within such shoreline designations so long as SMP Appendix C ("Shoreline Critical Area Regulations") is complied with. Below is a reproduction of the current Table 2, with the pertinent "shoreline modification" highlighted.</p> <p>Table 2, Shoreline Modifications, from the currently adopted SMP is inserted here within this comment.</p> <p>The footnotes to Table 2 do not clearly convey that Fill in critical areas (e.g., wetlands) is allowed as of right in the Shoreline Residential and Urban Mixed-Use shoreline designations so long as the shoreline modification comprising the Fill complies with the Shoreline Critical Area Regulations. (By comparison, Footnote 5 to Table 2 clearly conveys the conditions under which Fill is allowed in the Aquatic, Natural, and Urban Conservancy shoreline designations.) For enhanced clarity, it is proposed that a new footnote 22 be assigned to the "Fill" cell above, and added to the list of "Notes to Tables" below the Shoreline Use, Modification, and Development Standards Tables, which states:</p>	<p>Appendix C, Section II (D) states, critical areas and associated buffers may be altered or authorized through shoreline development permits, shoreline exemptions, or a shoreline variance. Section II (B) states development within wetlands shall be avoided, and alterations prohibited unless permitted in accordance with the Shoreline Master Program.</p> <p>Shoreline jurisdiction is defined as 200 feet upland from the Ordinary High-Water Mark (OHWM) of the Skagit River plus all associated wetlands (but not wetland buffers that extend beyond the 200-foot minimum jurisdiction) and all floodways as defined in RCW 90.58.030. Table 2 outlines shoreline modifications in each shoreline designation. Fill is a Permitted modification in both the Shoreline Residential and Urban Mixed-Use designations. Therefore, use of fill may be permitted for modifications to associated wetlands within the Shoreline Residential and Urban Mixed-Use designations as long as all requirements in the critical areas regulations are met and it is consistent with the rest of the master program.</p>

		<p>Fill in critical areas within the Shoreline Management Zone shall be allowed subject to compliance with applicable wetlands regulations set forth in Appendix C (“Shoreline Critical Area Regulations”).</p> <p>In consistency with the foregoing, it is proposed that the following nearly identical language be added to a new subsection F.3.I in the “Fill” subsection of Section VIII (“Shoreline Modification Provisions”):</p> <p>Fill in critical areas within the Shoreline Management Zone shall be allowed as set forth in the Section V Shoreline Modifications Table 2, subject to compliance with applicable wetlands regulations set forth in Appendix C (“Shoreline Critical Area Regulations”).</p> <p>Including the foregoing revisions in the SMP Update will provide enhanced clarity for the City and applicants alike when applying the Table 2 Shoreline Modifications standards.</p>	<p>As it relates to preliminary plat infrastructure and associated fill actions required for residential development, this action is permitted and reviewed by the underlying subdivision subject to appropriate mitigation.</p>
<p>2.</p>	<p>Clarification to Development Standards Table 3 Regarding Maximum Residential Density in “Shoreline Residential” Designation.</p>	<p>Clarification to Development Standards Table 3 Regarding Maximum Residential Density in “Shoreline Residential” Designation. To enhance the clarity of the information contained in Table 3 “Development Standards” in Section V (“Shoreline Use, Modification, and Development Standards Tables”), the SMP should clearly state that the density bonus allowed under MVMC 17.73 (“Regulations to Encourage Affordable Housing”) applies in shoreline environments in which residential use is allowed. “Footnote 19” should be amended to state the following.¹</p> <p>19. Residential density, minimum and maximum if applicable, measured per net acre (du/a), in the Shoreline Residential environmental designation is as follows, unless otherwise allowed under MVMC 17.73 (“Regulations to Encourage Affordable Housing”): R-A zone: 1.24 du/a (min 35,000 lot size); R-1, 3.0: 3.23 du/a (min 9,000 sf lot); R-1, 4.0: 4.0 to 4.54 du/a (7,500 sf lot); R-1,7.0: 7.26 du/a (4,500 sf lot).</p> <p>The proposed revision confirms for applicants and the City alike that residential densities allowed under the affordable housing ordinance are allowed in shoreline environments.</p>	<p>This has been corrected to address this comment. Footnote 20 is revised to Footnote 19, and the amended footnote and portion of Table 3 now read as follows:</p> <p>19. Residential density; <u>The</u> minimum and maximum <u>residential density (as if applicable) is measured per in net dwelling units per acre (du/a), and in the Shoreline Residential environmental designations is as follows:</u></p> <p>R-A zone: 1.24 du/acre (minimum 35,000 sf lot size) R-1, 3.0 zone: 3.23 du/acre (minimum 9,000 sf lot) R-1, 4.0 zone: 4.0 to 4.54 du/acre (minimum 7,500 sf lot) R-1, 5.0 zone: 4.0 to 5.73 du/acre (minimum 6,000 sf lot) R-1, 7.0 zone: 4.0 to 7.26 du/acre (minimum 4,500 sf lot)</p> <p><u>The above-listed minimum and maximum densities and minimum lot sizes can be deviated from when a development is permitted under Chapter 17.73</u></p>

		<p>¹ It appears that Development Standard “Density (max. and min. determined by underlying zoning district)” may be appended with the wrong footnote number. It is appended with a superscript “20,” but footnote 20 to Table 3 refers to trails. Note “19” appears to be the correct “Note to Table” for the “Density” item.</p>	<p>MVMC, Regulations to Encourage Affordable Housing.</p> <p>Density (max. and min. determined by underlying zoning district 20 19)</p>
<p>3.</p>	<p>Water Quality Policy.</p>	<p>Water Quality Policy. Subsection I (“Water Quality”) of SMP Update Section IV (“General Provisions”) contains the following draft proposed revision which should be deleted.</p> <p>All shoreline uses and activities should be located, designed, constructed, and maintained to avoid significant ecological impacts by alteration of water quality, quantity, or hydrologic conditions.</p> <p>The meaning and intent of the foregoing draft proposed revision are unclear. “Hydrologic conditions” is not a defined term in the SMP Update. It is generally understood to mean the study of water’s interaction with the Earth’s surfaces and sub-surfaces. Thus, in the regulatory context it is either redundant of “alteration of water quality [and] quantity” or has a different meaning which is not set forth in the SMP Update. The foregoing draft proposed revision should be deleted as follows.</p> <p>All shoreline uses and activities should be located, designed, constructed, and maintained to avoid significant ecological impacts by alteration of water quality, quantity, or hydrologic conditions.</p> <p>The proposed deletion improves clarity for applicants and the City alike.</p>	<p>This water quality policy has been changed to read as follows.</p> <p>All shoreline uses and activities should be located, designed, constructed, and maintained to avoid significant ecological impacts by alteration of the chemical, physical, and biological characteristics of waters/wetland systems. water quality, quantity, or hydrologic conditions.</p> <p>This change was made to ensure this goal is consistent with the goals and policies of the Clean Water Act, 33 U.S.C § 1251 et seq. (1972), RCW 90.58.020, and WAC 173-26-176.</p>

4.	In-Stream Structures Policy.	<p>In-Stream Structures Policy. Subsection I (“In-Stream Structures”) of SMP Update Section VII (“Shoreline Use Policies and Regulations”) contains the following existing provision.</p> <p>2.b. In-stream structures should be allowed only for the purposes of environmental restoration and maintaining the existing bridges crossing the Skagit River.</p> <p>The foregoing should be revised as follows, to account for stormwater management facilities, such as flood gates and culverts, which may be necessary as in-stream structures.</p> <p>2.b. In-stream structures should be allowed only for the purposes of environmental restoration and maintaining the existing bridges crossing the Skagit River, and for stormwater management facilities such as flood gates and culverts.</p> <p>The proposed revision confirms for applicants and the City alike that stormwater management facilities are permissible “in-stream structures.”</p>	<p>This In-Stream Structure Policy has been changed to read as follows:</p> <p>In-stream structures should be allowed only for the purposes of environmental restoration and maintaining the existing bridges crossing the Skagit River. <u>Stormwater management facilities, such as flood gates and culverts, can be permitted in cases where the City finds these facilities are necessary, essential, and there are no other less impactful means, methods or facilities that can be used/installed.</u></p>
5.	Fill Policy.	<p>Fill Policy. Subsection F (“Fill”) of SMP Update Section VIII (“Shoreline Modification Provisions”) contains the following draft proposed provision, which should be deleted because it is superfluous.</p> <p>2.b. Filling activities in waters/wetlands and shorelines usually require permitting at federal, state, and City levels of jurisdiction.</p> <p>The foregoing draft proposed provision contains general advisory information and provides no particular policy direction. Accordingly, it should be deleted as shown below.</p> <p>2.b. Filling activities in waters/wetlands and shorelines usually require permitting at federal, state, and City levels of jurisdiction.</p> <p>The proposed deletion avoids the inclusion of a superfluous new provision which imposes no regulatory policy or standards.</p>	<p>The statement is factually correct and informs Applicants at the earliest opportunity that permits from other Federal and State agencies may be required when an Applicant proposes to fill waters of the state, wetlands and/or shorelines. This includes permits from one, or all of the following: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources or Washington Department of Ecology.</p> <p>The City does not agree with the statement that the amendment is “superfluous” (commonly defined as going beyond what is enough or necessary). The comment states that this information “imposes no regulatory policy or standards”. Other jurisdictions within Washington provide this statement in their updated Shoreline Master Programs, approved by the Department of Ecology (for example, see Mercer Island Municipal Code 19.13.010.E).</p>

			<p>Removing this information would be a disservice to City applicants as they design their projects to comply with multiple agencies. Therefore, the City declines to make the requested change.</p> <p>The City will however change ‘usually’ to ‘may’ as is customary in other critical area ordinances and shoreline master programs for Applicant clarification:</p> <p>2.b. Filling activities in waters/wetlands and shorelines usually <u>may</u> require permitting at federal, state, and City levels of jurisdiction.</p>
<p>6.</p>	<p>Peer Review of Shoreline Applicants’ Consultant Work.</p>	<p>Peer Review of Shoreline Applicants’ Consultant Work. SMP Update § III “Shoreline Master Program Administrative Provisions” contains the following provision regarding “peer review” of application materials.</p> <p>Upon the review of materials submitted by an applicant the Director can, at their discretion, require peer review be completed by a consultant chosen by the Director, at the sole expense of the applicant. SMP Update § III.A.11.</p> <p>The foregoing provision is inconsistent with the intent of “peer review.” Peer review is intended to be an independent evaluation of a scientist’s methodology and conclusions, to ensure complete and accurate analysis consistent with industry standards. Such an independent evaluation requires a third party—the peer reviewer—who is independent of both the scientist and the audience receiving the scientist’s work. The draft provision above, which allows the City to require peer review “by a consultant chosen by the Director,” is inconsistent with these principles because the peer reviewer is not independent of the audience receiving the scientist’s work. This may be particularly problematic where a city has relied exclusively on a single consulting biologist for much, if not all, of the city’s shoreline analysis, including the city’s drafting of an SMP update. Finally, the draft provision is inconsistent with the standard approach taken by local governments in Washington, which typically provides opportunity for an applicant to have input on who will conduct the peer review.</p>	<p>The City requires peer review of most critical area reports and their associated materials.</p> <p>Unlike a lot of cities and counties Mount Vernon does not have a biologist on staff. As such, when critical area reports are submitted, they are screened by Department staff and routinely routed to one of the City’s consulting biologists for their review and comments.</p> <p>Peer review has also been determined to be necessary because over many years of reviewing critical area reports the City has encountered instances where submitted reports are incomplete, inconclusive, and/or incorrect.</p> <p>Of note, the City has no financial ties to projects, and it is the role of City staff to review and approve projects solely based on the City’s development regulations that are based on Best Available Science (BAS), and Federal/State laws. The City’s role differs from that of a developer, and the consultants that a developer contracts with to prepare reports on their behalf. Developers have financial interests that are benefited when critical area impacts to property are minimized.</p>

		<p>Based on the foregoing, Hansell/Mitzel requests that SMP § III.A.11 be revised as follows.</p> <p>Upon the review of materials submitted by an applicant the Director can, at their discretion, require peer review be completed by a consultant chosen by the applicant from a list of three (3) consultants provided by the Director, at the sole expense of the applicant.</p> <p>Appendix C to the SMP Update contains two similar provisions at § I.G and § VIII.A.2.c.i: App. C § I.G. Peer Review. The director may require peer review of any critical area reports or work that is submitted to the city. The director has the discretion to choose the consultant who will complete the peer review. If peer review is required, then the applicant shall be responsible for paying the entire costs of the peer review.</p> <p>App. C § VII.A.2.c. Independent Secondary Review. When appropriate due to the type of critical area present, or project area conditions, the director has the authority to require the applicant to prepare and/or fund additional analyses or activities, including, but not limited to: i. An evaluation by an independent certified professional regarding the applicant’s analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate. This shall be paid at the applicant’s expense, and the director shall select the third party review professional. Independent review shall be required for activities that are altering a critical area or buffer and are required to prepare supplemental studies and/or mitigation plans. Independent review for standard studies is discretionary and may be required by the director . . . Hansell/Mitzel requests that the foregoing provisions be revised as follows.</p> <p>App. C § I.G. Peer Review. The director may require peer review of any critical area reports or work that is submitted to the city. The director has the discretion to choose the consultant who will complete the peer review. If peer review is required, then the applicant shall choose a reviewer from a list of three (3) consultants provided by the Director and shall be responsible for paying the entire costs of the peer review.</p>	<p>The City has two biologists under contract to complete peer review who are intimately familiar with the City’s critical area regulations. These consultants are called upon to complete peer review of materials submitted to the City.</p> <p>When critical area reports are complete and comply with the critical area ordinance and/or shoreline master program, there are few corrections for the City’s peer review biologist to suggest. In all cases, the peer review consultant findings are reviewed by City staff for consistency.</p> <p>Several jurisdictions in Washington State employ a single or one peer review consultant for private development review (both large and small) (i.e., City of Bonney Lake, City of Kirkland, and City of Kent). Until recently, Planning and Development staff at the City of Kent employed one on-call peer reviewer until permit volumes were such that a second peer reviewer was required. Mount Vernon is significantly smaller than the above jurisdiction.</p> <p>Larger jurisdictions who have the capacity employ multiple peer review consultants, typically do not permit an applicant to self-select their peer review consultant, unless there is a conflict of interest (i.e., the peer review consultant prepared the critical area study for private development submitted to the city).</p> <p>For the reasons outlined above, the City declines to make the requested changes.</p>
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<p>7.</p>	<p>City’s Unique Wetlands Rating Model</p>	<p>City’s Unique Wetlands Rating Model. SMP Update Appendix C, § I “Regulation of Critical Areas in Shoreline Jurisdiction” contains the following draft provision regarding the City’s stand-alone wetlands rating model.</p> <p>App. C, § I.F.F.1.²The city adopts the hydrogeomorphic (HGM) functional assessment approach recommended by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Natural Resources Conservation Service, and other agencies. HGM assessment allows users to assess changes in ecosystem functions (hydrology, bio/geochemistry, plant community, and faunal support/habitat) when compared to local and/or regional referenced ecosystems. Mount Vernon has developed an HGM system of models that is specific to the pertinent waters/wetland subclasses within the city and/or urban growth area. Mount Vernon will use their HGM system rather than the Washington State Department of Ecology (DOE) wetland rating model for purposes of measuring both impacts to and benefits from activities in critical areas and buffers. The city’s HGM system is titled</p>	<p>As noted in Appendix C, Section I, subsection F(3)(h) and Section VII, subsection C of the draft SMP update, the City has adopted DOE’s wetland rating system (Hruby, T., 2014, Washington State Wetland Rating System for Western Washington: 2014 Update (Publication No. 14-06-029), Olympia, WA: Washington Department of Ecology). However, when mitigation is required within a critical area the City uses the HGM tool to assess the ecosystem functions at baseline and at other specified intervals (usually at baseline, and then at years 1, 2, 3, 5, 7 and 10 – this will vary depending on how the mitigation site is responding) as part of the mitigation process.</p> <p>As indicated, the HGM site evaluation model is a “functional assessment approach” tool used when a project is proposing mitigation activities requiring monitoring.</p>

		<p>“Operational Guidebook to Assessment of Riverine, Slope, and Depressional Waters/Wetlands Functions in the City of Mount Vernon, Washington; March 2008,” and any subsequent updates; hereinafter referred to as the HGM manual.</p> <p>The foregoing provision, by which the City would apply its own wetlands rating system, is inconsistent with the Growth Management Act, which requires local governments to use “the best available science in developing policies and development regulations to protect the functions and values of critical areas.” RCW 36.70A.172(1). To assist local governments in meeting this “best available science” requirement, the Department of Ecology publishes guidance on the best available science regarding wetlands, wetlands function, and wetlands management. The Department of Ecology also publishes the “Washington State Wetland Rating System for Western Washington” for use by local governments. The City’s intent to use its own separate wetland rating system “rather than the Washington State Department of Ecology (DOE) wetland rating model” is inconsistent with RCW 36.70A.172(1).</p> <p>Using a separate wetland rating system is also inconsistent with Department of Ecology administrative regulations implementing the Shoreline Management Act. The Washington Administrative Code requires that “[i]dentification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements.” WAC 173-22-035.³ The City’s intent to eschew Ecology and use its own separate wetland rating system “rather than the Washington State Department of Ecology (DOE) wetland rating model” is inconsistent with WAC 173-22-035.</p> <p>Further, from a practical perspective, introducing a separate wetland rating system introduces unnecessary complication and expense into the application process. The Department of Ecology wetlands rating system has a long track record, it has been used and tested time and again, and consultants are familiar with it. Applicants should be required to utilize only the Department of Ecology wetlands rating system and should not be required to conduct two separate analyses. The</p>	<p>In Mount Vernon the HGM model is a more accurate and locally focused tool for the assessment of the functions of impacted critical areas over time. The HGM model also allows deployment of adaptive management sooner and with more accuracy than other assessment models. DOE has not objected to use of this model versus the DOE wetland rating model that can be used to measure impacts to, and benefits from, activities in critical areas and buffers.</p> <p>In summary, the City does not have “its own wetlands rating system”; on the contrary the City has adopted DOE’s wetland rating system (Hruby, T., 2014, Washington State Wetland Rating System for Western Washington: 2014 Update (Publication No. 14-06-029), Olympia, WA: Washington Department of Ecology) as required by state statute. The HGM manual is used for projects that impact critical areas or their associated buffers requiring monitoring to ensure the functions of the impacted critical areas are restored.</p> <p>Of note is the fact that the City has a program named the Managed Ecosystem Alternative that is codified in Mount Vernon Municipal Code (MVMC) 15.40.110. This portion of the MVMC cannot be used on properties subject to shoreline jurisdiction; but can be used for properties outside of shoreline jurisdiction. A component of the Managed Ecosystem Alternative is that the City owns and manages several properties encumbered with wetlands and their associated buffers. The city enhances, maintains, and monitors these sites. The monitoring component is completed with the HGM assessment tool.</p> <p>For these reasons the City declines to make the requested changes.</p>
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		<p>proposed revision would cause duplication of efforts and inevitably increase consultant cost for applicants and review time for City staff.</p> <p>Based on the foregoing, Hansell/Mitzel requests that Appendix C, § I.F.F.1 be revised as follows:</p> <p>The city adopts the hydrogeomorphic (HGM) functional assessment approach recommended by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Natural Resources Conservation Service, and other agencies. HGM assessment allows users to assess changes in ecosystem functions (hydrology, bio/geochemistry, plant community, and faunal support/habitat) when compared to local and/or regional referenced ecosystems. Mount Vernon has developed an HGM system of models that is specific to the pertinent waters/wetland subclasses within the city and/or urban growth area. Mount Vernon will use their HGM system rather than the Washington State Department of Ecology (DOE) wetland rating-model for purposes of measuring both impacts to and benefits from activities in critical areas and buffers. The city's HGM system is titled "Operational Guidebook to Assessment of Riverine, Slope, and Depressional Waters/Wetlands Functions in the City of Mount Vernon, Washington; March 2008," and any subsequent updates; hereinafter referred to as the HGM manual.</p> <p>Hansell/Mitzel respectfully requests that the City utilize only the Department of Ecology wetlands rating manual to ensure consistency with the Growth Management Act, the Washington Administrative Code, and to avoid unnecessary complication and expense for applicants.</p> <p>² The subsection numbering in this draft section appears to be internally inconsistent. For reference, this provision can be found on page C-5 of Appendix C.</p> <p>³ The "regional supplement" applicable in the City is the US Army Corps of Engineers ' "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region."</p>	
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8.	Critical Areas Ordinance Restoration Guidebook.	<p>Critical Areas Ordinance Restoration Guidebook. The draft updated Appendix C contains the following draft subsection § 1.F.F.4 regarding the City’s Critical Areas Ordinance Restoration Guidebook.</p> <p>The city has developed a set of recommended critical area and buffer development standards for restoration and enhancement activities required for mitigation pursuant to this chapter. They are compiled under the title of “Critical Areas Ordinance Restoration Guidebook: Guidelines, Recommended Techniques and Details for Restoration of Waters/Wetlands and their Buffers”; hereinafter referred to as the CAO guidebook. The CAO guidebook is available on the city’s website or a paper copy is kept at the community and economic development department.</p> <p>The City’s “CAO guidebook” was published in 2008 and is outdated. In particular, the CAO guidebook does not reflect the most current mitigation guidance from the Department of Ecology and does not address wetland mitigation banking. The CAO guidance must be updated to incorporate the latest mitigation guidance from Ecology and incorporate information on the benefits and availability of the use of mitigation bank credits. Until the CAO guidance is updated, the foregoing provision should be deleted as follows.</p> <p>The city has developed a set of recommended critical area and buffer development standards for restoration and enhancement activities required for mitigation pursuant to this chapter. They are compiled under the title of “Critical Areas Ordinance Restoration Guidebook: Guidelines, Recommended Techniques and Details for Restoration of Waters/Wetlands and their Buffers”; hereinafter referred to as the CAO guidebook. The CAO guidebook is available on the city’s website or a paper copy is kept at the community and economic development department.</p> <p>In addition, the benefits and availability of mitigation bank credits should be added to Appendix C § VIII.G.9, which contains a list of “alternative methods of developing the property” if “wetland changes are proposed.” The Department of Ecology encourages the use of wetland mitigation bank credits. Appendix C should reflect this.</p>	<p>The City does not agree with comment number 8. The City’s CAO guidebook reflects mitigation guidance from the Department of Ecology.</p> <p>Appendix C, Subsection VII(G)(8) specifically authorizes the use of wetland mitigation banks.</p> <p>For these reasons, the City declines to make the requested changes.</p>
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9.	Wetland Classification and Designation.	<p>Wetland Classification and Designation. Appendix C § VII.C.1.d provides the criterion applicable to “Category IV” wetlands but has not been updated to reflect the 2014 Department of Ecology wetlands rating system. It reads as follows:</p> <p>d. Category IV. Category IV wetlands are those that meet the following criterion: ii. provide low levels of functions, scoring less than thirty (30) out of one hundred (100) points (DOE Wetlands Rating System, 2004).</p> <p>The foregoing provision should be updated to reflect the 2014 Department of Ecology wetlands rating system, in consistency with the draft new provisions which do so for Category I, II, and III wetlands.</p> <p>d. Category IV. Category IV wetlands are those that meet the following criterion: ii. provide low levels of functions, scoring less than thirty (30) out of one hundred (100) points scoring less than thirty (30) 9-15 points out of 27 out of one hundred (100) points (DOE Wetlands Rating System, 2004 2014).</p> <p>The foregoing revision will improve the internal consistency of this section of the SMP Update and improve consistency with the 2014 Department of Ecology wetlands rating system.</p>	<p>This provision within Appendix C was an error and has been revised as follows:</p> <p>Provide low levels of functions, scoring less than 15 thirty (30) out of one hundred (100) 15 points out of 27 (DOE Wetlands Rating System, 2004 2014).</p> <p>All of the other wetland categories have been updated in Appendix C; however, this one provision specific to Category IV wetlands was not updated like the other category of wetlands were.</p>
10.	Allowed Activities and Uses in Category I Wetlands.	<p>Allowed Activities and Uses in Category I Wetlands. The draft updated Appendix C contains the following draft deletion from § VII.E.3 which establishes allowed activities and uses in Category I wetlands.</p> <p>Category I wetlands: Activities and uses shall be prohibited from Category I wetlands. , except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of the MVMC.</p> <p>The proposed deletion, which removes valid bases for allowing certain activities and uses in Category I wetlands, is inconsistent with the City Critical Areas Ordinance. The deletion is inconsistent with MVMC 15.40.090.E, which provides: “Category I Wetlands. Activities and uses shall be prohibited from Category I, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of this title.” <i>See also</i> MVMC</p>	<p>To remain consistent, the City has changed Section VII.E.3 to read as follows:</p> <p>“Category I wetlands: Activities and uses shall be prohibited from Category I wetlands, except as provided for in the public agency and utility exception and variance sections of the MVMC.”</p>

		<p>15.40.040.F, which provides the exception for utilities; MVMC 15.40.130.B, which provides the reasonable use exception; and MVMC 15.40.130.C, which provides for variances from the Critical Areas Ordinance. The “Wetlands” section of Appendix C and the “Wetlands” section of the City Critical Areas Ordinance are virtually, if not actually, identical to each other and there is no basis for the proposed deletion. Therefore, the draft deletion should be restored as follows.</p> <p>Category I wetlands: Activities and uses shall be prohibited from Category I wetlands, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of the MVMC.</p> <p>Restoring the proposed deletion improves consistency between Appendix C and the City Critical Areas Ordinance, which provides clarity for applicants and the City alike.</p>	
<p>11.</p>	<p>Building Setbacks in Fish and Wildlife Habitat Conservation Areas.</p>	<p>Building Setbacks in Fish and Wildlife Habitat Conservation Areas. Appendix C, Section IX (“Fish and Wildlife Habitat Conservation Areas”), Subsection C.5 contains the following draft new provision regarding required minimum building setbacks in FWHCAs, which contains an undefined term “shoreline buffer” and is confusing.</p> <p>C.5.b. “Minimum building setback” is the required horizontal distance between the finished exterior wall of a structure and the edge of the critical area of the lot on which the structure is located. All portions of a structure must be located away from the critical area edge or shoreline buffer edge, whichever is greater, a distance equal to or greater than the minimum setback. Uses not requiring a permit defined in the City Building Code may be permitted in the setback if the Director determines that such intrusions will not adversely impact the fish and wildlife habitat conservation area and other required SMZ setbacks are adhered to, or prescribes a plan to replace affected functions and values within the affected area.</p> <p>The intent of original subsection C.5.b is to provide for a minimum building setback from a FWHCA critical area, and it is unclear what the draft proposed clause adds or changes. A designated fish and wildlife habitat conservation area with its buffer is a critical area. <i>See</i></p>	<p>The City agrees that the addition of shoreline buffer edge does not necessarily add to this provision.</p> <p>Per Table 3 Development Standards in Section V of the SMP, the shoreline setback for residential development in the Shoreline Residential and Urban Mixed-Use designations shall be no less than 50 feet landward of the landward toe of dikes and levees, with listed exceptions (MVMC 15.36.270). The intention of the proposed language is to convey that <i>if</i> a shoreline setback were greater than the minimum building setback of the critical area, the greater (or more restrictive) of the setbacks shall apply. There are no circumstances in the SMP and SMP Appendix C where that is the case.</p> <p>Therefore, the City will omit the insertion and maintain the existing SMP language, but declines the commenter’s proposed language.</p>

		<p>Section IX.C. However, the draft new clause provides for a minimum building setback from the edge of a “shoreline buffer,” which is not a defined term. “Buffer” means “an area adjacent to a wetland, river, or stream that, generally, functions to protect the public from loss suffered when the functions and values of the wetland, river, or stream are degraded.” SMP IX. Thus, a “buffer” applies adjacent to critical areas and not adjacent to the “shoreline.” An additional revision provided below also clarifies that when an FWHCA critical area is altered pursuant to SMP Appendix C, the minimum building setback is measured from the critical area edge as altered and not from the pre-alteration edge of the critical area.</p> <p>To remove ambiguity, Subsection C.5.b should be revised as follows:</p> <p>C.5.b. “Minimum building setback” is the required horizontal distance between the finished exterior wall of a structure and the edge of the critical area of the lot on which the structure is located. All portions of a structure must be located away from the Fish and Wildlife Habitat Conservation Area critical area edge or shoreline buffer edge, whichever is greater, a distance equal to or greater than the minimum setback. When an FWHCA critical area is altered pursuant to SMP Appendix C, the minimum building setback is measured from the critical area edge as altered. Uses not requiring a permit defined in the City Building Code may be permitted in the setback if the Director determines that such intrusions will not adversely impact the fish and wildlife habitat conservation area and other required SMZ setbacks are adhered to, or prescribes a plan to replace affected functions and values within the affected area.</p> <p>The foregoing revision clarifies that minimum building setbacks apply adjacent to the edge of FWHCA critical areas and prevents the introduction of the ambiguous undefined term “shoreline buffer.”</p>	
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<p>12.</p>	<p>Novel Shoreline Designation: “Potential Wetland Connection.”</p>	<p>Novel Shoreline Designation: “Potential Wetland Connection.” The draft updated shoreline designation maps found at Figures 2 through 4 of SMP Section IV (“Shoreline Environmental Designations”) appear to introduce three new shoreline designations which are unprecedented, are inconsistent with the Shoreline Management Act, and introduce unnecessary ambiguity into the SMP Update.</p> <p>As shown on Figures 2 through 4, which comprise the City’s draft new “Environmental Designations” maps, the City appears to have created three new shoreline designations:</p> <ul style="list-style-type: none"> • “Natural – Potential Wetland Connection” • “Shoreline Residential – Potential Wetland Connection” • “Urban Mixed-Use – Potential Wetland Connection.” <p>The SMP Update contains no definitions or implementing regulations for these novel designations.</p> <p>The novel designations introduce unnecessary ambiguity into the SMP Update. The SMP Update does not actually contain any regulations or standards applicable to the “Potential Wetland Connection” suffix. Thus, a property identified as “Shoreline Residential-Potential Wetland Connection” is regulated identically to a property identified as “Shoreline Residential.” It is, thus, meaningless and should be deleted from the SMP Update.</p> <p>The SMP Update provides an inadequate rationale for the “Potential Wetland Connection” suffix. New draft provision IV.A.2 notes that “there are variables the City is not able to accurately identify and map until site specific activities/developments are proposed” and that such “variables” include “the existence, location, and characteristics of waters/wetlands.” This caveat is inadequate, given that local SMPs, including shoreline designation maps, are approved by the Department of Ecology and become the official State master program. <i>See</i> WAC 173-26-030 (“The state master program is the cumulative total of all shoreline master programs and amendments thereto approved or adopted by” the Department of Ecology.) Thus, Figures 2 through 4 constitute the official City SMP “Environmental Designation maps” comprising a component of the state</p>	<p>The commenter has assigned the term ‘novel shoreline designation’, not the jurisdiction.</p> <p>To avoid any potential confusion the City has made the below-listed changes to the shoreline designation maps and associated items:</p> <ul style="list-style-type: none"> • The shoreline designation map located in Appendix E and Figures 2, 3, 4, and 5 have removed “Natural – Potential Wetland Connection”, Shoreline Residential – Potential Wetland Connection”, and Urban Mixed-Use – Potential Wetland Connection” from the legend. • The shoreline designation map located in Appendix E and Figures 2, 3, 4, and 5 have hatched areas identified on the map and in the legend. The legend indicates the hatching is located on properties as an overlay indicating the potential presence of shoreline associated wetlands. This overlay is not a separate shoreline environmental designation. <p>Consistent with the commentor’s suggestion, the City has added additional clarifying details within Section IV(A) regarding shoreline associated wetlands.</p> <p>Shoreline associated wetlands have been made part of the shoreline environment designation areas as indicated in supporting documentation prepared for the Periodic Update, and assigned the appropriate designation per the Department and Department Biologist’s technical analysis, the City’s existing critical area inventory based upon existing critical area report submitted for development, and the United States Fish and Wildlife Service National Wetland Inventory (i.e., Natural, Shoreline Residential, Urban Mixed-Use, and Urban Conservancy, and Aquatic).</p> <p>A technical staff memorandum prepared by Dr. Lyndon Lee and the Department dated June 15, 2021, evaluates the proposed overlay, supporting proposed updates to the City of Mount Vernon, SMP Appendix A- Shoreline</p>
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		<p>master program. Variables which will not be known until “site specific activities/developments are proposed” should not be codified in a local SMP.</p> <p>We understand from Development Services staff that the intent of the novel designations is to provide notice to the public that there “might” be areas within the hatched portions that could, in the future, based on permit review, be determined to be “associated wetlands” and that “associated wetlands” would be considered within shoreline jurisdiction. As noted above, the mapping approach is not consistent with the applicable regulations, because areas cannot be mapped as being in shoreline jurisdiction, unless a final determination has been made. To the extent that the novel designations are intended to identify areas where an “associated wetland” might be located, the SMP Update could include text that states, “Any area in the future that is formally determined to be an ‘associated wetland’ shall be regulated as a shoreland area under the SMP.”</p> <p>Consistent with the foregoing, Figures 2 through 4 should utilize only the standard shoreline environment designations. Thus, it is proposed that all references to the following should be deleted from Figures 2 through 4:</p> <ul style="list-style-type: none"> • “Natural – Potential Wetland Connection” • “Shoreline Residential – Potential Wetland Connection” • “Urban Mixed-Use – Potential Wetland Connection.” <p>Correspondingly, all cartographically distinct hatching patterns (horizontal lines) depicted on the draft Figures 2 through 4 should be deleted so that the visual depiction of each of the three novel designations shown on Figures 2 through 4 should be identical to, respectively, “Natural,” “Shoreline Residential,” and “Urban Mixed-Use.”</p>	<p>Inventory, Characterization, and Cumulative Impacts Report and the subsequent draft Shoreline Environment Designation map. The document is available publicly on the City of Mount Vernon SMP Periodic Update Project website, posted July 2021.</p> <p>The technical memorandum was transmitted to the Department of Ecology on July 7, 2021 for preliminary review and a subsequent Initial Determination. During the agency’s review to determine compliance with the State of Washington Shoreline Management Act, no required revisions were required by Ecology regarding the shoreline designations.</p> <p>Please see the following excerpt from the June 15, 2021 memorandum establishing compliance with State Law [RCW 90.58.020, the WAC Chapter 173-26-176, and WAC 173-26-201(2)(c)]:</p> <p>“In the 2021 SMP update, the City also focused on interpretations of “Associated jurisdictional wetlands or Associated wetlands”, defining them as those wetlands that are in proximity to and either influence or are influenced by shorelines of significance to the State. These wetlands are subject to the Shoreline Management Act. Consistent with WAC 173-22-040 this definition includes wetlands that are determined by the City to be in proximity to, and either influence or are influenced by the Skagit River. Within the City, this influence includes but is not limited to one or more of the following: periodic inundation, location within a floodplain, or hydraulic continuity. Hydraulic continuity is generally defined as the interrelation between groundwater (water beneath land surfaces or surface water bodies) and surface water (water above ground, such as lakes and streams); and can be surface or shallow subsurface hydraulic connection(s) that may be permanent, or which occur seasonally (e.g., during the wet winter/spring season) with intermittent flow connections.</p>
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			<p>The City’s biologist, Dr. Lyndon Lee, has reviewed all the proposed changes to the 2021 SMP update and finds with these changes the City’s SMP remains consistent with the requirements RCW 90.58.020, the WAC Chapter 173-26-176, and WAC 173-26-201(2)(c) because it remains a regulatory document that prevents degradation of ecological functions compared to existing conditions, it addresses adverse cumulative impacts, and it fairly allocates the burden of addressing these impacts among development opportunities.”</p> <p>For these reasons, the City has partially accepted the requested changes, as outlined above.</p>
<p>13.</p>	<p>Identification of “Associated Wetlands.”</p>	<p>Definition of “Associated Wetlands.” SMP Update § IX (“Definitions”) contains the following draft revised definition for “Associated jurisdictional wetlands”:</p> <p>Associated jurisdictional wetlands or Associated wetlands are those wetlands that are in proximity to and either influence or are influenced by shorelines of significance to the State and are, therefore, subject to the Shoreline Management Act. Consistent with WAC 173-22-040 this definition includes wetlands that are determined by the City to be in proximity to, and either influence or are influenced by, the Skagit River, Barney Lake, or any other waterbody defined as a shoreline of the State within Chapter 90.58 RCW. This influence includes, but is not limited to, one or more of the following: periodic inundation, location within a floodplain, or surface or shallow subsurface hydraulic connection(s) that may be permanent or which occur seasonally (e.g. during the wet winter/spring season) with intermittent flow connections.</p> <p>The foregoing draft amended definition is inconsistent with WAC 173-22-040, which states, “The following criteria contain the standards for the department’s designation of shoreland areas associated with shorelines of the state which are subject to the jurisdiction of chapter 90.58 RCW: . . . (2) Lakes. The shoreland area shall include: . . . (b) Those wetlands which are in proximity to and either influence or are influenced by the lake. This influence includes but is not limited to one or more</p>	<p>This provision has been amended as follows.</p> <p>Associated jurisdictional wetlands or Associated wetlands are those wetlands that are in proximity to and either influence or are influenced by shorelines of significance to the State and are, therefore, subject to the Shoreline Management Act. Consistent with WAC 173-22-040 this definition includes wetlands that are determined by the City to be in proximity to, and either influence or are influenced by, the Skagit River, Barney Lake, or any other waterbody defined as a shoreline of the State within Chapter 90.58 RCW. This influence includes, but is not limited to, one or more of the following: periodic inundation, location within a floodplain, or hydraulic continuity. Hydraulic continuity is generally defined in WAC 173-545-030(9) as “the interrelation between groundwater (water beneath land surfaces or surface water bodies) and surface water (water above ground, such as lakes and streams).” For example, hydraulic continuity can consist of surface or shallow subsurface water connection(s) that may be permanent, or which occur seasonally (e.g., during the wet winter/spring season) with intermittent flow characteristics.</p>

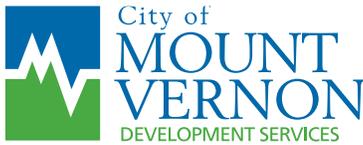
		<p>of the following: Periodic inundation or hydraulic continuity; . . . (3) Streams. The shoreland area shall include the greater of: . . . (c) Those wetlands which are in proximity to and either influence or are influenced by the stream. This influence includes but is not limited to one or more of the following: Periodic inundation; location within a flood plain; or hydraulic continuity;”</p> <p>Hansell/Mitzel requests that the draft amended definition be revised in consistency with WAC 173-22-040, as follows.</p> <p>Associated jurisdictional wetlands or Associated wetlands are those wetlands that are in proximity to and either influence or are influenced by shorelines of significance to the State and are, therefore, subject to the Shoreline Management Act. Consistent with WAC 173-22-040 this definition includes wetlands that are determined by the City to be in proximity to, and either influence or are influenced by, the Skagit River, Barney Lake, or any other waterbody defined as a shoreline of the State within Chapter 90.58 RCW. This influence includes, but is not limited to, one or more of the following: periodic inundation, location within a floodplain, or hydraulic continuity. surface or shallow subsurface hydraulic connection(s) that may be permanent or which occur seasonally (e.g. during the wet winter/spring season) with intermittent flow connections.</p> <p>The requested revision ensures consistency with WAC 173-22-040 and provides certainty for applicants and the City in applying the definition of “associated wetlands.”</p>	
<p>14.</p>	<p>Site Specific development named Swan View with the below listed Appendices:</p> <p>Appendix A: Soundview Consultants, LLC Memo Regarding a site-specific development named Swan View</p> <p>Appendix B: Correspondence from the</p>	<p>14. Identification of “Associated Wetlands.” The technical memorandum supporting the Appendix A update and adoption of the novel “Potential Wetlands Connection” designation misinterprets the science and the law to improperly conclude that certain wetlands in the City are “associated wetlands.” The Technical Memorandum prepared by L.C. Lee & Associates, Inc. dated April 30, 2021 regarding “Mr. Dan Mitzel – Swan View Plat – Shorelines” (the “City Memo”) concludes that three wetlands located on the Swan View Property are “associated” with the shorelines areas of the Skagit River and Lindegren Creek and, accordingly, that shoreline jurisdiction under the SMP includes the three</p>	<p>The portion of these comments and their associated Exhibits A, B, and C that are project-specific materials which are quasi-judicial and/or administrative in nature are not appropriate for consideration or inclusion in this shoreline Master Program update process which is a purely legislative process.</p> <p>There is no specific project before the Planning Commission or to go to the City Council, nor could there be as part of this legislative process. Such project-specific information and/or details are not</p>

<p>Corps of Engineers regarding a site specific development named Swan View.</p> <p>Appendix C: Correspondence from the Department of Ecology regarding a site specific development named Swan View</p>	<p>wetlands. The City Memo also appears to form the basis for the novel shoreline environment designations discussed above with the suffix “Potential Wetland Connection.” See City Memorandum “SMP, Appendix A Update” dated June 15, 2021 (“In the 2021 update, the City has identified these parcels that could be subject to shoreline jurisdiction due to the presence of associated wetlands . . .”). The City Memo misinterprets the law and misapplies the science. For the reasons that follow, the City Memo should be deleted in its entirety from the Appendix A Update.</p> <p>“Associated wetland” is a technical term defined under the SMA to mean “those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act.” WAC 173-22-030(1). An “associated wetland” is regulated as though it is located within the shoreline management zone even though it may be located outside of the 200-foot shoreline management zone adjacent to a stream. See WAC 173-22-040(3)(c) (“Streams. The shoreland area shall include the greater of: . . . (c) those wetlands which are in proximity to and either influence or are influenced by the stream.”). Thus, the identification of an “associated wetland” has a significant regulatory impact.</p> <p>The apparent basis for the conclusion in the City Memo that the wetlands have “immediate proximity and physical and functional connections to the Skagit River and Lindegren Creek floodplains and ‘Shoreline’ ecosystems” is a determination of the presence of (i) a “habitat mosaic” and (ii) seasonal intermittent hydrologic connections with the Skagit River. City Memo at 1. As more particularly described in the Technical Memorandum prepared by Soundview Consultants LLC (the “Soundview Memo”) attached as Exhibit A, neither of these bases survive scrutiny and the three wetlands are not “associated wetlands.”</p> <p>As an initial matter, Lindegren Creek, which is proximate to the Swan View Property, is not relevant for the purpose of applying the definition of “associated wetlands” under WAC 173- 22-030(1). Lindegren Creek is not a regulated shoreline under the Shoreline Management Act (SMA) because its mean annual flow does not meet the twenty cubic feet per second</p>	<p>appropriate for Planning Commission or City Council consideration on this legislative process since, among other concerns, such considerations are outside of or not relevant to the SMA criteria and since certain types of shoreline permits can be appealed to the City Council potentially creating a conflict of interest or an appearance of fairness issue for City Council decision-makers.</p> <p>Accordingly, Staff requests that the Planning Commission and the City Council disregard and not consider these comments and their associated Exhibits A, B, and C as part of this legislative process.</p> <p>However, in the event the Planning Commission or the City Council elects to consider these comments and their associated Exhibits A, B, and C Staff recommends these comments and exhibits be given no weight, or be disregarded, because they conflict with the Technical Memorandum dated April 30, 2021 from Dr. Lyndon Lee that is attached to the draft updated Appendix A of the SMP and with the information and directions provided to the City by Department of Ecology (DOE) Staff. The information and direction from DOE staff is contained in the materials accompanying this response matrix, identified as Exhibit 1.</p>	<p>appropriate for Planning Commission or City Council consideration on this legislative process since, among other concerns, such considerations are outside of or not relevant to the SMA criteria and since certain types of shoreline permits can be appealed to the City Council potentially creating a conflict of interest or an appearance of fairness issue for City Council decision-makers.</p> <p>Accordingly, Staff requests that the Planning Commission and the City Council disregard and not consider these comments and their associated Exhibits A, B, and C as part of this legislative process.</p> <p>However, in the event the Planning Commission or the City Council elects to consider these comments and their associated Exhibits A, B, and C Staff recommends these comments and exhibits be given no weight, or be disregarded, because they conflict with the Technical Memorandum dated April 30, 2021 from Dr. Lyndon Lee that is attached to the draft updated Appendix A of the SMP and with the information and directions provided to the City by Department of Ecology (DOE) Staff. The information and direction from DOE staff is contained in the materials accompanying this response matrix, identified as Exhibit 1.</p>
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		<p>threshold necessary for the SMA to apply. See RCW 90.58.030(2)(e) (“Shorelines’ means all of the water areas of the state, . . . and their associated shorelands, . . . except . . . (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments . . .”). Thus, Lindegren Creek is not relevant to an analysis of “associated wetlands” on the Swan View Property and the only relevant regulated shoreline is that of the Skagit River.</p> <p>As set forth in detail in the Soundview Memo, the three subject wetlands on the Hansell/Mitzel property are not “associated wetlands.” First, by any reasonable measure the wetlands lack “proximity to” the Skagit River—they are located approximately 3,350 feet east of the Skagit River. No legal precedent supports the proposition that such a distance constitutes “proximity to” a shoreline waterbody. In fact, the legal precedent suggests that a wetland located within 200 feet of a body of water is “in proximity,” but that a wetland located three quarters to one mile from a body of water is not. See <i>In the Matter of a Substantial Development Permit Denied by Island County to William L. Massey, William L. Massey, Appellant vs. Island County</i>, SHB No. 80-3, Final Findings of Fact, Conclusions of Law and Order, March 3, 1981; <i>Juanita Bay Valley Community Association v. City of Kirkland</i>, 9 Wn.App.59 (1973).</p> <p>Additionally, though the shoreline management zone includes flood plains which extend landward 200 feet from floodways, see WAC 173-22-040(3)(b), the test for “associated wetlands” is not whether a wetland is in proximity to the shoreline management zone. The test is whether a wetland is “in proximity to . . . the stream.” WAC 173-22-040(3)(c). Here, though the wetlands may be in proximity to a flood plain, they are 3,350 feet from the stream and thus are not proximate.</p> <p>The second element of an “associated wetland” is that it must “either influence or [be] influenced by” the stream. Legal precedent establishes several guiding principles regarding such “influence.” An “associated wetland” “would be essentially at the same level as the major body of water and also [] would have a direct surface connection.” <i>Juanita Bay</i></p>	
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		<p>ability to . . . have a subsurface connection to the Skagit River is highly unlikely.”); Department of Ecology Administrative Order No. 16961, January 3, 2020 (accepting U.S. Army Corps of Engineers Determination No. NWS-2005-357 and authorizing fill of 1.627 acres of Category IV wetlands on the Swan View Property). A copy of the U.S. Army Corps of Engineers Determination is attached as Exhibit B. A copy of the Department of Ecology Administrative Order No. 16961 is attached as Exhibit C.</p> <p>The City’s apparent conclusion that the subject wetlands are “associated wetlands” because of (i) a “habitat mosaic” and (ii) seasonal intermittent hydrologic connections with the Skagit River is flawed. The subject wetlands are not “associated wetlands” under Ecology guidance or legal precedent. For the foregoing reasons, the Technical Memo should be deleted in its entirety from the Appendix A update, as should all references in Figures 2 through 4 to “Potential Wetland Connection.”</p>	
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February 8, 2021

Mr. Dan Mitzel
1111 Cleveland Ave, Suite 203
Mount Vernon, WA 98273

Reference: Administrative Determination, Shoreline Designation on P24350

Dear Mr. Mitzel:

Following is an administrative interpretation regarding the Shoreline Designation of property you own identified as Lot 2 of Short Plat PL03-0689 (recorded under Auditor File Number: 200402100118), also described by the Skagit County Assessor as parcel: P24350 (hereinafter "site" or "subject site").

ADMINISTRATIVE DETERMINATION

In accordance with Mount Vernon Municipal Code (MVMC) Chapter 2.35, 14.05, and 15.07 an Administrative Determination is hereby made regarding the Shoreline Master Program's (SMP) environmental designation of the subject site:

1. The shoreline jurisdiction for the subject site includes the floodplain (elevation 37) and the three delineated wetlands east of the floodplain, but not the upland buffers associated with these wetlands as depicted on **Attachment 1**.
2. The environmental designation of the area subject to the shoreline jurisdiction is Natural.

Correspondence with the WA State Department of Ecology documenting their direction to the City regarding the extent of the shoreline jurisdiction and its associated environmental designation is attached to this letter identified as **Attachment 2**.

To put this Administrative Determination into context, a summary of events leading up to this determination follows.

BACKGROUND

1. December 2006 to April 2007 preliminary plat process on the subject site:
 - a. December 1, 2006, Swan View preliminary plat (City File No. LU06-079) that included a Shoreline Substantial Development Permit was deemed technically complete for processing. The Swan View preliminary plat proposed 44 single-family residential lots and identified wetlands and Lindegren Creek.
 - b. Mount Vernon operated under Skagit County's Shoreline Management Master Program (SMMP) from 1977 to 2011 when the City adopted its own SMP. As such, the Swan View preliminary plat was subject to Skagit County's SMMP that identified the site as having a shoreline environment of 'Rural'.
 - c. A Mitigated Determination of Non-Significance (MDNS) through the SEPA process was issued on January 31, 2007, for the Swan View preliminary plat.

- d. An open record public hearing was held on February 22, 2007, before the City's Hearing Examiner who issued a recommendation dated March 14, 2007, to approve, with conditions, the Swan View preliminary plat.
 - e. Resolution 736 was approved by Mount Vernon City Council on April 26, 2007, authorizing, with conditions, the Swan View preliminary plat.
 - f. On May 30, 2007, the City transmitted the City's Shoreline Permit for the Swan View preliminary plat to the DOE as required by law.
2. Extensions and expiration of the Swan View preliminary plat approval:
 - a. The Swan View preliminary plat was a valid land use for five years following its approval by City Council on April 26, 2007, resulting in an expiration of April 26, 2012.
 - b. On August 17, 2010, the City Council authorized additional time within which the Swan View preliminary plat would remain a valid application from April 26, 2012 to April 26, 2015.
 - c. During the 2013 legislative session the State Legislature approved SHB 1074 providing additional extensions to preliminary subdivisions, which extended the preliminary plat approval for Swan View to April 26, 2017.
 - d. On July 26, 2017, the City Council approved a Development Agreement via Resolution 933 extending the preliminary plat approval timeframe for the Swan View plat to April 26, 2020.
 - e. The Swan View preliminary plat expired on April 26, 2020.
 - f. No infrastructure was installed/constructed following the original April 26, 2007, preliminary plat approval and the expiration of the preliminary plat on April 26, 2020.
3. On June 22, 2011, the City Council passed Ordinance 3535 adopting an updated SMP that remains in effect today.
4. On March 10, 2020, BYK Construction scheduled a Pre-Application Meeting to discuss the development potential of the subject site.
 - a. In anticipation of the Pre-Application meeting planning staff reviewed the City's current SMP and found what appeared to be a mapping error because the subject site was not shown as being subject to the SMP on Figure 2 (pg. 21 of SMP) and its location was not described within any of the environment locations of the SMP.
 - b. Assuming a mapping error had occurred, planning staff advised the Applicant that the City would assign the Natural shoreline environment designation to the subject site because the Natural designation is physically the closest designation to the subject site. Planning staff also advised the Applicant that the City would be updating the SMP in the near future and encouraged the Applicant to participate in this process that would likely result in assigning a different environmental designation to the site.

5. Dr. Lyndon Lee, the City's Biologist, reviewed applicable records and determined that although the three wetlands depicted in Attachment 1 are not located in the floodplain and do not influence the Skagit River, they are influenced by the Skagit River and would have subsurface hydraulic connection(s) to the abutting floodplain and the Skagit River. These conclusions support a finding that the shoreline jurisdiction runs as depicted in Attachment A, a conclusion confirmed by the State Department of Ecology.

APPEAL RIGHTS

This Administrative Determination is a Type I decision that you may appeal to the Hearing Examiner. Any appeal must be in writing, contain the information outlined in MVMC 14.05.160(C)(3), and include applicable filing fees. This decision will be final unless an appeal to the hearing examiner is filed with Mount Vernon Development Services, 910 Cleveland Avenue, Mount Vernon, WA 98273, within 14-days of the date set out in this letter's heading.

The Department looks forward to working with you. Please let me know if you have any further questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Phillips", with a long horizontal flourish extending to the right.

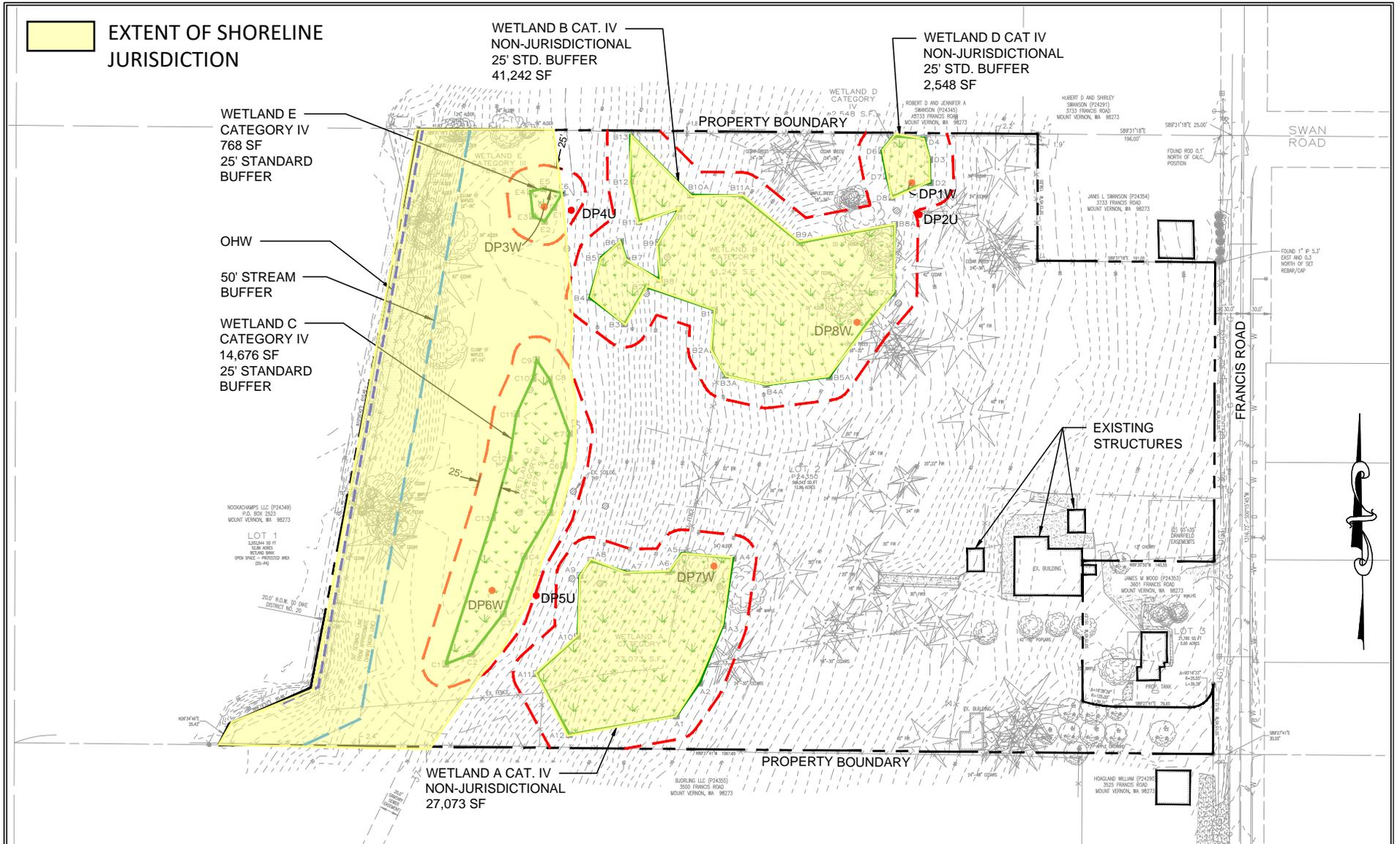
Chris Phillips,
Director

C: Kevin Rogerson, City Attorney

Attachments:

Attachment 1: Map identifying the extent of the shoreline jurisdiction

Attachment 2: Emails with DOE staff



EXTENT OF SHORELINE JURISDICTION

**WETLAND B CAT. IV
NON-JURISDICTIONAL
25' STD. BUFFER
41,242 SF**

**WETLAND D CAT IV
NON-JURISDICTIONAL
25' STD. BUFFER
2,548 SF**

**WETLAND E
CATEGORY IV
768 SF
25' STANDARD
BUFFER**

OHW

**50' STREAM
BUFFER**

**WETLAND C
CATEGORY IV
14,676 SF
25' STANDARD
BUFFER**

NOOKCHAMPS LLC (P24349)
P.O. BOX 2323
MOUNT VERNON, WA 98273

LOT 1
1.2434 AC FT
SCALE AREA
RECORD DRAWING
OPEN SPACE - PROTECTED AREA
(35-34)

25.0' R.O.W. TO ONE
EASTRICT NO. 20

N0P34147
36.4'

**WETLAND A CAT. IV
NON-JURISDICTIONAL
27,073 SF**

BURLING LLC (P24355)
3025 FRANCIS ROAD
MOUNT VERNON, WA 98273

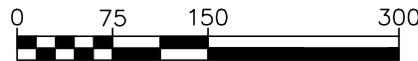
HOSLAND WILLIAMS (P24329)
3025 FRANCIS ROAD
MOUNT VERNON, WA 98273

**PRELIMINARY
INFORMATION ONLY**

NOT FOR CONSTRUCTION

SOUNDVIEW CONSULTANTS LLC ASSUMES
NO LIABILITY OR RESPONSIBILITY FOR
CONSTRUCTION, IMPROVEMENTS, OR
ESTIMATES BASED ON THIS PLAN SET

EXISTING CONDITIONS



**GRAPHIC SCALE
1"=150'**

PROJECT: SWAN VIEW

REFERENCE#

APPLICANT: MITZEL, DAN

**LOCATION: XXXX FRANCIS ROAD
MOUNT VERNON, WA 98273**

SHEET: 2 of 7

DATE: 6/21/2019

Rebecca Lowell

Subject: FW: SMP Update Progress Report

From: Yunge, Chad (ECY) [mailto:CYUN461@ECY.WA.GOV]

Sent: Monday, January 25, 2021 9:23 AM

To: Rebecca Lowell <rebeccab@mountvernonwa.gov>; Bromley, Lauren (ECY) <labr461@ECY.WA.GOV>

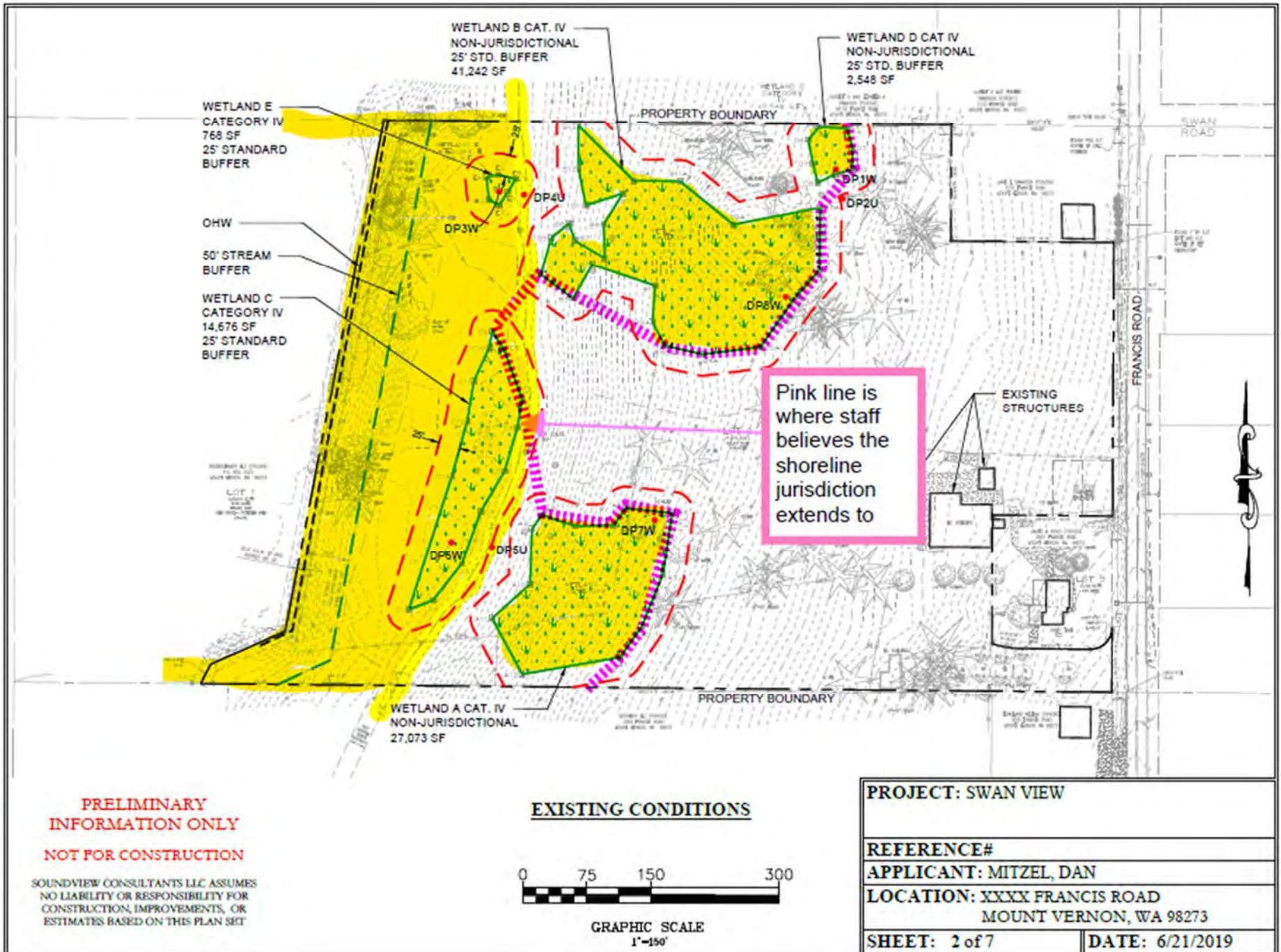
Cc: Chris Phillips <cphillips@mountvernonwa.gov>

Subject: RE: SMP Update Progress Report

Caution External Message

Good morning, Rebecca,

Based on the information you have provided, the following map would slightly alter the location of shoreline jurisdiction by including the entire floodplain. In addition, only the delineated wetland areas themselves, for the three shoreline-associated wetlands located east of the floodplain, would be included within shoreline jurisdiction and not the upland areas surround them.



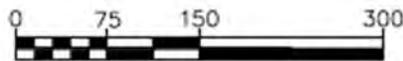
Pink line is where staff believes the shoreline jurisdiction extends to

PRELIMINARY INFORMATION ONLY

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EXISTING CONDITIONS



GRAPHIC SCALE
1"=150'

PROJECT: SWAN VIEW	
REFERENCE#	
APPLICANT: MITZEL, DAN	
LOCATION: XXXX FRANCIS ROAD MOUNT VERNON, WA 98273	
SHEET: 2 of 7	DATE: 6/21/2019

In terms of permit processing, any development activity within shoreline jurisdiction would require review through the City's SMP, which incorporates specific critical area provisions. Portions of the project that lie outside of shoreline jurisdiction would be reviewed through a critical areas permit or whatever local review process used by the City. So depending on the scope of work, a shoreline permit and a critical areas permit may be required at this property. I have not reviewed the City's SMP in regards to wetland fill on this property, however from your email it sounds like the current Shoreline Environment Designation (SED) may not allow it. If the City is planning on changing the SED during the SMP Periodic Review, keep in mind that any changes would have to be supported by the City's shoreline inventory and characterization, and not solely based on an individual's desire to fill wetlands in this case. I am not saying the change can't be made, but you should continue to work with Lauren on the scope of the changes and what analysis may be needed.

Please let either Lauren or myself know if you have any questions on the above information.

Kind regards,
Chad

Chad Yunge | Senior Regional Shoreline Planner
Shorelands & Environmental Assistance Program | Bellingham Field Office
360.255.4374 Office | 360.366.6186 Cell
chad.yunge@ecy.wa.gov



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From: Rebecca Lowell <rebeccab@mountvernonwa.gov>
Sent: Friday, January 15, 2021 6:04 PM
To: Bromley, Lauren (ECY) <labr461@ECY.WA.GOV>
Cc: Chris Phillips <cphillips@mountvernonwa.gov>; Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>
Subject: RE: SMP Update Progress Report

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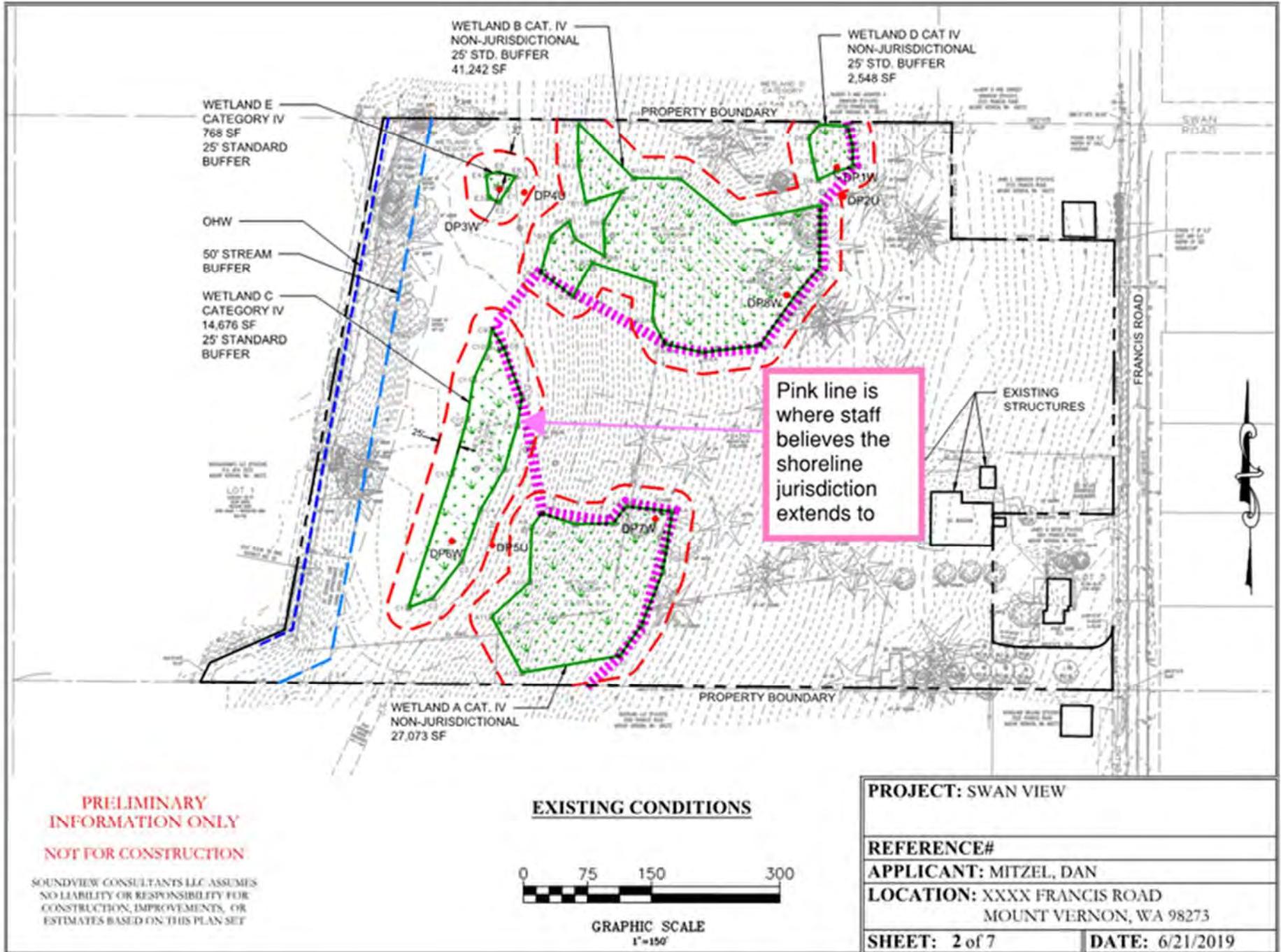
Hi Lauren:

I have a few follow up questions to make sure we are regulating this site correctly.

I've spoken with our City Biologist (Dr. Lyndon Lee) about the criteria you outlined for us in your email below and Dr. Lee confirmed for us that:

1. The eastern three wetlands not located in the floodplain do not influence the Skagit River.
2. The eastern three wetlands not located in the floodplain are influenced by the Skagit River.
3. The eastern three wetlands not located in the floodplain would have subsurface hydraulic connection(s) to the abutting floodplain and the Skagit River.

With the above (#1 – #3) in mind I think the shoreline jurisdiction extends to the far eastern edge of the on-site wetlands, but does not include the buffers for these wetlands. I've identified this area on the map below.



Could you please verify with the information provided whether or not I've correctly identified the extent of the shoreline jurisdiction.

Last, assuming the three wetlands on the far east side of the site are within the shoreline jurisdiction I wanted to make sure there wouldn't be an issue with the City processing a critical area permit allowing these three wetlands to be filled once the environmental designation of the site is officially changed to Shoreline Residential (assuming an analysis can support this change in designation). I think this would be allowed based on the set of critical area regulations the City adopted as part of our SMP. As a side note the property owner has already received a Nationwide Permit from the Corps and a Water Quality Certification from DOE to allow these three wetlands to be filled. However, the required City permit to allow the filling of these wetlands has not been submitted.

Thank you again for all of your help!

Rebecca S. Bradley-Lowell,
Principal Planner/Planning Manager



Development Services
910 Cleveland Ave
Mount Vernon, WA 98273

PHONE: (360) 336-6214 | **WEB:** www.mountvernonwa.gov

PERMIT PORTAL: <https://ci-mountvernon-wa.smartgovcommunity.com>

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From: Bromley, Lauren (ECY) <labr461@ECY.WA.GOV>

Sent: Tuesday, December 22, 2020 3:18 PM

To: Rebecca Lowell <rebeccab@mountvernonwa.gov>

Cc: Chris Phillips <cphillips@mountvernonwa.gov>; Yunge, Chad (ECY) <CYUN461@ECY.WA.GOV>

Subject: RE: SMP Update Progress Report

Caution External Message

Hi Rebecca,

Thank you for your patience in getting this response to your SMP questions. You will find the full response to each question in red below.

This property certainly has a lot going on but hopefully the response below will clarify how it fits into the City's SMP. Please don't hesitate to send us additional questions if further clarification is required.

I will be out of the office starting tomorrow for the holiday and back in on Monday.

Happy Holidays to you and yours.

Lauren Bromley

Shoreline Planner | WA Department of Ecology | Shorelands & Environmental Assistance
 Eastern Region, 4601 N. Monroe Street, Spokane, WA 99205
 Work: (509) 329-3550 | Mobile: (509) 220-7750 | lauren.bromley@ecy.wa.gov

“The birds have vanished into the sky and now the last cloud drains away. We sit together the mountain and me, until only the mountain remains.” - **Li Po**



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From: Rebecca Lowell <rebeccab@mountvernonwa.gov>
Sent: Tuesday, December 15, 2020 7:49 PM
To: Bromley, Lauren (ECY) <labr461@ECY.WA.GOV>
Cc: Chris Phillips <cphillips@mountvernonwa.gov>
Subject: RE: SMP Update Progress Report

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Hi Lauren:

I just left you a voicemail about the following issue I'm hoping you can provide direction to the City on.

Questions I need assistance with:

1. Is the below described property subject to the City's SMP?; **Yes**
and,
2. If the answer to question #1 is yes, where does the jurisdiction extend to and what would the SMP environmental designation be?

2a. At a minimum, it appears that there are shoreline associated wetlands on the property that are regulated under the SMA and the City's SMP. The two westernmost wetlands appear to be within the FEMA floodplain boundary and thus are automatically considered to be shoreline associated wetlands. Regarding the other wetlands on the property, the City would have to determine if the three (3) Category IV wetlands are shoreline associated. This means that the wetlands either influence or are influenced by the Skagit River in this case, including but not limited to being hydrologically connected to the floodplain. If determined to be shoreline associated, these wetlands would be regulated similarly to the other two. If they are not shoreline associated wetlands, they would be regulated directly through the City's Critical Areas Ordinance. Keep in mind that only the shoreline associated wetlands themselves are regulated by the Mount Vernon SMP in this case, as the City elected not to include critical area buffers within shoreline jurisdiction when such jurisdiction extends beyond 200-feet of the ordinary high watermark. Any work done within a shoreline associated wetland would require review per the SMP, but any associated buffer requirements would be applied through the CAO.

2b. Beyond any shoreline associated wetlands, in order to determine where the jurisdiction extends, the City would have to determine the location of the floodway boundary in relation to this property. The official shoreline map in the SMP does not show the floodway location but contains a note that indicates that its location is based on a site-specific analysis at the time of permit review. The FEMA FIRM for the area also lacks a mapped floodway boundary. Mount Vernon SMP Section IV.A.1 defines how the floodway should be determined, and based on these criteria, it may be possible that the floodway extends onto the western portion of the subject property. In your email dated December 15, you indicate that while the City does not have a mapped floodway, its regulations adopt the FEMA A1 Zone as its regulatory floodway. If this is the case, the landward extent of shoreline jurisdiction would be up to this A1 floodplain boundary plus any presence of shoreline associated wetlands as discussed above.

Regarding the appropriate shoreline environment designation, the existing Natural SED would apply to any shoreline jurisdictional areas on the subject property as this is an extension of the SED mapped on the City's shoreline maps.

Subject Property: Pages 1 to 4 of the attachment to this email contains a maps and information showing the location of the subject property that is described as Lot 2 of Short Plat PL03-0689 (recorded under Auditor File Number: 200402100118), also described by the Skagit County Assessor as parcel: P24350.

Background Information:

- The subject property is not mapped or described in the City's SMP. I'm left wondering if this was a mapping error or an omission.
- The City does not have a floodway that is mapped like other jurisdictions have. However, the City's development regulations identify zone A1 on FEMA's FIRM maps as being a floodway regulated by the City.
- Page 5 of the attached contains FEMA's FIRM map with the project site identified. A portion of the project site is located in zone A1.
- Page 6 of the attached contains a map identifying the on-site stream (Lindegren Creek not the off-site Skagit River) and several wetlands.
- The second attachment to this email is a copy of most of our current SMP. Within this copy I've highlighted in yellow and placed red boxes around portions of this document that I've referenced to-date in an attempt to correctly classify the site in question. This attachment may not be at all helpful for you; however, I created it for our attorney and I thought you might find it useful.

There are other details about this issue that will be easier to explain over the telephone. Looking forward to discussing with you when you have a chance.

Thanks!

Rebecca S. Bradley-Lowell,
Principal Planner/Planning Manager



Development Services
910 Cleveland Ave
Mount Vernon, WA 98273

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PERMIT PORTAL: <https://ci-mountvernon-wa.smartgovcommunity.com>

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From: Bromley, Lauren (ECY) <labr461@ECY.WA.GOV>

Sent: Tuesday, December 15, 2020 8:37 AM

To: Rebecca Lowell <rebeccab@mountvernonwa.gov>

Cc: Slone, Layne (ECY) <lnak461@ECY.WA.GOV>; Shawna Gossett <shawna@mountvernonwa.gov>

Subject: RE: SMP Update Progress Report

Caution External Message

Good morning Rebecca,

For all things EAGL, Layne Slone (cc'd) would be the person to help. Layne is the grant manager for your specific project and will be able to walk through how to get into EAGL and management of the grant itself throughout the project. I would recommend that Shawna contact her and then any SMP questions such as technical, permitting, legal, implementation, or just any overall SMP questions would be my side of things.

Both Layne and myself are here to assist you and your team, so don't hesitate to ask. ☺

Lauren Bromley

Shoreline Planner | WA Department of Ecology | Shorelands & Environmental Assistance
Eastern Region, 4601 N. Monroe Street, Spokane, WA 99205
Work: (509) 329-3550 | Mobil: (509) 220-7750 | lauren.bromley@ecy.wa.gov

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From: Rebecca Lowell <rebeccab@mountvernonwa.gov>
Sent: Friday, December 11, 2020 6:22 PM
To: Bromley, Lauren (ECY) <labr461@ECY.WA.GOV>
Cc: Slone, Layne (ECY) <lnak461@ECY.WA.GOV>; Shawna Gossett <shawna@mountvernonwa.gov>
Subject: RE: SMP Update Progress Report

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Thank you Lauren:

I was able to find the answer for the question I had a week or so ago. However, I spent about an hour trying to access EAGL and failed miserably. As such, I'm going to ask our amazing Permit Tech Shawna Gossett to connect with you so that she can figure out how to access/update the system to keep us in good standing.

Would you please let Shawna know when a good time to contact you would be.

Thanks so much!

Rebecca S. Bradley-Lowell,
Principal Planner/Planning Manager



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 Mount Vernon, WA 98273

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From: Bromley, Lauren (ECY) <labr461@ECY.WA.GOV>
Sent: Thursday, December 3, 2020 3:19 PM
To: Rebecca Lowell <rebeccab@mountvernonwa.gov>
Cc: Slone, Layne (ECY) <lnak461@ECY.WA.GOV>
Subject: RE: SMP Update Progress Report

Caution External Message

Good afternoon Rebecca,
Was your question regarding the SMP process or more of an EAGL grant questions?
Layne is really the expert to speak with regarding the grant otherwise I'm your contact for the SMP.

Lauren Bromley

Shoreline Planner | WA Department of Ecology | Shorelands & Environmental Assistance
Eastern Region, 4601 N. Monroe Street, Spokane, WA 99205
Work: (509) 329-3550 | Mobil: (509) 220-7750 | lauren.bromley@ecy.wa.gov

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From: Rebecca Lowell <rebeccab@mountvernonwa.gov>
Sent: Monday, November 30, 2020 10:41 AM
To: Bromley, Lauren (ECY) <labr461@ECY.WA.GOV>

Cc: Slone, Layne (ECY) <lnak461@ECY.WA.GOV>

Subject: RE: SMP Update Progress Report

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Hi Lauren, thank you for the reminder regarding the grant updates. I will log into the system and provide an update.

COVID-19 has thrown us a curveball and I have not been able to do any work on our update so far this year.

I do have a project specific shoreline designation question that would be easier to explain over the telephone. Would it be best for me to call you or Layne?

Thanks,

Rebecca S. Bradley-Lowell,
Principal Planner/Planning Manager



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Mount Vernon, WA 98273

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From: Bromley, Lauren (ECY) <labr461@ECY.WA.GOV>

Sent: Monday, November 16, 2020 3:38 PM

To: Rebecca Lowell <rebeccab@mountvernonwa.gov>

Cc: Slone, Layne (ECY) <lnak461@ECY.WA.GOV>

Subject: SMP Update Progress Report

Caution External Message

Good afternoon Rebecca,

My name is Lauren Bromely and I am assisting Chad Yunge in managing the SMP Update for the City of Mount Vernon. As your project planner, I am here to assist you throughout the update process and also help you work through the EAGL grant system. I understand both can be daunting tasks, so please feel free to contact me any time and as often as you need. I am here to be a resource to you.

On the note of the EAGL database, we have Mt. Vernon's grant as active since April but we have not received a progress report yet. Even if nothing is to be claimed for funds, the application still needs to have quarterly reports uploaded and the request amount would just read as \$0.

However, if you do have actions performed that the City would like to be reimbursed for, this would be the time to do so.

Please let me know if you need assistance with the process or have questions.

Thank you,

Lauren Bromley

Shoreline Planner

SEA / ERO

4601 N. Monroe Street

Spokane, WA 99205

Work: (509) 329-3550

Mobile: (509) 220-7750

Fax: (509) 329-3596

Email: Lauren.bromley@ecy.wa.gov

“The birds have vanished into the sky and now the last cloud drains away. We sit together the mountain and me, until only the mountain remains.” - **Li Po**



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1191 Second Avenue, Suite 1800
Seattle, WA 98101-2996
206-623-9372
vnf.com

October 14, 2021

VIA U.S. MAIL

Planning Commission
City of Mount Vernon
910 Cleveland Ave.
Mount Vernon, WA 98273

Re: City of Mount Vernon Shoreline Master Program Update—Comment Letter

Dear Planning Commissioners:

We submit this letter to the City of Mount Vernon (“**City**”) Planning Commission on behalf of Hansell/Mitzel, LLC (“**Hansell/Mitzel**”) to provide comments on the City’s draft Shoreline Master Program update (“**SMP Update**”), a matter which is on the October 19, 2021 Planning Commission agenda for an open record public hearing. Hansell/Mitzel is the owner of real property in the City which is affected by the SMP Update, including an approximately 13-acre property abutting the west frontage of Francis Road (Parcel No. P24350) (“**Swan View Property**”) and approximately 12 acres in Highland Greens Divisions II and VII (Parcel No. 124125). Hansell/Mitzel has reviewed Development Services staff’s draft SMP Update dated July 7, 2021 and supporting memoranda, and presents the following specific comments on the draft.

1. Clarification to Shoreline Modifications Table 2 Regarding “Fill.” To enhance the clarity of the information contained in Table 2 “Shoreline Modifications” in Section V (“Shoreline Use, Modification, and Development Standards Tables”), the SMP should clearly state that “Fill,” where allowed in a particular shoreline designation, is allowed in critical areas within such shoreline designations so long as SMP Appendix C (“Shoreline Critical Area Regulations”) is complied with. Below is a reproduction of the current Table 2, with the pertinent “shoreline modification” highlighted.

TABLE 2. SHORELINE MODIFICATIONS:

SHORELINE MODIFICATIONS	Shoreline Designations:				
	Aquatic	Natural	Urban Conservancy	Shoreline Residential	Urban Mixed-use
Shoreline Stabilization:					
Bioengineering	C ³	C ³	C ³	P ³	P ³
Revetment	X	X	C ³	P	P
Dikes/Levees	C	P	P	P	P
Dredging	C ⁶	n/a	n/a	n/a	n/a
Dredge material disposal	C ¹⁴	C ¹⁴	C ¹⁴	P	P
Hazardous Waste Cleanup	P	P	P	P	P
Fill	C ³	C ³	C ³	P	P
Piers and Docks	P ¹	X	C	P	P
Breakwaters, jetties, and weirs	P ¹³ /C ¹³	X	X	X	X

The footnotes to Table 2 do not clearly convey that Fill in critical areas (e.g., wetlands) is allowed as of right in the Shoreline Residential and Urban Mixed-Use shoreline designations so long as the shoreline modification comprising the Fill complies with the Shoreline Critical Area Regulations. (By comparison, Footnote 5 to Table 2 clearly conveys the conditions under which Fill is allowed in the Aquatic, Natural, and Urban Conservancy shoreline designations.) For enhanced clarity, it is proposed that a new footnote 22 be assigned to the “Fill” cell above, and added to the list of “Notes to Tables” below the Shoreline Use, Modification, and Development Standards Tables, which states:

Fill in critical areas within the Shoreline Management Zone shall be allowed subject to compliance with applicable wetlands regulations set forth in Appendix C (“Shoreline Critical Area Regulations”).

In consistency with the foregoing, it is proposed that the following nearly identical language be added to a new subsection F.3.1 in the “Fill” subsection of Section VIII (“Shoreline Modification Provisions”):

Fill in critical areas within the Shoreline Management Zone shall be allowed as set forth in the Section V Shoreline Modifications Table 2, subject to compliance with applicable wetlands regulations set forth in Appendix C (“Shoreline Critical Area Regulations”).

Including the foregoing revisions in the SMP Update will provide enhanced clarity for the City and applicants alike when applying the Table 2 Shoreline Modifications standards.

2. Clarification to Development Standards Table 3 Regarding Maximum Residential Density in “Shoreline Residential” Designation. To enhance the clarity of the information contained in Table 3 “Development Standards” in Section V (“Shoreline Use, Modification, and Development Standards Tables”), the SMP should clearly state that the density bonus allowed under MVMC 17.73 (“Regulations to Encourage Affordable Housing”) applies in

shoreline environments in which residential use is allowed. “Footnote 19” should be amended to state the following.¹

19. Residential density, minimum and maximum if applicable, measured per net acre (du/a), in the Shoreline Residential environmental designation is as follows, **unless otherwise allowed under MVMC 17.73 (“Regulations to Encourage Affordable Housing”)**: R-A zone: 1.24 du/a (min 35,000 lot size); R-1, 3.0: 3.23 du/a (min 9,000 sf lot); R-1, 4.0: 4.0 to 4.54 du/a (7,500 sf lot); R-1, 7.0: 7.26 du/a (4,500 sf lot).

The proposed revision confirms for applicants and the City alike that residential densities allowed under the affordable housing ordinance are allowed in shoreline environments.

3. Water Quality Policy. Subsection I (“Water Quality”) of SMP Update Section IV (“General Provisions”) contains the following draft proposed revision which should be deleted.

All shoreline uses and activities should be located, designed, constructed, and maintained to avoid significant ecological impacts by alteration of water quality, quantity, **or hydrologic conditions.**

The meaning and intent of the foregoing draft proposed revision are unclear. “Hydrologic conditions” is not a defined term in the SMP Update. It is generally understood to mean the study of water’s interaction with the Earth’s surfaces and sub-surfaces. Thus, in the regulatory context it is either redundant of “alteration of water quality [and] quantity” or has a different meaning which is not set forth in the SMP Update. The foregoing draft proposed revision should be deleted as follows.

All shoreline uses and activities should be located, designed, constructed, and maintained to avoid significant ecological impacts by alteration of water quality, quantity, ~~or hydrologic conditions.~~

The proposed deletion improves clarity for applicants and the City alike.

4. In-Stream Structures Policy. Subsection I (“In-Stream Structures”) of SMP Update Section VII (“Shoreline Use Policies and Regulations”) contains the following existing provision.

¹ It appears that Development Standard “Density (max. and min. determined by underlying zoning district)” may be appended with the wrong footnote number. It is appended with a superscript “20,” but footnote 20 to Table 3 refers to trails. Note “19” appears to be the correct “Note to Table” for the “Density” item.

2.b. In-stream structures should be allowed only for the purposes of environmental restoration and maintaining the existing bridges crossing the Skagit River.

The foregoing should be revised as follows, to account for stormwater management facilities, such as flood gates and culverts, which may be necessary as in-stream structures.

2.b. In-stream structures should be allowed only for the purposes of environmental restoration and maintaining the existing bridges crossing the Skagit River, **and for stormwater management facilities such as flood gates and culverts.**

The proposed revision confirms for applicants and the City alike that stormwater management facilities are permissible “in-stream structures.”

5. Fill Policy. Subsection F (“Fill”) of SMP Update Section VIII (“Shoreline Modification Provisions”) contains the following draft proposed provision, which should be deleted because it is superfluous.

2.b. Filling activities in waters/wetlands and shorelines usually require permitting at federal, state, and City levels of jurisdiction.

The foregoing draft proposed provision contains general advisory information and provides no particular policy direction. Accordingly, it should be deleted as shown below.

~~2.b. — Filling activities in waters/wetlands and shorelines usually require permitting at federal, state, and City levels of jurisdiction.~~

The proposed deletion avoids the inclusion of a superfluous new provision which imposes no regulatory policy or standards.

6. Peer Review of Shoreline Applicants’ Consultant Work. SMP Update § III “Shoreline Master Program Administrative Provisions” contains the following provision regarding “peer review” of application materials.

Upon the review of materials submitted by an applicant the Director can, at their discretion, require peer review be completed by a consultant chosen by the Director, at the sole expense of the applicant. SMP Update § III.A.11.

The foregoing provision is inconsistent with the intent of “peer review.” Peer review is intended to be an independent evaluation of a scientist’s methodology and conclusions, to ensure complete and accurate analysis consistent with industry standards. Such an independent

evaluation requires a third party—the peer reviewer—who is independent of both the scientist and the audience receiving the scientist’s work. The draft provision above, which allows the City to require peer review “by a consultant chosen by the Director,” is inconsistent with these principles because the peer reviewer is not independent of the audience receiving the scientist’s work. This may be particularly problematic where a city has relied exclusively on a single consulting biologist for much, if not all, of the city’s shoreline analysis, including the city’s drafting of an SMP update. Finally, the draft provision is inconsistent with the standard approach taken by local governments in Washington, which typically provides opportunity for an applicant to have input on who will conduct the peer review.

Based on the foregoing, Hansell/Mitzel requests that SMP § III.A.11 be revised as follows.

Upon the review of materials submitted by an applicant the Director can, at their discretion, require peer review be completed by a consultant chosen by the **applicant from a list of three (3) consultants provided by the** Director, at the sole expense of the applicant.

Appendix C to the SMP Update contains two similar provisions at § I.G and § VIII.A.2.c.i:

App. C § I.G. Peer Review. The director may require peer review of any critical area reports or work that is submitted to the city. The director has the discretion to choose the consultant who will complete the peer review. If peer review is required, then the applicant shall be responsible for paying the entire costs of the peer review.

App. C § VII.A.2.c. Independent Secondary Review. When appropriate due to the type of critical area present, or project area conditions, the director has the authority to require the applicant to prepare and/or fund additional analyses or activities, including, but not limited to: i. An evaluation by an independent certified professional regarding the applicant’s analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate. This shall be paid at the applicant’s expense, and the director shall select the third party review professional. Independent review shall be required for activities that are altering a critical area or buffer and are required to prepare supplemental studies and/or mitigation plans. Independent review for standard studies is discretionary and may be required by the director

Hansell/Mitzel requests that the foregoing provisions be revised as follows.

App. C § I.G. Peer Review. The director may require peer review of any critical area reports or work that is submitted to the city. ~~The director has the discretion to choose the consultant who will complete the peer review.~~ If peer review is required, then the applicant shall **choose a reviewer from a list of three (3) consultants provided by the Director and shall** be responsible for paying the entire costs of the peer review.

App. C § VII.A.2.c. Independent Secondary Review. When appropriate due to the type of critical area present, or project area conditions, the director has the authority to require the applicant to prepare and/or fund additional analyses or activities, including, but not limited to: i. An evaluation by an independent certified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate. This shall be paid at the applicant's expense, and the ~~director~~ **applicant** shall select the third party review professional **from a list of three (3) consultants provided by the Director**. Independent review shall be required for activities that are altering a critical area or buffer and are required to prepare supplemental studies and/or mitigation plans. Independent review for standard studies is discretionary and may be required by the director

Hansell/Mitzel acknowledges that peer review of application materials can be an appropriate tool in certain circumstances but proposes the foregoing revisions to ensure that the peer review process leads to a truly independent review.

7. City's Unique Wetlands Rating Model. SMP Update Appendix C, § I "Regulation of Critical Areas in Shoreline Jurisdiction" contains the following draft provision regarding the City's stand-alone wetlands rating model.

App. C, § I.F.F.1.² The city adopts the hydrogeomorphic (HGM) functional assessment approach recommended by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Natural Resources Conservation Service, and other agencies. HGM assessment allows users to assess changes in ecosystem functions (hydrology, bio/geochemistry, plant community, and faunal support/habitat) when compared to local and/or regional referenced ecosystems. Mount Vernon has developed an HGM system of models that is specific to the pertinent waters/wetland subclasses

² The subsection numbering in this draft section appears to be internally inconsistent. For reference, this provision can be found on page C-5 of Appendix C.

within the city and/or urban growth area. Mount Vernon will use their HGM system rather than the Washington State Department of Ecology (DOE) wetland rating model for purposes of measuring both impacts to and benefits from activities in critical areas and buffers. The city's HGM system is titled "Operational Guidebook to Assessment of Riverine, Slope, and Depressional Waters/Wetlands Functions in the City of Mount Vernon, Washington; March 2008," and any subsequent updates; hereinafter referred to as the HGM manual.

The foregoing provision, by which the City would apply its own wetlands rating system, is inconsistent with the Growth Management Act, which requires local governments to use "the best available science in developing policies and development regulations to protect the functions and values of critical areas." RCW 36.70A.172(1). To assist local governments in meeting this "best available science" requirement, the Department of Ecology publishes guidance on the best available science regarding wetlands, wetlands function, and wetlands management. The Department of Ecology also publishes the "Washington State Wetland Rating System for Western Washington" for use by local governments. The City's intent to use its own separate wetland rating system "rather than the Washington State Department of Ecology (DOE) wetland rating model" is inconsistent with RCW 36.70A.172(1).

Using a separate wetland rating system is also inconsistent with Department of Ecology administrative regulations implementing the Shoreline Management Act. The Washington Administrative Code requires that "[i]dentification of wetlands and delineation of their boundaries pursuant to this chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements." WAC 173-22-035.³ The City's intent to eschew Ecology and use its own separate wetland rating system "rather than the Washington State Department of Ecology (DOE) wetland rating model" is inconsistent with WAC 173-22-035.

Further, from a practical perspective, introducing a separate wetland rating system introduces unnecessary complication and expense into the application process. The Department of Ecology wetlands rating system has a long track record, it has been used and tested time and again, and consultants are familiar with it. Applicants should be required to utilize only the Department of Ecology wetlands rating system and should not be required to conduct two separate analyses. The proposed revision would cause duplication of efforts and inevitably increase consultant cost for applicants and review time for City staff.

Based on the foregoing, Hansell/Mitzel requests that Appendix C, § I.F.F.1 be revised as follows:

³ The "regional supplement" applicable in the City is the US Army Corps of Engineers' "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region."

~~The city adopts the hydrogeomorphic (HGM) functional assessment approach recommended by the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Natural Resources Conservation Service, and other agencies. HGM assessment allows users to assess changes in ecosystem functions (hydrology, bio/geochemistry, plant community, and faunal support/habitat) when compared to local and/or regional referenced ecosystems. Mount Vernon has developed an HGM system of models that is specific to the pertinent waters/wetland subclasses within the city and/or urban growth area. Mount Vernon will use their HGM system rather than the Washington State Department of Ecology (DOE) wetland rating model for purposes of measuring both impacts to and benefits from activities in critical areas and buffers. The city's HGM system is titled "Operational Guidebook to Assessment of Riverine, Slope, and Depressional Waters/Wetlands Functions in the City of Mount Vernon, Washington; March 2008," and any subsequent updates; hereinafter referred to as the HGM manual.~~

Hansell/Mitzel respectfully requests that the City utilize only the Department of Ecology wetlands rating manual to ensure consistency with the Growth Management Act, the Washington Administrative Code, and to avoid unnecessary complication and expense for applicants.

8. Critical Areas Ordinance Restoration Guidebook. The draft updated Appendix C contains the following draft subsection § 1.F.F.4 regarding the City's Critical Areas Ordinance Restoration Guidebook.

The city has developed a set of recommended critical area and buffer development standards for restoration and enhancement activities required for mitigation pursuant to this chapter. They are compiled under the title of "Critical Areas Ordinance Restoration Guidebook: Guidelines, Recommended Techniques and Details for Restoration of Waters/Wetlands and their Buffers"; hereinafter referred to as the CAO guidebook. The CAO guidebook is available on the city's website or a paper copy is kept at the community and economic development department.

The City's "CAO guidebook" was published in 2008 and is outdated. In particular, the CAO guidebook does not reflect the most current mitigation guidance from the Department of Ecology and does not address wetland mitigation banking. The CAO guidance must be updated to incorporate the latest mitigation guidance from Ecology and incorporate information on the benefits and availability of the use of mitigation bank credits. Until the CAO guidance is updated, the foregoing provision should be deleted as follows.

~~The city has developed a set of recommended critical area and buffer development standards for restoration and enhancement activities required for mitigation pursuant to this chapter. They are compiled under the title of “Critical Areas Ordinance Restoration Guidebook: Guidelines, Recommended Techniques and Details for Restoration of Waters/Wetlands and their Buffers”; hereinafter referred to as the CAO guidebook. The CAO guidebook is available on the city’s website or a paper copy is kept at the community and economic development department.~~

In addition, the benefits and availability of mitigation bank credits should be added to Appendix C § VIII.G.9, which contains a list of “alternative methods of developing the property” if “wetland changes are proposed.” The Department of Ecology encourages the use of wetland mitigation bank credits. Appendix C should reflect this.

9. Wetland Classification and Designation. Appendix C § VII.C.1.d provides the criterion applicable to “Category IV” wetlands but has not been updated to reflect the 2014 Department of Ecology wetlands rating system. It reads as follows:

d. Category IV. Category IV wetlands are those that meet the following criterion: ii. provide low levels of functions, scoring less than thirty (30) out of one hundred (100) points (DOE Wetlands Rating System, 2004).

The foregoing provision should be updated to reflect the 2014 Department of Ecology wetlands rating system, in consistency with the draft new provisions which do so for Category I, II, and III wetlands.

d. Category IV. Category IV wetlands are those that meet the following criterion: ii. provide low levels of functions, scoring ~~less than thirty (30)~~ **9-15 points out of 27** ~~out of one hundred (100) points~~ (DOE Wetlands Rating System, ~~2004~~**2014**).

The foregoing revision will improve the internal consistency of this section of the SMP Update and improve consistency with the 2014 Department of Ecology wetlands rating system.

10. Allowed Activities and Uses in Category I Wetlands. The draft updated Appendix C contains the following draft deletion from § VII.E.3 which establishes allowed activities and uses in Category I wetlands.

Category I wetlands: Activities and uses shall be prohibited from Category I wetlands. ~~, except as provided for in the public agency~~

~~and utility exception, reasonable use exception, and variance sections of the MVMC.~~

The proposed deletion, which removes valid bases for allowing certain activities and uses in Category I wetlands, is inconsistent with the City Critical Areas Ordinance. The deletion is inconsistent with MVMC 15.40.090.E, which provides: “Category I Wetlands. Activities and uses shall be prohibited from Category I, except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of this title.” *See also* MVMC 15.40.040.F, which provides the exception for utilities; MVMC 15.40.130.B, which provides the reasonable use exception; and MVMC 15.40.130.C, which provides for variances from the Critical Areas Ordinance. The “Wetlands” section of Appendix C and the “Wetlands” section of the City Critical Areas Ordinance are virtually, if not actually, identical to each other and there is no basis for the proposed deletion. Therefore, the draft deletion should be restored as follows.

Category I wetlands: Activities and uses shall be prohibited from Category I wetlands, **except as provided for in the public agency and utility exception, reasonable use exception, and variance sections of the MVMC.**

Restoring the proposed deletion improves consistency between Appendix C and the City Critical Areas Ordinance, which provides clarity for applicants and the City alike.

11. Building Setbacks in Fish and Wildlife Habitat Conservation Areas.

Appendix C, Section IX (“Fish and Wildlife Habitat Conservation Areas”), Subsection C.5 contains the following draft new provision regarding required minimum building setbacks in FWHCAs, which contains an undefined term “shoreline buffer” and is confusing.

C.5.b. “Minimum building setback” is the required horizontal distance between the finished exterior wall of a structure and the edge of the critical area of the lot on which the structure is located. All portions of a structure must be located away from the critical area edge **or shoreline buffer edge, whichever is greater**, a distance equal to or greater than the minimum setback. Uses not requiring a permit defined in the City Building Code may be permitted in the setback if the Director determines that such intrusions will not adversely impact the fish and wildlife habitat conservation area and other required SMZ setbacks are adhered to, or prescribes a plan to replace affected functions and values within the affected area.

The intent of original subsection C.5.b is to provide for a minimum building setback from a FWHCA critical area, and it is unclear what the draft proposed clause adds or changes. A designated fish and wildlife habitat conservation area with its buffer is a critical area. *See* Section IX.C. However, the draft new clause provides for a minimum building setback from the

edge of a “shoreline buffer,” which is not a defined term. “Buffer” means “an area adjacent to a wetland, river, or stream that, generally, functions to protect the public from loss suffered when the functions and values of the wetland, river, or stream are degraded.” SMP IX. Thus, a “buffer” applies adjacent to critical areas and not adjacent to the “shoreline.”

An additional revision provided below also clarifies that when an FWHCA critical area is altered pursuant to SMP Appendix C, the minimum building setback is measured from the critical area edge as altered and not from the pre-alteration edge of the critical area.

To remove ambiguity, Subsection C.5.b should be revised as follows:

C.5.b. “Minimum building setback” is the required horizontal distance between the finished exterior wall of a structure and the edge of the critical area of the lot on which the structure is located. All portions of a structure must be located away from the **Fish and Wildlife Habitat Conservation Area** critical area edge ~~or shoreline buffer edge, whichever is greater,~~ a distance equal to or greater than the minimum setback. **When an FWHCA critical area is altered pursuant to SMP Appendix C, the minimum building setback is measured from the critical area edge as altered.** Uses not requiring a permit defined in the City Building Code may be permitted in the setback if the Director determines that such intrusions will not adversely impact the fish and wildlife habitat conservation area and other required SMZ setbacks are adhered to, or prescribes a plan to replace affected functions and values within the affected area.

The foregoing revision clarifies that minimum building setbacks apply adjacent to the edge of FWHCA critical areas and prevents the introduction of the ambiguous undefined term “shoreline buffer.”

12. Novel Shoreline Designation: “Potential Wetland Connection.” The draft updated shoreline designation maps found at Figures 2 through 4 of SMP Section IV (“Shoreline Environmental Designations”) appear to introduce three new shoreline designations which are unprecedented, are inconsistent with the Shoreline Management Act, and introduce unnecessary ambiguity into the SMP Update.

As shown on Figures 2 through 4, which comprise the City’s draft new “Environmental Designations” maps, the City appears to have created three new shoreline designations:

- “Natural – Potential Wetland Connection”
- “Shoreline Residential – Potential Wetland Connection”
- “Urban Mixed-Use – Potential Wetland Connection.”

The SMP Update contains no definitions or implementing regulations for these novel designations.

The novel designations introduce unnecessary ambiguity into the SMP Update. The SMP Update does not actually contain any regulations or standards applicable to the “Potential Wetland Connection” suffix. Thus, a property identified as “Shoreline Residential-Potential Wetland Connection” is regulated identically to a property identified as “Shoreline Residential.” It is, thus, meaningless and should be deleted from the SMP Update.

The SMP Update provides an inadequate rationale for the “Potential Wetland Connection” suffix. New draft provision IV.A.2 notes that “there are variables the City is not able to accurately identify and map until site specific activities/developments are proposed” and that such “variables” include “the existence, location, and characteristics of waters/wetlands.” This caveat is inadequate, given that local SMPs, including shoreline designation maps, are approved by the Department of Ecology and become the official State master program. *See* WAC 173-26-030 (“The state master program is the cumulative total of all shoreline master programs and amendments thereto approved or adopted by” the Department of Ecology.) Thus, Figures 2 through 4 constitute the official City SMP “Environmental Designation maps” comprising a component of the state master program. Variables which will not be known until “site specific activities/developments are proposed” should not be codified in a local SMP.

We understand from Development Services staff that the intent of the novel designations is to provide notice to the public that there “might” be areas within the hatched portions that could, in the future, based on permit review, be determined to be “associated wetlands” and that “associated wetlands” would be considered within shoreline jurisdiction. As noted above, the mapping approach is not consistent with the applicable regulations, because areas cannot be mapped as being in shoreline jurisdiction, unless a final determination has been made. To the extent that the novel designations are intended to identify areas where an “associated wetland” might be located, the SMP Update could include text that states, “Any area in the future that is formally determined to be an ‘associated wetland’ shall be regulated as a shoreland area under the SMP.”

Consistent with the foregoing, Figures 2 through 4 should utilize only the standard shoreline environment designations. Thus, it is proposed that all references to the following should be deleted from Figures 2 through 4:

- “Natural – Potential Wetland Connection”
- “Shoreline Residential – Potential Wetland Connection”
- “Urban Mixed-Use – Potential Wetland Connection.”

Correspondingly, all cartographically distinct hatching patterns (horizontal lines) depicted on the draft Figures 2 through 4 should be deleted so that the visual depiction of each of the three novel designations shown on Figures 2 through 4 should be identical to, respectively, “Natural,” “Shoreline Residential,” and “Urban Mixed-Use.”

13. Definition of “Associated Wetlands.” SMP Update § IX (“Definitions”) contains the following draft revised definition for “Associated jurisdictional wetlands”:

Associated jurisdictional wetlands or Associated wetlands are those wetlands that are in proximity to and either influence or are influenced by shorelines of significance to the State and are, therefore, subject to the Shoreline Management Act. ~~Consistent with WAC 173-22-040 this definition includes wetlands that are determined by the City to be in proximity to, and either influence or are influenced by, the Skagit River, Barney Lake, or any other waterbody defined as a shoreline of the State within Chapter 90.58 RCW. This influence includes, but is not limited to, one or more of the following: periodic inundation, location within a floodplain, or surface or shallow subsurface hydraulic connection(s) that may be permanent or which occur seasonally (e.g. during the wet winter/spring season) with intermittent flow connections.~~

The foregoing draft amended definition is inconsistent with WAC 173-22-040, which states, “The following criteria contain the standards for the department’s designation of shoreland areas associated with shorelines of the state which are subject to the jurisdiction of chapter 90.58 RCW: . . . (2) Lakes. The shoreland area shall include: . . . (b) Those wetlands which are in proximity to and either influence or are influenced by the lake. This influence includes but is not limited to one or more of the following: Periodic inundation or hydraulic continuity; . . . (3) Streams. The shoreland area shall include the greater of: . . . (c) Those wetlands which are in proximity to and either influence or are influenced by the stream. This influence includes but is not limited to one or more of the following: Periodic inundation; location within a flood plain; or hydraulic continuity;”

Hansell/Mitzel requests that the draft amended definition be revised in consistency with WAC 173-22-040, as follows.

Associated jurisdictional wetlands or Associated wetlands are those wetlands that are in proximity to and either influence or are influenced by shorelines of significance to the State and are, therefore, subject to the Shoreline Management Act. Consistent with WAC 173-22-040 this definition includes wetlands that are determined by the City to be in proximity to, and either influence or are influenced by, the Skagit River, Barney Lake, or any other waterbody defined as a shoreline of the State within Chapter 90.58 RCW. This influence includes, but is not limited to, one or more of the following: periodic inundation, location within a floodplain, or ~~hydraulic continuity. surface or shallow subsurface hydraulic connection(s) that may be permanent or which occur seasonally (e.g. during the wet winter/spring season) with intermittent flow connections.~~

The requested revision ensures consistency with WAC 173-22-040 and provides certainty for applicants and the City in applying the definition of “associated wetlands.”

14. Identification of “Associated Wetlands.” The technical memorandum supporting the Appendix A update and adoption of the novel “Potential Wetlands Connection” designation misinterprets the science and the law to improperly conclude that certain wetlands in the City are “associated wetlands.” The Technical Memorandum prepared by L.C. Lee & Associates, Inc. dated April 30, 2021 regarding “Mr. Dan Mitzel – Swan View Plat – Shorelines” (the “**City Memo**”) concludes that three wetlands located on the Swan View Property are “associated” with the shorelines areas of the Skagit River and Lindegren Creek and, accordingly, that shoreline jurisdiction under the SMP includes the three wetlands. The City Memo also appears to form the basis for the novel shoreline environment designations discussed above with the suffix “Potential Wetland Connection.” *See* City Memorandum “SMP, Appendix A Update” dated June 15, 2021 (“In the 2021 update, the City has identified these parcels that could be subject to shoreline jurisdiction due to the presence of associated wetlands . . .”). The City Memo misinterprets the law and misapplies the science. For the reasons that follow, the City Memo should be deleted in its entirety from the Appendix A Update.

“Associated wetland” is a technical term defined under the SMA to mean “those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act.” WAC 173-22-030(1). An “associated wetland” is regulated as though it is located within the shoreline management zone even though it may be located outside of the 200-foot shoreline management zone adjacent to a stream. *See* WAC 173-22-040(3)(c) (“Streams. The shoreland area shall include the greater of: . . . (c) those wetlands which are in proximity to and either influence or are influenced by the stream.”). Thus, the identification of an “associated wetland” has a significant regulatory impact.

The apparent basis for the conclusion in the City Memo that the wetlands have “immediate proximity and physical and functional connections to the Skagit River and Lindegren Creek floodplains and ‘Shoreline’ ecosystems” is a determination of the presence of (i) a “habitat mosaic” and (ii) seasonal intermittent hydrologic connections with the Skagit River. City Memo at 1. As more particularly described in the Technical Memorandum prepared by Soundview Consultants LLC (the “**Soundview Memo**”) attached as Exhibit A, neither of these bases survive scrutiny and the three wetlands are not “associated wetlands.”

As an initial matter, Lindegren Creek, which is proximate to the Swan View Property, is not relevant for the purpose of applying the definition of “associated wetlands” under WAC 173-22-030(1). Lindegren Creek is not a regulated shoreline under the Shoreline Management Act (SMA) because its mean annual flow does not meet the twenty cubic feet per second threshold necessary for the SMA to apply. *See* RCW 90.58.030(2)(e) (“‘Shorelines’ means all of the water areas of the state, . . . and their associated shorelands, . . . except . . . (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments . . .”). Thus, Lindegren Creek is

not relevant to an analysis of “associated wetlands” on the Swan View Property and the only relevant regulated shoreline is that of the Skagit River.

As set forth in detail in the Soundview Memo, the three subject wetlands on the Hansell/Mitzel property are not “associated wetlands.” First, by any reasonable measure the wetlands lack “proximity to” the Skagit River—they are located approximately 3,350 feet east of the Skagit River. No legal precedent supports the proposition that such a distance constitutes “proximity to” a shoreline waterbody. In fact, the legal precedent suggests that a wetland located within 200 feet of a body of water is “in proximity,” but that a wetland located three quarters to one mile from a body of water is not. *See In the Matter of a Substantial Development Permit Denied by Island County to William L. Massey, William L. Massey, Appellant vs. Island County*, SHB No. 80-3, Final Findings of Fact, Conclusions of Law and Order, March 3, 1981; *Juanita Bay Valley Community Association v. City of Kirkland*, 9 Wn.App.59 (1973).

Additionally, though the shoreline management zone includes flood plains which extend landward 200 feet from floodways, *see* WAC 173-22-040(3)(b), the test for “associated wetlands” is not whether a wetland is in proximity to the shoreline management zone. The test is whether a wetland is “in proximity to . . . the stream.” WAC 173-22-040(3)(c). Here, though the wetlands may be in proximity to a flood plain, they are 3,350 feet from the stream and thus are not proximate.

The second element of an “associated wetland” is that it must “either influence or [be] influenced by” the stream. Legal precedent establishes several guiding principles regarding such “influence.” An “associated wetland” “would be essentially at the same level as the major body of water and also [] would have a direct surface connection.” *Juanita Bay Valley Community Association v. City of Kirkland*, 9 Wn.App.59 (1973). “[A] body of water and its ‘associated wetlands’ will share the same water, the water quality of one will affect the other, and there will be a visual and esthetic connection between the two.” *Id.* at 81. A wetland was an “associated wetland” when the wetland (i) was located within 200 feet of Skagit Bay, (ii) was once part of a marshy lagoon with a direct tidal connection, and (iii) drainage was influenced by the rise and fall in the tide. *In the Matter of a Substantial Development Permit Denied by Island County to William L. Massey, William L. Massey, Appellant vs. Island County*, SHB No. 80-3, Final Findings of Fact, Conclusions of Law and Order, March 3, 1981. The subject wetlands are not consistent with any of the foregoing.

Further, the Department of Ecology Shoreline Master Program Handbook describes “hydraulic continuity” as a factor in determining whether a wetland is an “associated wetland.” “Hydraulic continuity clues include undrained hydric soils contiguous with the water body and sheet flow from the site during or following precipitation events.” Handbook at 25. Thus, hydraulic continuity pertains to the physical connection between the wetland and the stream via groundwater. And though a floodplain may be included in the shoreline management zone, by definition an “associated wetland” requires a hydraulic connection with the stream itself—not the floodplain. *See* WAC 173-22-030(1).

Here, the wetlands do not meet the definition of “associated wetlands.” First, they are clearly not in proximity to the Skagit River because they are located approximately 3,350 feet to the east. Second, as set forth in the Soundview Memo, the wetlands do not “influence” the Skagit River and do not have “hydraulic continuity” with the river. Third, the wetlands clearly cannot be “influenced by” the Skagit River because the wetlands are situated upslope from the Skagit River, each at an elevation of at least 41 feet higher than the river. *See* Soundview Memo; *see also* U.S. Army Corps of Engineers Determination, Reference No. NWS-2004-357, April 30, 2019 (determining that the subject wetlands have no significant nexus to the Skagit River and are not “waters of the U.S.” because they “do not significantly affect the chemical, physical, or biological integrity of the Skagit River” and “their ability to . . . have a subsurface connection to the Skagit River is highly unlikely.”); Department of Ecology Administrative Order No. 16961, January 3, 2020 (accepting U.S. Army Corps of Engineers Determination No. NWS-2005-357 and authorizing fill of 1.627 acres of Category IV wetlands on the Swan View Property). A copy of the U.S. Army Corps of Engineers Determination is attached as Exhibit B. A copy of the Department of Ecology Administrative Order No. 16961 is attached as Exhibit C.

The City’s apparent conclusion that the subject wetlands are “associated wetlands” because of (i) a “habitat mosaic” and (ii) seasonal intermittent hydrologic connections with the Skagit River is flawed. The subject wetlands are not “associated wetlands” under Ecology guidance or legal precedent.

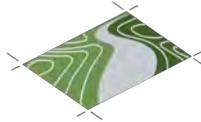
For the foregoing reasons, the Technical Memo should be deleted in its entirety from the Appendix A update, as should all references in Figures 2 through 4 to “Potential Wetland Connection.”

Hansell/Mitzel appreciates the Planning Commission’s consideration of the foregoing comments on the SMP Update. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew J. Vivian". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Matthew J. Vivian

Exhibit A**Soundview Consultants LLC**

Environmental Assessment • Planning • Land Use Solutions

2907 Harborview Dr., Suite D, Gig Harbor, WA 98335

Phone: (253) 514-8952 Fax: (253) 514-8954

Technical Memorandum**To: Rebecca Lowell & Chris Phillips, City of Mount Vernon****File Number: 1723.0001****From: Ann Boeholt, Soundview Consultants LLC****Date: October 8, 2021****Re: Response to Shoreline Master Program Third-Party Comments – Swan View Plat**

Dear Ms. Lowell & Mr. Phillips,

Soundview Consultants LLC (SVC) is assisting Hansell Mitzel LLC (Applicant) with Environmental Planning and permitting for a proposed single-family residential plat (Swan View Plat) on a 30.88-acre site located adjacent to 3773 Francis Road in the City of Mount Vernon (City), Washington. The subject property consists of two parcels situated in the Northwest ¼, of Section 9, Township 34 North, Range 4 East, W.M (Skagit County Tax Parcel Numbers P24350 and P24355). SVC has prepared a Wetland and Fish and Wildlife Habitat Assessment Report and Conceptual Mitigation Plan (Buffer Enhancement and Mitigation Bank Use Plan) and is continuing to support this project during review by the City. The parcel south of the Swan View Plat is owned by Mike and Roberta Bjorling and has been included in the project area because of the sanitary sewer connection that is planned to run across the westerly portion of the Bjorling property. The Swan View project area is 12.96 acres.

The City had solicited technical input from their third-party consulting biologist, L.C. Lee and Associates, Inc. (“Consulting Biologist”), who prepared a technical memorandum dated April 30, 2021 in which depressional wetlands A, B, and D on the subject Swan View property (“subject property”) were interpreted as being Associated Wetlands, subject to the City’s Shoreline Master Program. This memorandum clearly presented implications for the proposed Swan View Plat; moreover, prior to this jurisdictional status having been fully vetted, it is being used in consideration of the City’s current efforts to re-designate Shoreline Environments and to seemingly expand shoreline jurisdiction within portions of the City.

This Technical Memorandum has been prepared as a general response to that April 30, 2021 Technical Memorandum from the City’s Consulting Biologist. SVC agrees that Wetlands C and E are associated wetlands, as these wetlands are within the Federal Emergency Management Agency (FEMA) 100-year floodplain area (which includes all lands up to the 37-foot base flood elevation). However, Soundview Consultants finds that there is a lack of proximity and influence between wetlands A, B, and D on the subject property and the Shoreline Water body in question, which is the Skagit River, and disagrees with a determination that these wetlands are “associated” with the shoreline of the Skagit River.

Analysis and Discussion of “Associated Wetlands” Regarding the Swan View Project

The City’s Consulting Biologist claims that Wetlands A, B, and D are “associated” with the shoreline areas of the Skagit River and Lindgren Creek and that, therefore, shoreline jurisdiction extends to include the entirety of these wetlands. This claim is based on the unique opinion that “the eastern three wetlands not located in the floodplain are influenced by the Skagit River” due to their “hydraulic connection(s) to the abutting floodplain and the Skagit River.”

From a review of publicly available information, including the small handful of Washington case law and administrative decisions relating to associated wetland determinations and the record of regulatory review for this proposed project, coupled with our intimate knowledge of the subject property from multiple site visits, leads to the conclusion that Wetlands A, B, and D are clearly not “associated wetlands”.

Per WAC 173-22-030, “associated wetlands’ means those wetlands which are in proximity to and either influence, or are influenced by, tidal waters or a lake or stream subject to the Shoreline Management Act.” The shoreline waterbody relevant to the subject property is the Skagit River. Notably, Lindgren Creek is not a shoreline waterbody, subject to RCW 90.58.030(2)(e)(ii), in that it does not have a mean annual flow of 20 CFM (see also WAC 173-18-330, where Lindgren Creek is not listed). The questions, therefore, are: 1) do the subject Wetlands A, B, and D (or any of them, singularly) have proximity to the Skagit River; and 2) do these wetlands influence, or are they influenced by, the Skagit River. Guidance from the Washington State Department of Ecology (WSDOE) has clarified that a wetland must meet the tests for *both* influence and proximity in order to be determined associated, and furthermore, the greater the distance wetlands are to a shoreline waterbody (i.e. less proximity), the greater the influence needs to be in order to make a determination of associated wetland status.

Proximity

The wetlands in question on the subject site are situated approximately 0.57-mile from the Skagit River and outside of the 37-foot elevation of the floodplain/shoreline extent. The City’s Consulting Biologist, in their April 30 Technical Memorandum, does state that the main channel of the Skagit River is approximately 3,350 feet west of the subject property; this would not be considered “proximate”.

WSDOE has issued Shoreline Master Program guidance in the form of a *Shoreline Master Program Handbook*, (WSDOE Publication 11-06-010) (“Handbook”). Chapter 5 of the Handbook addresses Shoreline Jurisdiction and, on pages 24-25, it discusses associated wetlands. Here, it repeats the definition of “associated wetlands” adopted in WAC 173-22-030, and then identifies “factors” to be used to determine whether wetlands meet the “proximity and influence” test. The Handbook states: “in some cases, wetlands *outside* the 100-year floodplain *may* be “associated” if they are hydraulically connected with shoreline waters through surface or subsurface flows (page 25, emphasis in original). In so stating, with the italicized wording above, the position by Ecology is that wetlands outside of the floodplain *most often* do not have sufficient proximity or influence.

In *Juanita Bay Valley Community Association v. City of Kirkland*, 9 Wn.App.59 (1973), a community group challenged the City’s issuance of a grading permit to a proposed industrial park, in part, arguing that the proposal was located within associated wetlands and required a shoreline substantial

development permit. The Court found that the site was not within associated wetlands. The Court’s decision notes that the site was located “not less than $\frac{3}{4}$ to 1 mile east of the highwater mark of Lake Washington.” The City had not mapped as within shoreline jurisdiction the marshlands on the proponent’s property and at trial WSDOE testified that the criteria it used to assess whether the wetlands on the site were associated wetlands was “that the wetland area would be essentially at the same level as the major body of water and also that it would have a direct surface connection.”

The Court noted that the legislature adopted a very specific but arbitrary standard of 20 cubic feet per second for bringing a stream into shoreline jurisdiction. The Court continued, “It is obvious that the legislature, by making such a specific and arbitrary designation, was seeking to delineate with care the geographic coverage of the act. Similarly, it is apparent that the [WSDOE’s] approach is consistent with such legislative intent. The Department’s designation of areas having a surface water connection at grade essentially guarantees protection under SMA to bodies of water having a close physical proximity to their respective ‘associated wetlands.’ Under such a ‘zero grade’ test, each body of water and its ‘associated wetlands’ will share the same water, the water quality of one will affect the other, and there will be a visual and esthetic connection between the two.”

While regulations, guidance documents, and case law do not define a distance for what is “proximate”, it is clear that proximity and influence are both necessary, that proximate generally means close (that they may share the same water), and that proximity is tied to influence, such that the further a wetland is away from a shoreline, the greater it must influence or be influenced by the shoreline in order to be classified as an “associated” wetland.

Influence

The City’s Consulting Biologist states that wetlands A, B, and D, due to their small size and landscape position, are not influencing the Skagit River Ecosystem. Rather, they assert that the landscape position of Wetlands A, B, and D immediately proximate to the Skagit River and Lindgren Creek *Ecosystems* means that these wetlands are influenced by the structure and function of these ecosystems (i.e. that they meet the test for being “influenced by”) because “there are no doubt important movement and dispersal pathways and habitat connections that are used by several classes of faunal species that either seasonally migrate to or reside wholly within wetland A, B, and D and other waters/wetland elements of the Skagit River/Lindgren Creek landscape.” This justification does not meet the requirements in determining “influence” from the Skagit River based on geographic, topographic, hydrologic, and pedologic factors, as discussed in detail below. Furthermore, if any such influence exists from the Skagit River (not just the river’s ecosystem) upon the wetlands, this influence is not strong enough to overcome the problem of lack of proximity.

There is no question that the Washington State term “associated” within WAC 173-22-030 is not the same as the definition used by the federal government for determining Waters of the United States (WOTUS), for purposes of considering influence. That said, it is important to note that the USACE determined Wetlands A, B, and D—situated further upslope, to the east of the floodplain—to be “isolated” from traditionally navigable waters (i.e. the Skagit River) and tributaries to it. This “isolated” determination was based on the USACE’s findings that Wetlands A, B, and D are not bordering, contiguous with, or neighboring a jurisdictional water and also do not meet the significant nexus test given that these wetlands were found to not significantly affect the chemical, physical, or biological integrity of jurisdictional waters of Lindgren Creek or the Skagit River (refer to the Agency Determinations section below for more details). Granted, this determination did not address whether

there was any significant affect the other way around: i.e. whether Lindgren Creek or the Skagit River have any affect on the wetlands in question. This does, however, emphasize that the only affect to be considered is that of the river upon the wetlands.

Per the Handbook, “factors used to determine whether wetlands meet the ‘proximity and influence’ test include but are not limited to one or more of the following:

- Period inundation.
- Hydraulic continuity.
- On marine waters, formation by tidally influenced geo-hydraulic processes, or a surface connection through a culvert or tide gate.”

The geographic landscape position, site topography, and movement of water through the subject property do not support the alleged “influence” from the Skagit River, but rather points to hydraulic discontinuity. As mentioned above, Wetlands A, B, and D on the subject property are situated approximately 0.57-mile from the Skagit River and outside of the 37-foot elevation of the floodplain/shoreline extent. The dominant slope gradient onsite is to the west. Wetlands C and E are depressional wetlands situated on a relatively flat terrace at the toe of slope, entirely within the 37-foot elevation associated within the 100-year floodplain. Wetlands C and E are within shoreline jurisdiction. However, Wetlands A, B, and D are slope wetlands that are located further upslope and away from the extent of the 100-year floodplain and as such are not similarly situated as Wetlands C and E. Specifically, Wetland A is situated approximately 45 horizontal feet upslope from the 100-year floodplain and begins at a 43-foot elevation; Wetland B is situated approximately 20 horizontal feet upslope from the 100-year floodplain and begins at a 41-foot elevation; and Wetland D is situated approximately 334 horizontal feet upslope from the 100-year floodplain and begins at a 72-foot elevation. Additionally, no surface hydrological connections (e.g. drainages, etc.) exist between Wetlands A, B, and D to the 100-year floodplain, further supporting the hydraulic disconnection from these wetlands to the 100-year floodplain.

In addition, the wetlands within and outside of the floodplain contain different hydrologic regimes. While Wetlands C and E within the floodplain contain areas of seasonal ponding, Wetlands A, B, and D outside of the floodplain only contain seasonal saturation and completely lack areas of surface ponding. As such, no direct surface hydrological connection or interaction exists between the wetlands within and outside of the floodplain. While very rudimentary, it is also important to note that the movement of water follows the laws of physics, meaning that hydrology flows downgradient to the lowest point, and is not able to flow backwards or upgradient. With Wetlands A, B, and D situated upslope from Wetlands C and E as well as upslope from the Skagit River and its associated floodplain, both surface sheet flow and groundwater move downslope. This fact proves that any potential surface or groundwater hydrology associated with the Skagit River, its associated floodplain, and Wetlands C and E cannot physically move easterly against the dominant slope gradient to influence Wetlands A, B, or D upslope. Even during flooding events and/or during the wet season where the groundwater is fully recharged, Wetlands A, B, and D are too far removed in the landscape for any potential sheet flow (i.e. surface hydrology) or groundwater influence from the Skagit River, located at least 0.55-mile to the west and 41 feet lower topographically. As such, these geographic, topographic, and hydrologic factors help lead to the determination that there is no hydraulic connection, and no influence, from the Skagit River.

The Natural Resource Conservation Service (NRCS)-mapped soils present on the subject property, Tokul gravelly medial loam, 8 to 15 percent slopes, do not support the alleged “influence” from the Skagit River, but also points to hydraulic discontinuity. Per the NRCS soil survey definition of this soil type (Attachment A), the properties and qualities of the soil are described as moderately well drained with no frequency of flooding or ponding. The depth to water table is typically between 18 to 36 inches below ground surface. A seasonal high water table within 12 inches of the soil surface is considered a primary indicator of wetland hydrology under current wetland delineation methodology (Environmental Laboratory, 1987; USACE, 2010). As such, the lack of seasonal inundation in the upper 18-36 inches in the soil is consistent with the 95 percent non-hydric (i.e. non-wetland) classification of the soil. The WSDOE Handbook states that hydraulic continuity clues include undrained hydric soils contiguous with a waterbody. The hydric soils identified within the boundaries of Wetlands A, B, and D are separated from the Skagit River downgradient by the non-hydric/non-wetland Tokul soils. As such, the eastern portion of the site (where Wetlands A, B, and D are found) lacks undrained hydric soils contiguous with the Skagit River, bolstering the determination that there is no hydraulic connection, and no influence, to or from the Skagit River.

Instead of relying upon the WSDOE Handbook and current regulations, the City’s Consulting Biologist utilized an obsolete 1990 guidance document (WSDOE Publication 90-45b) no longer relevant that has been replaced by the Handbook. In addition, it is clear the basis for determining influence was established upon this obsolete guidance. The current Handbook and further illustrated by recent case law demonstrates periodic inundation and hydraulic continuity are the overwhelming factors that apply to determining influence of the shoreline (Skagit River).

SVC found that the site-specific habitat functions associated with Wetlands A, B, and D are degraded, lower functioning, and physically separated from core habitat areas associated with the Skagit River, and do not contain intact habitat integral to the development or persistence of species potentially present in the vicinity of the subject property, contrary to the Consulting Biologist’s assertions. Wetlands A, B, and D are low-functioning, Category IV wetlands that have low habitat scores based on their wetland ratings under current guidance from WSDOE (Hruby, 2014). This indicates that these wetland areas generally lack or contain minimal plant structure, hydroperiods, interspersions of habitats, special habitat features, accessible habitat, undisturbed habitat, or habitat valuable to society. All three of these wetlands are dominated by or contain non-native invasive species including reed canarygrass (*Phalaris arundinacea*) and Himalayan blackberry (*Rubus armeniacus*). In addition, these non-native invasive species are dominant between these wetlands and Wetlands C and E as well as throughout the uplands on the subject property. Non-native invasive species severely reduce biodiversity, compete with native organisms for limited resources, and alter habitats to the point of causing fundamental disruptions of native ecosystems. As such, these wetlands do not contain intact wildlife habitat or habitat that is more beneficial than the surrounding upland areas onsite.

Wetlands A, B, and D are also impacted by the existing moderate and high land use intensities directly upslope, including single-family residences and roadways. Such land uses contribute pollutants and cause habitat isolation.

The slope hydrogeomorphic classification of Wetlands A, B, and D is another limiting factor in habitat development and separates these wetlands from the downgradient depressional wetlands and floodplain (i.e. “core” habitat areas). The lack of occasional or seasonal surface ponding precludes Wetlands A, B, or D from producing those macroinvertebrates that begin their life cycle in water. Such macroinvertebrates directly contribute a basic food source for amphibians, reptiles, songbirds,

and waterfowl, which in turn serve as prey to other species continuing up the food chain. Comparatively, Wetlands C and E and other potential wetlands located within the floodplain share surface or groundwater influence with the Skagit River and as such contain a range of hydrologic regimes that include temporary to permanent ponding. Such areas in close proximity to the river are core habitat areas for a wide range of fauna. While various terrestrial and avian species may be present in Wetlands A, B, or D at certain times, presence is typically fleeting as optimal habitat is absent from the area. As such, the existing habitat elements in Wetlands A, B, and D are disconnected from and are not influenced by the Skagit River.

Agency Determinations

U.S. Army Corps of Engineers

On May 2, 2019, the U.S. Army Corps of Engineers (USACE) issued an approved jurisdictional determination for the subject property (NWS-2004-357) which determined that “Wetlands C and E are waters of the U.S. based on proximity to Lindgren Creek (approximately 120 feet) and their location in the 100-year floodplain for the creek. We have also determined that Wetlands A, B, and D are not waters of the U.S.” At the time of this determination, the 2015 Clean Water Rule was in effect. The terms “adjacent” and “significant nexus” defined under the 2015 Clean Water Rule are similar to the term “associated wetlands” as defined under WAC 173-22-030. Factors used to determine whether a water is associated include periodic inundation, hydraulic continuity, and on marine waters, formation by tidally influenced geo-hydraulic processes, or a surface connection through a culvert or tide gate. In the case of this project, the USACE determined that Wetlands A, B, and D are non-jurisdictional since they are not bordering, contiguous with, nor neighboring a jurisdictional water and also do not meet the significant nexus test given that these wetlands were found to not significantly affect the chemical, physical, or biological integrity of jurisdictional waters of Lindgren Creek or the Skagit River.

Washington State Department of Ecology

On January 3, 2020, WSDOE issued an administrative order (No. 16961) to permanently fill/impact 1.627 acres of non-federally regulated wetlands on the subject property. During WSDOE’s review, they found that the project is compliant with the RCW Chapter 90.48 and other applicable requirements of state law, including the shoreline regulations under RCW Chapter 90.58. In other words, WSDOE has already reviewed these wetlands and did not assert that they were associated wetlands, subject to the Shoreline Management Act.

Conclusion

In summary, while wetlands A, B, and D are within 45, 20, and 344 horizontal feet, respectively of the Skagit River floodplain, they are over 0.55-mile from the Skagit River itself. This does not appear to meet the test of proximity within the WAC definition of “associated wetland”, especially given the weak (at best) influence that these wetlands may have from or upon the Skagit River. Allegations that these wetlands are integral to the ecosystem of the Lindgren Creek and the Skagit River floodplain are irrelevant, if not questionable, because the question at hand is not whether there is an association with the floodplain of the Skagit River, but whether there is an association, as that term is defined in WAC 173-22-030, between the shoreline water body (i.e. the Skagit River itself) and the wetlands on the eastern portion of the subject property (Wetlands A, B, and D).

Wetlands A, B, and D lack proximity, and lack influence from or to the Skagit River. It is incorrect to conclude that Wetlands A, B, and D are “associated wetlands” subject to the City’s Shoreline Master Program; they are not associated wetlands and do not fall under jurisdiction of the City’s Shoreline Master Program or the Shoreline Management Act.

City of Mount Vernon Shoreline Master Program Update and Expansion of Shoreline Jurisdiction

While a different issue, the City’s consideration of their shoreline Master Program Update and expansion and designation of Shoreline Environments is clearly leaning upon the disputed allegation that Wetlands A, B, and D, and other wetlands like them are associated wetlands.

Within Exhibit 5b of the proposed SMP update, the description of changes to Figure 2 of the SMP states that the Consulting Biologist’s findings that shoreline jurisdiction extends onto the subject Swan View property led the City to consider whether nearby areas could also potentially be subject to shoreline jurisdiction. Figure 2 then shows the entire subject property as being a conditional shoreline jurisdictional area. While there is no disagreement that Wetlands C and E on the subject property are associated wetland due to their location with the 100-year floodplain of the Skagit River, providing a figure that includes the entire subject property as a conditional shoreline jurisdictional area implies a degree of finality that does not exist and is problematic.

On the one hand, identifying areas as possibly containing wetlands that might be determined to be associated wetlands, can avoid surprises by land developers in the future (that may otherwise discover late in site development planning that portions of their property are subject to shoreline regulations). However, this is problematic in that it may devalue property or may lead to false conclusions by evaluators that associated wetland status has in fact been confirmed. Furthermore, of great concern is that in the City’s contemplated Shoreline Environment Designation maps, only select parcels are identified as having potentially associated wetlands. It appears that only parcels where there has been some evaluation due to a past or pending land use proposal are identified as conditional shoreline jurisdictional areas. This gives the impression of a land grab, or of an intention to further regulate proposed developments by bringing them into jurisdiction of the Shoreline Master Program, which surely is not the City’s intent. Developed sites, oddly, do not appear to be included within these conditional shoreline jurisdictional areas, and yet developed sites certainly could, now or in the future, contain wetlands that are just as likely to be considered associated wetlands as those wetlands on the subject Swan View property, for instance, or within similar nearby properties. *Note: The proposed map does include the Divisions IV and V of the Highland Greens PUD. Division V has a 51-unit apartment project and a 24-unit Senior living project made up of 8 multifamily units.*

If areas are to be identified as conditional shoreline jurisdictional areas based on the possibility of the presence of associated wetlands within them, it is critical that such conditional mapping not just include properties that have already been investigated for wetlands, but also include properties where no evaluation has occurred.

Please do not hesitate to contact me with any question or concerns you may have.

Sincerely,



Ann Boeholt
Senior Environmental Scientist and Planner, PWS
ann@soundviewconsultants.com

References

- Environmental Laboratory. 1987. *Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1*, US Army Engineer Waterways Experiment Station, Vicksburg, Mississippi.
- Hruby, T. 2014. *Washington State Wetland Rating System for Western Washington – Revised*. Washington State Department of Ecology Publication # 14-06-29.
- U.S. Army Corps of Engineers (USACE). 2010. *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Ver 2.0)*, ed. J.S. Wakeley, Lichvar, R.W. and Noble, C.V. ERDC/EL TR-10-3. Vicksburg, MSS: U.S. Army Engineer Research and Development Center.
- Washington State Department of Ecology. 1990. *Shoreline Administrator's Manual, First Edition, 1990*. Ecology publication number 90-45b. Published October, 1990.
- Washington State Department of Ecology. 2017 *Shoreline Master Program Handbook*. Ecology publication number 11-06-010. Published August 2009, revised December 2017.

Attachment A — NRCS Soil Classification

Map Unit Description: Tokul gravelly medial loam, 8 to 15 percent slopes—Skagit County Area, Washington

Skagit County Area, Washington

147—Tokul gravelly medial loam, 8 to 15 percent slopes

Map Unit Setting

National map unit symbol: 2t611
Elevation: 160 to 1,150 feet
Mean annual precipitation: 45 to 70 inches
Mean annual air temperature: 46 to 52 degrees F
Frost-free period: 140 to 200 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Tokul and similar soils: 70 percent
Minor components: 30 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Tokul

Setting

Landform: Hillslopes, till plains
Landform position (two-dimensional): Toeslope
Landform position (three-dimensional): Side slope, tread
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Volcanic ash mixed with loess over glacial till

Typical profile

O_i - 0 to 1 inches: slightly decomposed plant material
O_a - 1 to 2 inches: highly decomposed plant material
A - 2 to 6 inches: gravelly medial loam
B_{s1} - 6 to 9 inches: gravelly medial loam
B_{s2} - 9 to 17 inches: gravelly medial loam
B_{s3} - 17 to 24 inches: gravelly medial loam
BC - 24 to 33 inches: gravelly medial fine sandy loam
2B_{sm} - 33 to 62 inches: cemented material

Properties and qualities

Slope: 8 to 15 percent
Depth to restrictive feature: 20 to 39 inches to cemented horizon;
 20 to 39 inches to densic material
Drainage class: Moderately well drained
Capacity of the most limiting layer to transmit water (K_{sat}): Very low to moderately low (0.00 to 0.06 in/hr)
Depth to water table: About 18 to 36 inches
Frequency of flooding: None
Frequency of ponding: None
Available water capacity: Moderate (about 8.7 inches)

Attachment B— Qualifications

All information and supporting documentation, including this *Technical Memorandum* in response to the Swan View project, was prepared by, or under the direction of Ann Boeholt, Jon Pickett, and Kyla Caddey of SVC.

Ann Boeholt

Senior Environmental Scientist and Planner, PWS

Professional Experience: 30+ years

Ann Boeholt is a Senior Environmental Planner and a Certified Professional Wetland Scientist with over 30 years of experience in aquatic resources management in western Washington. Ann earned a Bachelor of Science degree in Environmental Science from the Evergreen State College and completed coursework and a thesis towards a Master of Science in Aquatic Ecology from the University of Washington's School of Aquatic and Fisheries Sciences. Ann has formal training and extensive experience in wetlands delineations and ratings, shorelands management, fish and wildlife and marine assessments, ordinary high water mark determinations, environmental planning, negotiations and permitting, native plant selection, care and maintenance, ecological performance monitoring, scientific data analysis, mitigation banking and alternative mitigation programs. She is independently listed as a Qualified Wetland Scientist by Pierce County and as a WSDOT Junior BA author.

Ann was previously employed (for 14 years) with the Washington State Department of Ecology's Shorelands and Environmental Assistance Program. In her capacity as a Regional Wetland and Shoreland Specialist there, Ann provided technical assistance, local government and consultant training, and review of ordinary high water mark delineations and associated wetland determinations throughout western Washington. On numerous occasions Ann has provided expert testimony relating to such determinations to the Shoreline Hearings Board and local Hearing Examiners

As a Senior Environmental Planner, Ann is responsible for project planning and management, including researching regulations, analyzing and sharing findings, participating in strategic planning of projects, reviewing and finalizing assessment reports and permit applications, supporting projects through the permit review process, and related tasks. She presently manages several complex shoreline projects.

Jon Pickett

Associate Principal

Professional Experience: 10+ years

Jon Pickett is an Associate Principal and Senior Scientist with a diverse background in environmental and shoreline compliance and permitting, wetland and stream ecology, fish and wildlife biology, mitigation compliance and design, and environmental planning and land use due diligence. Jon oversees a wide range of large-scale industrial, commercial, and multi-family residential projects throughout Western Washington, providing environmental permitting and regulatory compliance assistance for land use entitlement projects from feasibility through mitigation compliance. Jon performs wetland, stream, and shoreline delineations and fish & wildlife habitat assessments; conducts

code and regulation analysis and review; prepares reports and permit applications and documents; provides environmental compliance recommendation; and provides restoration and mitigation design.

Jon earned a Bachelor of Science degree in Natural Resource Sciences from Washington State University and Bachelor of Science and Minor in Forestry from Washington State University. Jon has received 40-hour wetland delineation training (Western Mountains, Valleys, & Coast and Arid West Regional Supplements) and regularly performs wetland, stream, and shoreline delineations. Jon is a Whatcom County Qualified Wetland Specialist and Wildlife Biologist and is a Pierce County Qualified Wetland Specialist. He has been formally trained by WSDOE in the use of the Washington State Wetland Rating System 2014, How to Determine the Ordinary High-Water Mark (Freshwater and Marine), Using Field Indicators for Hydric Soils, and the Using the Credit-Debit Method for Estimating Mitigation Needs.

Kyla Caddey

Environmental Scientist & Certified Ecologist

Professional Experience: 7 years

Kyla Caddey is a senior-level Environmental Scientist with a diverse background in stream and wetland ecology, wildlife ecology and conservation, wildlife and natural resource assessments and monitoring, and riparian habitat restoration at various public and private entities. Kyla has field experience performing in-depth studies in both the Pacific Northwest and Central American ecosystems which included various environmental science research and statistical analysis. Kyla has advanced expertise in federal- and state-listed endangered, threatened, and sensitive species surveys and assessment of aquatic and terrestrial systems throughout the Puget Sound region. She has completed hundreds of wetland delineations and has extensive knowledge and interest in hydric soil identification. As the senior writer, she provides informed project oversight and performs final quality assurance / quality control on various types of scientific reports for agency submittal, including: Biological Assessments/Evaluations; Wetland, Shoreline, and Fish and Wildlife Habitat Assessments; Mitigation Plans, and Mitigation Monitoring Reports. She currently performs wetland, stream, and shoreline delineations and fish and wildlife habitat assessments; prepares scientific reports; and provides environmental permitting and regulatory compliance assistance to support a wide range of commercial, industrial, and multi-family residential land use projects.

Kyla earned a Bachelor of Science degree in Environmental Science and Resource Management from the University of Washington, Seattle with a focus in Wildlife Conservation and a minor in Quantitative Science. She has also completed additional coursework in Comprehensive Bird Biology from Cornell University. Ms. Caddey is a Certified Ecologist through the Ecological Society of America. She has received 40-hour wetland delineation training (Western Mtns, Valleys, & Coast and Arid West Regional Supplement), is a Pierce County Qualified Wetland Specialist and Wildlife Biologist, and is an approved Mazama pocket gopher survey biologist through USFWS. Kyla has been formally trained through the Washington State Department of Ecology, Coastal Training Program, and the Washington Native Plant Society in winter twig and grass, sedge, and rush identification for Western WA; Using the Credit-Debit Method in Estimating Wetland Mitigation Needs; How to Determine the Ordinary High Water Mark; Using Field Indicators for Hydric Soils; How to Administer Development Permits in Washington Shorelines; Puget Sound Coastal Processes; and Forage Fish Survey Techniques. Additionally, she has received formal training in preparing WSDOT Biological Assessments.

Exhibit B

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SEATTLE DISTRICT
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

Regulatory Branch

May 2, 2019

Mr. Dan Mitzel
Hansell Mitzel, LLC
1111 Cleveland Avenue
Suite 201
Mount Vernon, Washington 98273

Reference: NWS-2004-357
Mitzel, Dan

Dear Mr. Mitzel:

This letter is in response to your request for verification of the jurisdictional limits of waters of the U.S. at Mount Vernon, Skagit County, Washington, in the review area of the subject property as shown on the enclosed drawings dated May 2, 2019. The U.S. Army Corps of Engineers has determined that Wetlands "C" and "E" are waters of the U.S. based on proximity to Lindgren Creek (approximately 120 feet) and their location in the 100-year floodplain for the creek. This determination applies only to the review area.

We have also determined that Wetlands "A", "B", and "D" are not waters of the U.S. As such, work that would occur within these areas does not require Department of the Army authorization under Section 404 of the Clean Water Act. Other state and local regulations may still apply to these wetlands. For example, the Washington State Department of Ecology (Ecology) may regulate these wetlands. The enclosed Ecology *Focus* sheet explains how Ecology regulates this type of wetlands. You should contact Ecology's Federal Permit Coordinator at (360) 407-6068 or ecyrefedpermits@ecy.wa.gov for more information on how to obtain State approval for your project. We are sending a copy of this letter to Ecology and to the Environmental Protection Agency's Aquatic Resources Unit.

This approved jurisdictional determination is valid for a period of five years from the date of this letter unless new information warrants revisions of the determination. A copy of this jurisdictional determination, dated April 30, 2019, can be found on our website at www.nws.usace.army.mil select "Regulatory Branch, Permit Information" and then "Jurisdictional Determinations". If you object to this determination, you may request an administrative appeal under our regulations (33 Code of Federal Regulations, Part 331) as described in the enclosed *Appeal Process Fact Sheet* and the *Notification of Administrative Appeal Options and Process and Request for Appeal* form.

-2-

If you propose to do any work in the areas identified to be waters of the U.S., you should contact our office prior to commencing work to determine permit requirements. Please note that conducting certain activities in waters of the U.S. without Department of the Army authorization would violate Federal law. If you have any questions, please contact me at ronald.j.wilcox@usace.army.mil or at (206) 316-3893.

Sincerely,



Ron Wilcox, Senior Project manager
Regulatory Branch

Enclosures



®

Regulatory Program



®

INTERIM APPROVED JURISDICTIONAL DETERMINATION FORM U.S. Army Corps of Engineers

This form should be completed by following the instructions provided
in the Interim Approved Jurisdictional Determination Form User Manual.

SECTION I: BACKGROUND INFORMATION

A. COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (AJD): 4/26/19

B. ORM NUMBER IN APPROPRIATE FORMAT (e.g., HQ-2015-00001-SMJ): NWS-2004-357

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: WA County/parish/borough: Skagit City: Mount Vernon

Center coordinates of site (lat/long in degree decimal format): Lat. 48.4535, Long. -122.3029.

Map(s)/diagram(s) of review area (including map identifying single point of entry (SPOE) watershed and/or potential jurisdictional areas where applicable) is/are: attached in report/map titled Wetland/fish/wildlife Assessment.

Other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with this action and are recorded on a different jurisdictional determination (JD) form. List JD form ID numbers (e.g., HQ-2015-00001-SMJ-1): .

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office (Desk) Determination Only. Date: 4/26/19.

Office (Desk) and Field Determination. Office/Desk Dates: . Field Date(s): .

SECTION II: DATA SOURCES

Check all that were used to aid in the determination and attach data/maps to this AJD form and/or references/citations in the administrative record, as appropriate.

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant. Title/Date: Wetland Delineation and Habitat Assessment 10/31/18.

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Data sheets/delineation report are sufficient for purposes of AJD form. Title/Date: Wetland Delineation and Habitat Assessment 10/31/18.

Data sheets/delineation report are not sufficient for purposes of AJD form. Summarize rationale and include information on revised data sheets/delineation report that this AJD form has relied upon:

Revised Title/Date: .

Data sheets prepared by the Corps. Title/Date: .

Corps navigable waters study. Title/Date: .

CorpsMap ORM map layers. Title/Date: 3/21/19.

USGS Hydrologic Atlas. Title/Date: .

USGS, NHD, or WBD data/maps. Title/Date: .

USGS 8, 10 and/or 12 digit HUC maps. HUC number: .

USGS maps. Scale & quad name and date: .

USDA NRCS Soil Survey. Citation: 7/5/18.

USFWS National Wetlands Inventory maps. Citation: 6/13/18.

State/Local wetland inventory maps. Citation: 5/11/15.

FEMA/FIRM maps. Citation: 7/5/18.

Photographs: Aerial. Citation: . or Other. Citation: .

LiDAR data/maps. Citation: .

Previous JDs. File no. and date of JD letter: NWS-2004-357; 7/14/04.

Applicable/supporting case law: .

Applicable/supporting scientific literature: .

Other information (please specify):

SECTION III: SUMMARY OF FINDINGS

Complete ORM "Aquatic Resource Upload Sheet" or Export and Print the Aquatic Resource Screen from ORM for All Waters and Features, Regardless of Jurisdictional Status – Required

A. RIVERS AND HARBORS ACT (RHA) SECTION 10 DETERMINATION OF JURISDICTION:

"navigable waters of the U.S." within RHA jurisdiction (as defined by 33 CFR part 329) in the review area.

- **Complete Table 1 - Required**

NOTE: If the navigable water is not subject to the ebb and flow of the tide or included on the District's list of Section 10 navigable waters list, **DO NOT USE THIS FORM TO MAKE THE DETERMINATION.** The District must continue to follow the procedure outlined in 33 CFR part 329.14 to make a Section 10 RHA navigability determination.

B. CLEAN WATER ACT (CWA) SECTION 404 DETERMINATION OF JURISDICTION: "waters of the U.S." within CWA jurisdiction (as defined by 33 CFR part 328.3) in the review area. Check all that apply.

(a)(1): All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. (Traditional Navigable Waters (TNWs))

- **Complete Table 1 - Required**

This AJD includes a case-specific (a)(1) TNW (Section 404 navigable-in-fact) determination on a water that has not previously been designated as such. Documentation required for this case-specific (a)(1) TNW determination is attached.

(a)(2): All interstate waters, including interstate wetlands.

- **Complete Table 2 - Required**

(a)(3): The territorial seas.

- **Complete Table 3 - Required**

(a)(4): All impoundments of waters otherwise identified as waters of the U.S. under 33 CFR part 328.3.

- **Complete Table 4 - Required**

(a)(5): All tributaries, as defined in 33 CFR part 328.3, of waters identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 5 - Required**

(a)(6): All waters adjacent to a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

- **Complete Table 6 - Required**

Bordering/Contiguous.

Neighboring:

(c)(2)(i): All waters located within 100 feet of the ordinary high water mark (OHWM) of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3.

(c)(2)(ii): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 and not more than 1,500 feet of the OHWM of such water.

(c)(2)(iii): All waters located within 1,500 feet of the high tide line of a water identified in paragraphs (a)(1) or (a)(3) of 33 CFR part 328.3, and all waters within 1,500 feet of the OHWM of the Great Lakes.

(a)(7): All waters identified in 33 CFR 328.3(a)(7)(i)-(v) where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 7 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(7) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

(a)(8): All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3 not covered by (c)(2)(ii) above and all waters located within 4,000 feet of the high tide line or OHWM of a water identified in paragraphs (a)(1)-(a)(5) of 33 CFR part 328.3 where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.

- **Complete Table 8 for the significant nexus determination. Attach a map delineating the SPOE watershed boundary with (a)(8) waters identified in the similarly situated analysis. - Required**

Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.

C. NON-WATERS OF THE U.S. FINDINGS:

Check all that apply.

- The review area is comprised entirely of dry land.
- Potential-(a)(7) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(7) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Potential-(a)(8) Waters: Waters that DO NOT have a significant nexus to a water identified in paragraphs (a)(1)-(a)(3) of 33 CFR part 328.3.
- **Complete Table 9 and attach a map delineating the SPOE watershed boundary with potential (a)(8) waters identified in the similarly situated analysis. - Required**
- Includes water(s) that are geographically and physically adjacent per (a)(6), but are being used for established, normal farming, silviculture, and ranching activities (33 USC Section 1344(f)(1)) and therefore are not adjacent and require a case-specific significant nexus determination.
- Excluded Waters (Non-Waters of U.S.), even where they otherwise meet the terms of paragraphs (a)(4)-(a)(8):
- **Complete Table 10 - Required**
- (b)(1): Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA.
- (b)(2): Prior converted cropland.
- (b)(3)(i): Ditches with ephemeral flow that are not a relocated tributary or excavated in a tributary.
- (b)(3)(ii): Ditches with intermittent flow that are not a relocated tributary, excavated in a tributary, or drain wetlands.
- (b)(3)(iii): Ditches that do not flow, either directly or through another water, into a water identified in paragraphs (a)(1)-(a)(3).
- (b)(4)(i): Artificially irrigated areas that would revert to dry land should application of water to that area cease.
- (b)(4)(ii): Artificial, constructed lakes and ponds created in dry land such as farm and stock watering ponds, irrigation ponds, settling basins, fields flooded for rice growing, log cleaning ponds, or cooling ponds.
- (b)(4)(iii): Artificial reflecting pools or swimming pools created in dry land.¹
- (b)(4)(iv): Small ornamental waters created in dry land.¹
- (b)(4)(v): Water-filled depressions created in dry land incidental to mining or construction activity, including pits excavated for obtaining fill, sand, or gravel that fill with water.
- (b)(4)(vi): Erosional features, including gullies, rills, and other ephemeral features that do not meet the definition of tributary, non-wetland swales, and lawfully constructed grassed waterways.¹
- (b)(4)(vii): Puddles.¹
- (b)(5): Groundwater, including groundwater drained through subsurface drainage systems.¹
- (b)(6): Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land.¹
- (b)(7): Wastewater recycling structures created in dry land; detention and retention basins built for wastewater recycling; groundwater recharge basins; percolation ponds built for wastewater recycling; and water distributary structures built for wastewater recycling.
- Other non-jurisdictional waters/features within review area that do not meet the definitions in 33 CFR 328.3 of (a)(1)-(a)(8) waters and are not excluded waters identified in (b)(1)-(b)(7).
- **Complete Table 11 - Required.**

D. ADDITIONAL COMMENTS TO SUPPORT AJD:

¹ In many cases these excluded features will not be specifically identified on the AJD form, unless specifically requested. Corps Districts may, in case-by-case instances, choose to identify some or all of these features within the review area.

Jurisdictional Waters of the U.S.

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 1. (a)(1) Traditional Navigable Waters

(a)(1) Waters Name	(a)(1) Criteria	Rationale to Support (a)(1) Designation Include High Tide Line or Ordinary High Water Mark indicators, when applicable.
N/A	Choose an item.	N/A

Table 2. (a)(2) Interstate Waters

(a)(2) Waters Name	Rationale to Support (a)(2) Designation
N/A	N/A

Table 3. (a)(3) Territorial Seas

(a)(3) Waters Name	Rationale to Support (a)(3) Designation
N/A	N/A

Table 4. (a)(4) Impoundments

(a)(4) Waters Name	Rationale to Support (a)(4) Designation
N/A	N/A
N/A	N/A

Table 5. (a)(5) Tributaries

(a)(5) Waters Name	Flow Regime	(a)(1)-(a)(3) Water Name to which this (a)(5) Tributary Flows	Tributary Breaks	Rationale for (a)(5) Designation and Additional Discussion. Identify flowpath to (a)(1)-(a)(3) water or attach map identifying the flowpath; explain any breaks or flow through excluded/non-jurisdictional features, etc.
Lindegren Creek	Perennial	Skagit River	No	See attached map
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A
N/A	Choose an item.	N/A	Choose an item.	N/A

Table 6. (a)(6) Adjacent Waters

(a)(6) Waters Name	(a)(1)-(a)(5) Water Name to which this Water is Adjacent	Rationale for (a)(6) Designation and Additional Discussion. Identify the type of water and how the limits of jurisdiction were established (e.g., wetland, 87 Manual/Regional Supplement); explain how the 100-year floodplain and/or the distance threshold was determined; whether this water extends beyond a threshold; explain if the water is part of a mosaic, etc.
Wetland C	Lundegren Creek	Bordering
Wetland E	Lundegren Creek	Bordering
N/A	N/A	N/A
N/A	N/A	N/A

Table 7. (a)(7) Waters

SPOE Name	(a)(7) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; discuss whether any similarly situated waters were present and aggregated for SND; discuss data, provide analysis, and summarize how the waters have more than speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Table 8. (a)(8) Waters

SPOE Name	(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water has a Significant Nexus	Significant Nexus Determination Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to subject water and aggregated for SND; discuss data, provide analysis, and then summarize how the waters have more than speculative or insubstantial effect the on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water, etc.
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

Non-Jurisdictional Waters

Default field entry is "N/A". Delete "N/A" and fill out all fields in the table where applicable for waters/features present in the review area.

Table 9. Non-Waters/No Significant Nexus

SPOE Name	Non-(a)(7)/(a)(8) Waters Name	(a)(1)-(a)(3) Water Name to which this Water DOES NOT have a Significant Nexus	Basis for Determination that the Functions DO NOT Contribute Significantly to the Chemical, Physical, or Biological Integrity of the (a)(1)-(a)(3) Water. Identify SPOE watershed; explain how 100-yr floodplain and/or the distance threshold was determined; discuss whether waters were determined to be similarly situated to the subject water; discuss data, provide analysis, and summarize how the waters did not have more than a speculative or insubstantial effect on the physical, chemical, or biological integrity of the (a)(1)-(a)(3) water.
N/A	Wetlands A, B, D	Skagit River	See MFR in the administrative record for this project for Similarly Situated Waters and Significant Nexus Determination dated April 26, 2019 for rationale to support a finding of no significant nexus.
N/A	N/A	N/A	N/A

Table 10. Non-Waters/Excluded Waters and Features

Paragraph (b) Excluded Feature/Water Name	Rationale for Paragraph (b) Excluded Feature/Water and Additional Discussion.
N/A	N/A
N/A	N/A

Table 11. Non-Waters/Other

Other Non-Waters of U.S. Feature/Water Name	Rationale for Non-Waters of U.S. Feature/Water and Additional Discussion.
N/A	N/A

CENWS-ODR

Reference: NWS-2004-357; Mitzel, Dan

MEMORANDUM FOR RECORD

SUBJECT: Similarly Situated Waters and Significant Nexus Determination

The waters specified at paragraph (a)(8) require a determination whether they are similarly situated. Under this step, the agencies apply factors in the determination of when waters evaluated under paragraph (a)(8) should be considered either individually or in combination for purposes of a significant nexus analysis. A determination of “similarly situated” requires an evaluation of whether a group of waters in the region that meet the distance thresholds set out under paragraph (a)(8) can reasonably be expected to function together in their effect on the chemical, physical, or biological integrity of downstream traditional navigable waters, interstate waters, or the territorial seas. Similarly situated waters can be identified as sufficiently close together for purposes of this paragraph of the regulation when they are within a contiguous area of land with relatively homogeneous soils, vegetation, and landform (*e.g.*, plain, mountain, valley, etc.).

A water has a significant nexus when any single function or combination of functions performed by the water, alone or together with similarly situated waters in the region, contributes significantly to the chemical, physical, or biological integrity of the nearest water identified in paragraphs (a)(1) through (3).

NOTE: This evaluation is for Wetlands A, B, and D only. On-site Wetlands C and E are (a)(6) waters based on proximity to Lindgren Creek (approximately 120 feet) and their location in the 100-year floodplain for the creek.

1. Subject Wetlands

- a. Soils: Based on USDA Soil Survey Data, soils at and immediately around the project area of Wetlands A, B, C, D, and E are mapped as Skagit silt loam (0 to 15% slopes – listed hydric soil) and Tokul gravelly medium loam (8 to 15% slopes – non hydric soil). Soils at the project site are mapped as partially hydric (1% -25%) and moderately drained.
- b. Vegetation: Wetland A, 0.62 of an acre (27,073 square feet) (SF) category IV is a Palustrine, Scrub-Shrub, Seasonally Saturated, Continuously Saturated (PSSBD) sloped wetland; Vegetation consists of *Alnus rubra* (red alder), *Juncus effuses* (soft rush), *Holcus lanatus* (common velvet grass), *Ranunculus repens* (creeping butter cup), and *Lysichiton americanum* (skunk cabbage);

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SUBJECT: NWS-2004-357; Mitzel, Dan

Wetland B, 0.95 of an acre (41,242 SF) Palustrine Forested, Emergent, Seasonally Saturated, Continuously Saturated wetland (PFO/EMBD) category IV sloped wetland; Vegetation consists of *Salix lasiandra* (Pacific willow), *Salix scouleriana* (Scouler's willow), *Rubus spectabilis* (salmonberry) and *Lysichiton americanum* (skunk cabbage).

Wetland D, 0.06 of an acre (2,548 SF) Palustrine Forested, Seasonally Saturated (PFOB) category IV sloped wetland; Vegetation consists of *Acer macrophyllum* (big-leaf maple), *Alnus rubra* (red alder), *Rt,bus spectabilis* (salmonberry), *Equisetum arvense* (field horsetail) and *Lysichiton americanum* (skunk cabbage).

c. Landform: The wetlands are located in irregular plains moderately well drained land forms. Vicinity has mosaic of wetlands scattered over a wide forested / developed area along a ridge running southwest to northwest and generally slopes west toward Lindgren Creek which flows to an (a)(1) water, the Skagit River. Wetlands A, B, and D are not within the mapped 100-year flood plain and are located upslope from Wetlands C and E.

d. Proximity: Wetlands C and E are within the flood plain and adjacent to Lindgren Creek. Wetlands A, B, and D are not within the flood plain and area located 241-feet, 320-feet, and 544-feet, respectively, from Lindgren Creek.

2. Similarly Situated Characteristics

a. NWS-2004-357 Single Point of Entry (SPOE) basin is delineated in the attached figure. The Lindgren Creek SPOE is located within the lower Skagit River drainage area within Mount Vernon, Washington.

b. Similarly situated waters would be PSS/PFO/PEM/ seasonally saturated sloped wetlands in irregular landforms with soils that have been identified as hydric, moderately drained, located above the 100-year flood plain, and within 4000 feet of OHWM of Lindgren Creek, an (a)(5) tributary that drains to the Skagit River.

3. Similarly Situated Waters Identified

Based on NWI Mapping and characteristics discussed above, three wetlands totaling 8.50 acres were identified as similarly situated wetlands. Other wetlands were excluded because they were not situated within the same land cover, landform class, and soil drainage class.

4. Significant Nexus Determination

The subject waters (Wetlands A, B, and D) either alone or in combination with other similarly situated waters in the region, do not significantly affect the chemical, physical, or biological integrity of the Skagit River based on the discussion below:

CENWS-ODR
SUBJECT: NWS-2004-357; Mitzel, Dan

Wetlands A, B, and D, functions evaluated include storage of floodwater; recharge of groundwater that sustains river base flow; retention and transformation of nutrients, metals, and pesticides; export of organism or seeds to downstream waters; and habitats needed for stream species.

Wetlands A, B, and D may provide some pollutant filtration as dense, woody plants cover at least half their areas. However, the areas immediately surrounding the wetlands is unmanaged and does not generate pollutants requiring wetland filtration. The wetlands likely provide forage and cover for small terrestrial mammals and birds. However, the diversity of niches within the wetlands are is limited by the presence of only one Cowardin class. For the subject wetlands, the hydrologic connectivity and effects to the downstream WOTUS is severely impacted and disconnected by natural and anthropological conditions (dikes, gated culverts, drainage ditches, artificial wetlands, upland hills). The landscape between Lindegren Creek and Wetlands A, B and D consists of upland areas which slope down to a depression where Wetlands C and E are located. An upland berm is located between Wetlands C and E before sloping down to Lindegren Creek, approximately 145-feet to the west. The downstream connection from the subject wetlands to the Skagit River is approximately 5,200 feet.

As Wetlands A, B and D are low functioning sloped wetlands, their ability to recharge groundwater that sustains river base flow or have a subsurface connection to the Skagit River is highly unlikely. Due to the wetlands location in the landscape above the 100 year flood plain they are unlikely to provide storage of floodwater; have little ability to provide retention and transformation of nutrients, metals, and pesticides; have little ability to provide export of organism or seeds to downstream waters; and no ability to provide habitat for aquatic species.

A review of aerial imagery indicates that the three NWI wetlands have similar characteristic to the subject wetlands – no direct connectivity to Lindgren Creek, situated in areas that have been modified through development, and offering little if any functional contributions to conditions in the Skagit River.

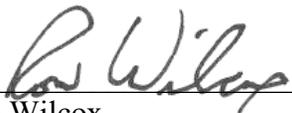
As such, Wetland C and the similarly situated wetlands working in combination are not providing significant contributions to flow, sediment and toxin trapping, nutrient recycling, retention and attenuation of flood waters, export of organic matter, or export of food resources at a level that would significantly affect the downstream (a)(1) water..

The Skagit River contains Essential Fisheries Habitat for anadromous salmonids that utilize the waters of Oakland Bay. In addition, the river provides rearing and spawning habitat for ESA listed bull trout, steelhead and chinook salmon. No fish use was identified in Lindegren Creek above a fish passage barrier found 3,600 feet downstream from the subject property. The subject waters either alone or in combination with other similarly situated waters in the SPOE basin, do

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not contribute to fish habitat conditions in the Skagit River through primary food support, water quality protection, and/or moderation of flow regimes.

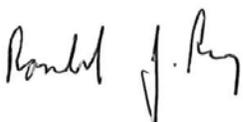
5. Conclusion: Because there is not a significant nexus, Wetlands A, B, and D are not waters of the U.S.



Ron Wilcox
Senior Project Manager

30 April 2019

Date



Randel Perry
Senior Project Manager

30 April 2019

Date

- Attachments:
Vicinity Map
Aerial
Site Wetlands Map
Topo Map
SPOE Map
NWI/Drainage Class Map
NWI/Landform Map
NHD Map
NWI Map
Soil Survey

Exhibit C



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

January 3, 2020

Dan Mitzel
Hansell Mitzel Homes, LLC
PO Box 2523
Mt. Vernon, WA 98273

Re: Administrative Order No. 16961 to permanently fill/impact 1.627 acres of non-federally regulated wetlands to construct Swan View residential development in the City of Mount Vernon, Skagit County, Washington

Dear Dan Mitzel:

On June 25, 2019, the Department of Ecology received your request for an Administrative Order to conduct work in wetlands. Ecology has determined the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Chapter 90.48 RCW and other applicable requirements of state law.

This approval is subject to the conditions contained in the enclosed Order. **You must familiarize yourself with and abide by the conditions in the Order, including all notification requirements.** If you have any questions, please contact Chris Luerkens at (360) 255-4399. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Joe Burear, Section Manager
Shorelands and Environmental Assistance Program

Enclosure

By certified mail: 9171 9690 0935 0233 1182 03

E-cc: Ron Wilcox, U.S. Army Corps of Engineers
ECY RE FED PERMITS
Jon Picket, Soundview Consultants



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE REQUEST BY) ORDER #16961
Hansell Mitzel Homes, LLC) Corps AJD Ref #NWS-2004-357
FOR AN ADMINISTRATIVE ORDER TO)
CONDUCT WORK IN NON-FEDERALLY)
REGULATED WETLANDS)

TO: Hansell Mitzel Homes, LLC
Dan Mitzel
PO Box 2523
Mt. Vernon, WA 98273

This is an Administrative Order requiring Hansell Mitzel Homes, LLC to comply with Chapter 90.48 RCW and the rules and regulations of the Department of Ecology (Ecology) by taking certain actions, which are described below. RCW 90.48.120(1) authorizes Ecology to issue Administrative Orders requiring compliance whenever it determines a person has violated or creates a substantial potential to violate any provision of Chapter 90.48 RCW.

On June 25, 2019, Ecology received a request to impact 1.627 acres of non-federally regulated wetlands to construct Swan View residential development in Skagit County. The U.S. Army Corps of Engineers (Corps) issued its jurisdictional determination that Wetlands A, B, and D are not waters of the U.S. on May 2, 2019. The site is located at 3773 Francis Road, Mount Vernon, Washington, Section 9, TOWNSHIP 34 North, RANGE 4 East, Skagit County, and WRIA 3.

The applicant proposes the development of a 43-lot residential plat, including associated roads, utilities, and stormwater infrastructure within the City of Mount Vernon.

This Administrative Order authorizes fill of 1.627 acres of Category IV wetland at the project location, which will be mitigated through purchase of 1.382 credits at the Nookachamps Wetland Mitigation Bank. Additionally, stream and wetland buffer impacts will be mitigated onsite through enhancement of 36,447 square feet of stream buffer and 11,450 square feet of wetland buffer, as well as all other actions as proposed in the *Hansell Mitzel Homes – Francis Road, Wetland, Shoreline, and Fish and Wildlife Habitat Assessment and Conceptual Mitigation Plan (Revised June 2019)*.

For purposes of this Order, the term “Applicant” shall mean Hansell Mitzel Homes, LLC and its agents, assigns, and contractors.

In view of the foregoing and in accordance with RCW 90.48.120(1):

IT IS ORDERED that the Applicant shall comply with the following:

A. General Conditions:

Order #16961, Corps Reference #NWS-2004-357
Hansell Mitzel Homes, LLC
January 3, 2020
Page 2 of 13

- A1. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the JARPA received by Ecology on June 25, 2019, or as otherwise approved by Ecology. The JARPA list the project name as “*Swan View*”.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology’s Bellingham Field Office, Attn: Chris Luerkens, SEA Program, 913 Squalicum Way, Suite 101 or via email to fednotification@ecy.wa.gov and a cc to chris.luerkens@ecy.wa.gov. Any submittals shall reference Order No. 16961.
- A3. The Applicant shall provide access to the project site and mitigation site upon request by Ecology.
- A4. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
- A5. Nothing in this Order waives Ecology’s authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- A6. The Applicant shall ensure all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. **These statements shall be provided to Ecology before construction begins at the project.**
- A7. The Applicant shall install erosion-control silt fencing outside of the outer edge of the retained wetland buffers for Wetlands C and E prior to the start of construction. The Applicant shall have a wetland professional on site during installation to verify the correct location of the silt fencing.
- A8. The applicant shall install permanent fencing at the outer edge of the retained buffers once grading of the project areas adjacent to the wetland buffers is complete.

B. Notification Requirements:

- B1. The Applicant shall provide written notification (FAX, email, or mail) to Ecology’s Bellingham Field Office in accordance with condition A2 above for the following activities:
 - a. At least seven (7) days within the start of impacts to wetlands.
 - b. Immediately following a violation of the state water quality standards or any condition of this Order.
 - c. Within seven (7) days of installation of silt fencing per condition A7.

Order #16961, Corps Reference #NWS-2004-357
 Hansell Mitzel Homes, LLC
 January 3, 2020
 Page 3 of 13

- d. Within seven (7) days of installation of permanent fencing per condition A8.
- e. At least seven (7) days prior to completing the wetland buffer mitigation site.

C. Wetland Compensatory Mitigation Conditions

- C1. The Applicant shall mitigate wetland impacts as described in the *Hansell Mitzel Homes – Francis Road, Wetland, Shoreline and Fish and Wildlife Habitat Assessment Report and Conceptual Mitigation Plan (Revised June 2019)* (hereafter called the “Mitigation Plan”) prepared by Soundview Consultants, and dated October 2018, revised June 2019, or as modified by this Order or revised and approved by Ecology.
- C2. The Applicant shall submit any changes to the Mitigation Plan in writing to Ecology (see A2) for review and approval before work begins.
- C3. The Applicant shall have a wetland professional at the wetland site to supervise during construction and planting.

Implementation

- C4. Prior to impacting wetlands, the Applicant shall submit to Ecology documentation from the bank sponsor verifying the purchase of 1.382 wetland mitigation bank credits from the Nookachamps Wetland Mitigation Bank. This documentation must include the permit number, permit issuance date, impact acreage, the amount of credits required by the permit, and date of credit purchase.
- C5. The Applicant shall complete the purchase of credits before the impacts to wetlands occur, or Ecology may require additional compensation to account for temporal loss of wetland functions.
- C6. If the mitigation cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:
 - a) Hansell Mitzell Homes, LLC, Swan View Project.
 - b) Nookachamps Wetland Mitigation Bank.
 With the:
 - c) Reason for the delay.
 - d) Expected date of completion.

The Applicant shall submit an updated written notification every 12 months thereafter until the Hansell Mitzell Homes, LLC, Swan View Project and the required credits are purchased.

On-Site Mitigation and Implementation

- C7. The Applicant shall mitigate impacts of 7,578 square feet of wetland buffer and install approximately 36,447 square feet of stream buffer enhancement along Lindegren Creek

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as described in the Mitigation Plan, or as modified by this Order, or revised and approved by Ecology.

C8. Unless otherwise approved by Ecology in writing, the Applicant shall begin the buffer compensatory mitigation project before, or concurrent with, impacting wetlands, or Ecology may require additional compensation to account for additional temporal loss of wetland functions.

C9. If the buffer mitigation is not constructed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of:

- a) Hansell Mitzell Homes, LLC, Swan View Project.
- b) The on-site buffer mitigation.

With the:

- c) Expected date of completion, and
- d) Reason for the delay

The Applicant shall submit an updated written notification regarding the on-site buffer mitigation every 12 months thereafter until the Hansell Mitzell Homes, LLC, Swan View Project and buffer mitigation sites are complete.

C10. The Applicant shall ensure all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers at the wetland mitigation site and above the 100-year floodplain.

C11. The Applicant shall ensure no material is stockpiled within existing wetlands and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology-approved Mitigation Plan.

C12. The Applicant shall ensure no construction debris is deposited within existing wetlands and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology-approved Mitigation Plan.

C13. The Applicant shall not use polyacrylamide at the mitigation site(s).

C14. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site(s).

C15. Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit. Applicators shall comply with all conditions of the Noxious Weed Control Permit.

C16. If weed-barrier fabric is used on the site, the Applicant shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for entire-site and/or individual plant weed

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- control. Non-biodegradable plastic weed-barrier fabric shall be used only at the base of individual plants and shall be removed before it starts to break down, before it interferes with plant growth, or before the end of the monitoring period, whichever comes first.
- C17. If seeding is used as a best management practice for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species.
- C18. The Applicant will install a split rail fence outside of the outer edge of all wetland and stream buffers, unless otherwise approved by Ecology.
- C19. The Applicant shall place signs at the mitigation area's(s') boundaries, including buffers, as described in the Mitigation Plan.
- C20. After completing construction and planting of the mitigation sites(s), the Applicant shall submit to Ecology (see A2) an as-built report, including plan sheets, documenting site conditions at year zero. The as-built report must:
- a) Be submitted within 90 days of completing construction and planting. Include one hard copy and one electronic file.
 - b) Include the information listed in Attachment B (Information Required for As-built Reports).
 - c) Include documentation of the recorded legal mechanism required in condition C21.
- C21. Within 90 days of completing construction and planting of the Hansell Mitzell Homes, LLC, Swan View Project buffer mitigation sites, the Applicant shall send a draft conservation easement to Ecology for review and approval. Within 90 days after Ecology approval, the approved conservation easement must be recorded with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property and a copy of the recorded notice sent to Ecology (see A2). The conservation easement shall be recorded with a figure that corresponds with the legal description showing the area being protected, a copy of this Order, and a site map showing the location of wetlands and their buffers.

Monitoring and Maintenance

- C22. The Applicant shall water and maintain all mitigation site plantings so as to meet the Mitigation Plan's performance standards. If an irrigation system is installed, it shall be removed by the end of year three unless permission is received in writing from Ecology to allow the system to remain for a longer period.
- C23. The Applicant shall monitor the mitigation site for a minimum of five years. The Applicant shall use the monitoring methods described on pages 27-28 of the Mitigation Plan.

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- C24. The Applicant shall submit to Ecology (see A2) monitoring reports documenting mitigation site conditions for years 1, 2, 3, and 5. The monitoring reports must:
- a) Be submitted by December 31 of each monitoring year. Include one hard copy and one electronic file.
 - b) Include the information listed in Attachment C (Information Required for Monitoring Reports).
- C25. The Applicant shall implement the Mitigation Plan's contingency measures if the Mitigation Plan's goals, objectives, or performance standards are not being met.
- C26. Prior to implementing contingency measures not specified in the Mitigation Plan, the Applicant shall consult with and obtain written approval from Ecology for the changes.
- C27. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the first available planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
- C28. If the Applicant has not met all conditions, including performance standards, for the mitigation site at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.
- C29. Until the Applicant has received written notice from Ecology that the Mitigation Plan has been fully implemented, the Applicant's obligation under condition C1 to mitigate for wetland impacts is not met.

D. Timing

- D1. This Order shall remain in effect until compliance with all requirements of this Order have been met and the Applicant has received written notification from Ecology to that effect.
- D2. Failure to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

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- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person (see addresses below). Email is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p> <p>Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

CONTACT INFORMATION

Please direct all questions about this Order to:

Chris Luerkens
 Department of Ecology
 Bellingham Field Office
 913 Squalicum Way, Suite 101
 Bellingham, WA 98225
 (360) 255-4399
chris.luerkens@ecy.wa.gov

MORE INFORMATION

- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>

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- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

DATED January 3, 2020, at Bellevue, Washington:



Joe Burcar, Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

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ATTACHMENT A
Statement of Understanding of
Administrative Order Conditions

HANSELL MITZEL HOMES, LLC
SWAN VIEW PROJECT
Administrative Order #16961
and
Corps Reference No. NWS-2004-357

As the Applicant for the Swan View project, I have read and understand the conditions of Washington State Department of Ecology Order #16961, and any permits, plans, documents, and approvals referenced in the Order.

I have and will continue to ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.

Signature

Date

Title

Phone

Company

ATTACHMENT B Information Required for As-built Reports

**HANSELL MITZEL HOMES, LLC
SWAN VIEW PROJECT
Administrative Order #16961
Corps Reference #NWS-2004-3570**

Background Information

- 1) Project name.
- 2) Ecology reference number and the Corps reference number.
- 3) Name and contact information of the person preparing the as-built report. Also include the names of:
 - a) The applicant.
 - b) The landowner (if different than the applicant).
 - c) Wetland professional on site during construction of the compensatory mitigation site.
- 4) Date the report was produced.

The Compensatory Mitigation Project

- 5) Brief description of the **final** compensatory mitigation project with any changes from the approved plan made during construction. Include:
 - a) **Actual** acreage and type(s) (re-establishment, rehabilitation, creation, enhancement, and preservation) of mitigation authorized to compensate for wetland impacts.
 - b) Important dates including:
 - i. Start of project construction.
 - ii. When work on the compensatory mitigation site began and ended.
 - iii. When different activities such as grading, removal of invasive plants, installing plants, and installing habitat features began and ended.
- 7) Description of any problems encountered and solutions implemented (with reasons for changes) during construction of the compensatory mitigation site.
- 8) List of any follow-up actions needed, with a schedule.
- 9) Final site maps (8-1/2" x 11" or larger) of the compensatory mitigation site(s), including the following (at a minimum):
 - a) Geographic location of the site with landmarks;
 - b) Clear delineation of the project perimeter(s);
 - c) Topography (with a description of how elevations were determined);
 - d) Installed planting scheme (quantities, densities, sizes, and approximate locations of plants, as well as the source(s) of plant material);
 - e) Location of habitat features;
 - f) Location of permanent photo stations.

The final site maps should reflect on-the-ground conditions after the site work is completed. Include the month and year when the maps were produced and, if applicable, when information was collected.

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- 10) Photographs of the site at as-built conditions taken from permanent photo stations. We recommend photo pans.
- 11) Copies of any records of deed notifications or conservation easements.

ATTACHMENT C
Information Required for Monitoring Reports
(See Condition B24)

HANSELL MITZEL, LLC
SWAN VIEW PROJECT
Administrative Order #16961
Corps Reference #NWS-2004-357

Ecology requires the following information for monitoring reports submitted under this Order. Ecology will accept additional information that may be required by other agencies.

Background Information

- 1) Project name.
- 2) Ecology Order number and the Corps reference number.
- 3) Name and contact information of the person preparing the monitoring report. Also, if different from the person preparing the report, include the names of:
 - a) The applicant
 - b) The landowner
 - c) The party responsible for the monitoring activities.
- 4) Dates the monitoring data were collected.
- 5) Date the report was produced.

Mitigation Project Information

- 6) Brief description of the mitigation project, including acreage of Cowardin classes and mitigation type(s) (re-establishment, rehabilitation, creation, enhancement, preservation, upland, buffers).
- 7) Description of the monitoring approach and methods. For each performance standard being measured provide the following information:
 - a) Description of the sampling technique (e.g., monitoring point for soil or hydrology, line or point intercept method, ocular estimates in individually placed plots). If you are using a standardized technique, provide a reference for that method.
 - b) Size and shape of plots or transects.
 - c) Number of sampling locations and how you determined the number of sampling locations to use.
 - d) Percent of the mitigation area being sampled.
 - e) Locations of sampling (provide a map showing the locations), how you determined where to place the sampling locations (e.g., simple random sample), and whether they are permanent or temporary.
 - f) Schedule for sampling (how often and when).
 - g) Description of how the data was evaluated and analyzed.

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- 8) Summary table(s) comparing performance standards with monitoring results and whether each standard has been met.
 - 9) Discussion of how the monitoring data were used to determine whether the site(s) is meeting performance standards.
 - 10) Goals and objectives and a discussion of whether the project is progressing toward achieving them.
 - 11) Summary, including dates, of management actions implemented at the site(s), for example, maintenance and corrective actions.
 - 12) Summary of any difficulties or significant events that occurred on the site that may affect the success of the project.
 - 13) Specific recommendations for additional maintenance or corrective actions with a timetable.
 - 14) Photographs taken at permanent photo stations and other photographs, as needed. Photos must be dated and clearly indicate the direction the camera is facing. Photo pans are recommended.
 - 15) Vicinity map showing the geographic location of the site(s) with landmarks.
 - 16) Mitigation site map(s), 8-1/2" x 11" or larger, showing the following:
 - a) Boundary of the site(s).
 - b) Location of permanent photo stations and any other photos taken.
 - c) Data sampling locations, such as points, plots, or transects.
 - d) Approximate locations of any replanted vegetation.
 - e) Changes to site conditions since the last report, such as areas of regrading, a shift in the location of Cowardin classes or habitat features, or a change in water regime.
- Include the month and year when each map was produced or revised. The site map(s) should reflect on-the-ground conditions during the most recent monitoring year.