



EXHIBIT "F"
2014 ANNUAL AMENDMENT

Amendments to the Tacoma Municipal Code

These amendments show all of the changes to the *existing* text of the Tacoma Municipal Code. The sections included are only those portions of the Code that are associated with these amendments. New text is underlined and text that is deleted is shown in ~~strikethrough~~.

Chapter 13.11
CRITICAL AREAS PRESERVATION

Sections:

- 13.11.100 General Provisions.
- 13.11.110 Purpose.
- 13.11.120 Intent.
- 13.11.130 Scope and Applicability.
- 13.11.140 Regulated Uses/Activities.
- 13.11.145 Pre-existing Uses/Structures.
- 13.11.150 *Repealed.*
- 13.11.160 Abrogation and Greater Restrictions.
- 13.11.170 Severability.
- 13.11.180 Critical Area Designation and SEPA.
- 13.11.190 Review Process.
- 13.11.200 Allowed Activities.
- 13.11.210 Activities Allowed with Staff Review.
- 13.11.220 Application Types.
- 13.11.230 Application Submittal Requirements.
- 13.11.240 Legal Test(s).
- 13.11.250 General Standards.
- 13.11.260 Residential Density Credits.
- 13.11.270 General Mitigation Requirements.
- 13.11.280 Conditions, Notice on Title, and Appeals.
- 13.11.290 Sureties.
- 13.11.300 Wetlands.**
- 13.11.310 Wetland Classification.
- 13.11.320 Wetland Buffers.
- 13.11.330 Wetland Buffer Modifications.
- 13.11.340 Wetland Mitigation Requirements.
- 13.11.350 *Repealed.*
- 13.11.360 *Repealed.*
- 13.11.400 Streams and Riparian Habitats.
- 13.11.410 Stream Classification.
- 13.11.420 Stream Buffers.
- 13.11.430 Stream Buffer Modifications.
- 13.11.440 Stream Standards.
- 13.11.450 Stream Mitigation Requirements.
- 13.11.500 Fish and Wildlife Habitat Conservation Areas (FWHCAs).
- 13.11.510 Classification.
- 13.11.520 Standards.
- ~~13.11.530 FWHCA's Shoreline Marine Buffers.~~
- ~~13.11.540 FWHCA's Marine Buffer Modifications.~~
- 13.11.550 FWHCA's Mitigation Requirements.
- 13.11.560 FWHCA's Management Areas.
- 13.11.580 *Repealed.*

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| 13.11.600 | Flood Hazard Areas. |
| 13.11.610 | Classification. |
| 13.11.620 | Standards. |
| 13.11.640 | General Development Standards. |
| 13.11.700 | Geologic Hazardous Areas. |
| 13.11.710 | Designation. |
| 13.11.720 | Classification. |
| 13.11.730 | General Development Standards. |
| 13.11.800 | Aquifer Recharge Areas. |
| 13.11.810 | Classification. |
| 13.11.820 | Standards. |
| 13.11.900 | Definitions. |

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13.11.130 Scope and Applicability.

A. The provisions of this chapter apply to all lands and waters, all land uses and development activities, and all structures and facilities in the City, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the City. This chapter applies to all critical areas outside of the Shoreline District. ~~Upon Department of Ecology approval of an updated City of Tacoma Shoreline Master Program, this chapter will no longer apply to lands and waters subject to the Shoreline Management Act and the Shoreline Master Program. Until such time, critical areas within or associated with Shorelines of the State will continue to be subject to the requirements and standards of this chapter.~~ This chapter specifically applies to any activity which would destroy vegetation; result in a significant change in critical habitat, water temperature, physical, or chemical characteristics; or alter natural contours and/or substantially alter existing patterns of tidal, sediment, or storm water flow on any land which meets the classification standards for any critical area defined herein. Such activities include excavation, grading, filling, the removal of vegetation, and the construction, exterior alteration, or enlargement of any building or structure. In addition, this chapter applies to all public or private actions, permits, and approvals in or adjacent to a critical area and its buffer.

B. Critical areas outside a shoreline district that involve a development activity that is reviewed, pursuant to Section 13.05.095 TMC (Development Regulation Agreements), except for projects identified in subsection 13.05.095(B)4 TMC, shall be considered during the Development Regulation Agreement review process; a separate critical areas permit is not required. Any approval(s) pursuant to Section 13.05.095 TMC shall, to the maximum extent feasible, avoid potential impacts to critical areas, and any unavoidable impacts to critical areas shall be fully mitigated, either on- or off-site.

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13.11.145 Pre-existing Uses/Structures.

A. An established use or existing structure that was lawfully permitted prior to adoption of this chapter, but which is not in compliance with this chapter, may continue subject to the provisions of Tacoma Municipal Code (TMC) Chapter 13.11 Critical Areas Preservation, ~~Chapter 13.10 Shoreline Management~~ and Section 13.06.630.

B. Except as otherwise required by law, a legal pre-existing use or structure may continue unchanged; or modified only where the use or structure becomes less non-conforming, and where the modification will increase the buffer, and increase the functions of the critical area.

C. All modifications for pre-existing structures, other than trails, shall conform to the current code provision to the maximum extent possible as determined by the Director of Planning and Development Services.

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13.11.190 Review Process.

A. The Review Process is used to determine whether a critical area or critical area buffer is present on or adjacent to a proposal, and whether additional review or permitting is required.

Critical area may be located through the use of information from the United States Department of Agriculture Natural Resource Conservation Service, the United States Geological Survey, the Washington Department of Ecology, the Coastal Zone Atlas, the Washington Department of Fish and Wildlife stream maps and Priority Habitat and Species maps, Washington DNR Aquatic Lands maps, the National Wetlands Inventory maps, Tacoma topography maps, the City's Generalized Wetland and Critical Areas Inventory maps, and Pierce County Assessor's maps to establish general locations and/or verify the location of any wetland, or stream, or FWHCA site. The City's Generalized Wetland and Critical Area Inventory maps and other above-listed sources are only guidelines available for reference. The actual location of critical areas must be determined on a site-by-site basis according to the classification criteria.

The City may utilize information from any source referred to above or available in order to establish general locations and/or to verify the location of any wetland, stream or FWHCA.

B. Site Review. In order to assist customers with potential proposals, City staff will provide an initial site review based on existing information, maps and a potential site visit to identify potential wetlands, streams, and their associated buffers within 300 feet. FWHCAs and their ~~marine habitat buffer~~/management areas will also be identified. Site reviews are completed on a case by case basis and may require the applicant to submit a wetland delineation, wetland categorization, stream type and Ordinary High Water Mark location, hydrology reports, and priority fish and wildlife species and habitat presence information from WDFW or the City.

Following the site visit and Review Process, a project may proceed without further critical area permitting if the applicant can demonstrate the following:

1. There are no adverse impacts to the critical area or buffer, and
2. Structures and improvements are all located beyond the required buffers, and
3. Existing hydrology will be maintained to support critical areas, and
4. The proposed use or activity is consistent with WDFW species management recommendations.

C. In conjunction with the site review process, the Director of Planning and Development Services (the "Director"; see 13.11.900 D., below) may require additional information on the physical, biological, and anthropogenic features that contribute to the existing ecological conditions and functions to determine whether a formal wetland/stream/FWHCA ~~exemption, assessment or~~ development permit is required.

D. Review, Assessment and Permit Requirements.

1. Review of development activities within the jurisdiction of the Shoreline Management Act, including Puget Sound, Wapato Lake, or any stream where the mean annual flow is 20 cubic feet per second or greater are regulated under provisions of TMC 13.10 and the Tacoma Shoreline Master Program. ~~of both this Chapter and TMC 13.10, Shoreline Management. If there are any conflicts between TMC 13.10, Shoreline Management, and Chapter 13.11, Critical Areas Preservation, the most restrictive requirements shall apply.~~ Upon adoption of the new Shoreline Master Program on October 15, 2103, ~~all and code, all critical area~~ code excerpts referring to the regulation of critical areas within the shoreline will no longer be valid and those critical areas shall be regulated under the new shoreline code TMC 13.10.

~~a. Development activities that require a Shoreline Substantial Development permit do not require a separate Wetland/Stream/FWHCA permit or exemption, provided the Shoreline Substantial Development Permit review includes review for consistency with this Chapter.~~

~~b. Development activities that require a Shoreline Exemption and a Wetland/Stream/FWHCA permit will be processed separately.~~

~~e. Development activities that require a Shoreline Exemption and a Wetland/Stream/FWHCA exemption will be processed under the Shoreline Exemption.~~

~~d. Development activities that do not require a building or land use permit may still be subject to a Wetland/Stream/FWHCA permit or exemption.~~

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13.11.210 Activities Allowed with Staff Review.

A. Purpose. The purpose of this section is to allow City staff review to determine whether potential impacts to a critical area or buffer may occur, without requiring a critical area permit. The staff review will ensure the activity meets the specific criteria below.

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6. One-time expansion of existing structures and accessory structures, provided that expansion of the developed footprint within the critical area or buffer does not increase by more than 25 percent and that the new construction or related use extends away from the critical area ; keeps disturbance of native vegetation to a minimum; and replaces native vegetation that may be disturbed This expansion may also occur in a direction parallel to the critical area if the expansion takes place upon existing impervious surfaces. Activities must comply with WDFW management recommendations where applicable. A Notice on Title must be recorded to be eligible for staff review and approval.

7. Maintenance and repair of existing ~~retaining walls and -bulkheads, shoreline armoring, and~~ bioengineered stabilization measures designed to protect property from erosion.

* * *

12. Tree Pruning. Tree pruning may be allowed provided a report from a certified arborist, landscape architect or professional forester regarding the health of the tree is submitted, and a functional impact analysis from a qualified professional evaluating the functions of the critical area as a result of the pruning, is also submitted to the City for review and approval. No topping, complete removal or impacts to the health of the tree shall be allowed.

~~13. Within Shorelines of the State, as defined by RCW 90.58.030, activities exempt under WAC 173-27-040, with the exception of WAC 173-27-040 (2) (c), (g) and (h). This exemption shall not include activities within wetlands, streams, or their associated buffers, and also shall not include activities within associated wetlands or streams as established in RCW 90.58.030(2)(d).'~~

~~1413.~~ Watershed restoration projects that conform to the provisions of RCW 89.08.460 shall be reviewed without fee and approved within 45 days per RCW 89.08.490.

~~1514.~~ Fish habitat enhancement projects that conform to the provision of RCW 77.55.181 shall be reviewed without fee and comments provided as specified in RCW 77.55.181.

~~16. Maintenance and repair of existing bulkheads, stream bank armoring and bioengineered stabilization measures designed to protect property from erosion or slope failure.~~

~~1715.~~ Demolition of structures.

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13.11.230 Application Submittal Requirements.

A. The purpose of information submittal and review is to require a level of study sufficient to protect critical areas and/or the public from hazards. All information submitted shall be reviewed as to its validity and may be rejected as incomplete or incorrect. Additional information or electronic copies of all information may be requested for review and to ensure compliance. In the event of conflicts regarding information submitted, the Director may, at the applicant's expense, obtain expert services to verify information.

B. The following items are required for permit review and approval, where applicable depending upon the project and permit type, and as determined necessary by City staff.

1. A Joint Aquatic Resource Permit Application and vicinity map for the project.

2. A surveyed site plan that includes the following:

a. Parcel line(s), north arrow, scale and two foot contours.

b. Location and square footage for existing and proposed site improvements including, utilities, stormwater and drainage facilities, construction and clearing limits, and off-site improvements. Include the amounts and specifications for all draining, excavation, filling, grading or dredging.

c. The location and specifications of barrier fencing, silt fencing and other erosion control measures.

d. Base flood elevation, floodplain type and boundary and floodways, if site is within a floodplain.

e. Critical Areas including all surveyed, delineated wetland boundaries, and the ordinary high water mark of any stream and their buffers, and all Fish and Wildlife Conservation Areas (FWHCA), ~~marine buffers~~ and any FWHCA Management Areas.

f. The square footage of the existing critical areas and buffers located on-site and the location and square footage of any impacted areas.

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13.11.340 Wetland Mitigation Requirements.

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D. Mitigation ratios.

1. The ratios contained within Table 5 shall apply to all Creation, Re-establishment, Rehabilitation, and Enhancement compensatory mitigation.

2. Increased replacement ratios. The Director may increase the ratios under the following circumstances:

- a. Uncertainty exists as to the probable success of the proposed restoration or creation;
- b. A significant period of time will elapse between impact and replication of wetland functions;
- c. Proposed mitigation will result in a lower category wetland or reduced function relative to the wetland being impacted; or
- d. The impact was an unauthorized impact.

| Table 5. Mitigation ratios for projects in Western Washington that do not alter the hydro-geomorphic setting of the site*** | | | | |
|---|---|--|--|------------------|
| Category and Type of Wetland | Re-establishment or Creation | Rehabilitation | 1:1 Re-establishment or Creation (R/C) and Enhancement (E) | Enhancement only |
| All Category IV | 1:5:1 | 3:1 | 1:1 R/C and 2:1 E | 6:1 |
| All Category III | 2:1 | 4:1 | 1:1 R/C and 2:1 E | 8:1 |
| Category II Estuarine | Case-by-case | 4:1 rehabilitation of an estuarine wetland | Case-by-case | Case-by-case |
| Category II Interdunal | 2:1 Compensation has to be interdunal wetland | 4:1 compensation has to be interdunal | 1:1 R/C and 2:1 E | 8:1 |
| All other Category II | 3:1 | 8:1 | 1:1 R/C and 4:1 E | 12:1 |
| Category I Forested | 6:1 | 12:1 | 1:1 R/C and 10:1 E | 24:1 |
| Category I based on score for functions | 4:1 | 8:1 | 1:1 R/C and 6:1 E | 16:1 |
| Category I Natural Heritage site | Not considered possible | 6:1 | Case-by-case | Case-by-case |
| Category I Coastal lagoon | Not considered possible | 6:1 | Case-by-case | Case-by-case |
| Category I Bog | Not considered possible | 6:1 | Case-by-case | Case-by-case |
| Category I Estuarine | Case-by-case | 6:1 | Case-by-case | Case-by-case |
| <p>*Natural heritage site, coastal lagoons, and bogs are considered irreplaceable wetlands, and therefore no amount of compensation would replace these ecosystems. Avoidance is the best option. In the rare cases when impacts cannot be avoided, replacement ratios will be assigned on a case-by-case basis. However, these ratios will be significantly higher than the other ratios for Category I wetland.</p> <p>**Rehabilitation ratios area based on the assumption that actions judged to be most effective for that site are being implemented.</p> <p>**Rehabilitation ratios area based on the assumption that actions judged to be most effective for that site are being implemented.</p> <p>***Washington State Department of Ecology and Washington State Department of Fish and Wildlife’s Wetlands in Washington State; Volume 2: Guidance for Protecting and Managing Wetlands, Buffer Alternative 3</p> | | | | |

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13.11.500 Fish and Wildlife Habitat Conservation Areas (FWHCAs).

The 500 section contains the regulations for fish and wildlife habitat conservation areas (FWHCAs), including the following:

- 13.11.510 Classification.
- 13.11.520 Standards.
- ~~13.11.530 FWHCA's Shoreline Marine Buffers.~~
- ~~13.11.540 FWHCA's Marine Buffer Modifications.~~
- 13.11.550 FWHCA's Mitigation Requirements.
- 13.11.560 FWHCA's Management Areas.
- 13.11.580 *Repealed.*

13.11.510 Classification.

A. Fish and wildlife habitat conservation areas are areas identified by the Washington Department of Wildlife as being of critical importance to the maintenance of fish and wildlife species. These areas may include other critical areas such as geologically hazardous areas, stream corridors, wetlands, and these critical areas' associative buffers.

1. Fish and Wildlife Habitat Conservation Areas (FWHCAs). Fish and Wildlife habitat areas include:

a. Lands and waters containing priority habitats and species.

~~a. Lands and waters containing priority habitats and species including Commencement Bay and all waterways.~~

~~b. All public and private tidelands or bedlands suitable for shellfish harvest, including any shellfish protection districts established pursuant to Chapter 90.72 RCW. The Washington Department of Health's classification system shall be used to classify commercial shellfish areas.~~

~~c. Kelp and eelgrass beds and herring, sand lance, and smelt spawning areas. Kelp and eelgrass beds may be classified and identified by the Washington Department of Natural Resources Aquatic Lands Program and the Washington Department of Ecology. Locations are compiled in the WDNR Aquatic Lands Shore Zone Inventory, and the Puget Sound Environmental Atlas, Volumes 1 and 2. Herring, sand lance, and surf smelt spawning times and locations are outlined in RCW 220-110, Hydraulic Code Rules and the Puget Sound Environmental Atlas.~~

~~db. Natural ponds under 20 acres and their submerged aquatic beds that provide critical fish or wildlife habitat.~~

~~ec. Waters of the State, which are defined in WAC Title 222, Forest Practices Rules and Regulations. Waters of the State must be classified using the system in WAC 222-16-030. In classifying waters of the state as FWHCAs the following may be considered:~~

- (1) Species present which are endangered, threatened, sensitive, or priority;
- (2) Species present which are sensitive to habitat manipulation;
- (3) Historic presence of priority species;
- (4) Existing surrounding land uses that are incompatible with salmonid habitat;
- (5) Presence and size of riparian ecosystem;
- (6) Existing water rights; and
- (7) The intermittent nature of some of the higher classes of Waters of the State.

~~fd. Lakes, ponds, streams and rivers planted with game fish, including those planted under the auspices of a federal, state, local, or tribal program and waters which support priority fish species as identified by the Washington Department of Fish and Wildlife.~~

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~~**13.11.530 FWHCA's Shoreline Marine Buffers.**~~

~~A. FWHCA's Marine Buffers~~

~~1. General. A marine buffer area shall be provided within the shoreline for all uses adjacent to a FWHCA to protect the integrity and function of the FWHCA. The buffer shall be measured horizontally from the edge of the ordinary high water mark landward.~~

~~2. Marine Buffer. Beneficial nearshore habitat functions that can be provided by landward buffers include feeder bluff input, water quality, sediment control, wildlife habitat, microclimate, nutrient input, fish prey production, shade, and habitat structure such as large woody debris. Buffer widths shall be established according to Table 7.~~

| Table 7. Minimum Marine Buffers * | |
|---|--|
| Marine Habitat Area | Buffer Width (feet) |
| Tacoma Narrows South (from south city limits to waterward extension of 6th Avenue). | 50 |
| Tacoma Narrows Central (from public ownership starting at waterward extension of 6th Avenue to centerline of SR 16). | 115 |
| Tacoma Narrows North and Point Defiance (from centerline of SR 16 to the existing northwesterly portion of the existing bulkheaded promenade at Owen Beach) | 200 |
| Commencement Bay West (the northwesterly portion of the existing bulkheaded promenade at Owen Beach to Thea Foss Waterway, except for Slag Island beginning at the boundary between parcels 8950100017 and 8940100016 that runs perpendicular from Eaton Street and continuing to Point Ruston, the site of the former ASARCO Tacoma Smelter, at the waterward extension of North 49th Street.) | 115 (50 feet for Slag Island and former ASARCO Tacoma Smelter site) |
| Commencement Bay Waterways (industrial waterways and Thea Foss) | 50 |
| Commencement Bay East (East 11th Street to city limits) | 115 |

* Buffers may not apply if use is exempt according to Section 13.11.140.B.8.

(Ord. 27728 Ex. A; passed Jul. 1, 2008; Ord. 27431 § 45; passed Nov. 15, 2005)

13.11.540—FWHCA’s Marine Buffer Modifications.

A. ~~Where a designated FWHCA marine buffer geographically coincides with a stream or wetland, provisions for increasing buffers, buffer averaging, and buffer reductions for the wetland and stream component shall apply as described within this chapter only when there is no impact to the FWHCA.~~

B. ~~Modification of a FWHCA marine buffer is subject to the site review requirements, according to Section 13.11.250 and are not subject to the permitting requirements of Section 13.11.230, when modification is necessary to accommodate an essential public facility or public utility where no feasible alternative location will accommodate the facility; for water dependent uses and their accessory structures; water related uses; or the minimum public access as required in the S-6, S-7, and S-8 shoreline districts as required by TMC Section 13.10.175, where:~~

- ~~1. No new surface that is permeable by water at the time of the application will be covered with an impervious surface; and~~
- ~~2. No vegetation important to the function of the critical area will be removed; and~~
- ~~3. Any additional stormwater impacts will be managed according to the City’s Surface Water Management Manual or an equivalent, in accordance with the Department of Ecology’s Stormwater Management Manual for Western Washington; and~~
- ~~4. The facility is located, designed, and constructed to minimize and, where possible, avoid FWHCA marine buffer disturbance to the maximum extent feasible; and~~
- ~~5. In water uses are subject to review and approval through the Washington Department of Fish and Wildlife’s Hydraulic Project Approval and/or U.S. Army Corps of Engineer’s Nationwide or Individual Permit; and~~
- ~~6. The use must also comply with all applicable local, state, and federal laws; or~~

C. ~~Modification of a FWHCA marine buffer is also allowed for applicable uses and activities per 13.11.140 and for those uses and activities subject to the permitting requirements contained within Section 13.11.230, including Innovative Mitigation, and 13.11.550.~~

(Ord. 27728 Ex. A; passed Jul. 1, 2008)

13.11.550 FWHCA’s Mitigation Requirements.

A. All proposed modification in a FWHCA ~~or its marine buffer~~ shall be in accordance with the standards of this section, except where ~~the modification has met the standards contained in 13.11.540.B or is Exempt per 13.11.140~~ allowed through 13.11.200 or 13.11.210.

B. All FWHCA ~~and their marine buffer~~ mitigation will comply with applicable mitigation requirements specified in ~~13.11.260 and~~ 13.11.270, including, but not limited to, mitigation plan requirements, monitoring and bonding.

C. Where a designated FWHCA geographically coincides with a stream or wetland, mitigation will comply with applicable mitigation requirements described within this chapter.

~~D. Mitigation for habitat impacts in the marine buffer shall occur in the following order of preference:~~

- ~~1. On the parcel within the buffer as close to the ordinary high water mark as possible;~~
- ~~2. Within the buffer as close to the ordinary high water mark as possible on a parcel that abuts the ordinary high watermark within one quarter (1/4) mile along the shoreline from where the vegetation removal, placement of impervious surface or other loss of habitat occurred;~~
- ~~3. Farther along the shoreline within the buffer as close to the ordinary high watermark as possible.~~

~~E. The following mitigation ratios are required for habitat impacts in the marine buffer. The first number specifies the area of replacement habitat, and second specifies the area of altered habitat:~~

- ~~1. 1:1 for areas on the parcel or on a parcel that abuts the ordinary high watermark within one quarter (1/4) mile along the shoreline from where the vegetation removal, placement of impervious surface or other loss of habitat occurred.~~
- ~~2. 3:1 farther along the shoreline, provided that if a five (5) year bonded monitoring program is provided that monitors the effectiveness of mitigation measures and provides a means for ensuring the attainment of the goals of the program, the Director may approve a 2:1 ratio.~~

FD. Habitat Management Plan. If the critical area review process as described in this chapter (13.11.250) determines that a Habitat Management Plan shall be prepared as part of a development proposal to avoid or minimize impacts to FWHCAs ~~or marine buffers~~/management areas, the following standards shall apply.

1. A habitat management plan shall be prepared in coordination with the Washington State Department of Fish and Wildlife by a qualified professional.
2. A habitat management plan shall contain, at a minimum, the following:
 - a. Analysis and discussion on the project's effects on critical fish and wildlife habitat;
 - b. An assessment and discussion on special management recommendations which have been developed for species or habitat located on the site by any federal or state agency;
 - c. Proposed mitigation measures which could minimize or avoid impacts;
 - d. Assessment and evaluation of the effectiveness of mitigation measures proposed; and
 - e. Assessment and evaluation of ongoing management practices which will protect critical fish and wildlife habitat after development of the project site, including proposed monitoring and maintenance programs.

GE. If mitigation is performed off-site, a conservation easement or other legal document must be provided to the City to ensure that the party responsible for the maintenance and monitoring of the mitigation has access and the right to perform these activities.

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13.11.900 Definitions.

Words and phrases used in this chapter shall be interpreted as defined below. Where ambiguity exists, words or phrases shall be interpreted so as to give this chapter its most reasonable application in carrying out its regulatory purpose.

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13.11.900.S

Scrub-shrub wetland. A wetland with at least thirty percent (30%) of its surface area covered by woody vegetation less than twenty (20) feet in height as the uppermost strata.

Seismic hazard areas means areas subject to severe risk damage as a result of seismic induced settlement, shaking, lateral spreading, surface faulting, slope failure or soil liquefaction. These conditions occur in areas underlain by soils low cohesion or density usually in association with a shallow groundwater table. Seismic hazard areas shall be defined by the Washington Department of Ecology Coastal Zone Atlas (Seismic Hazard Map prepared by GeoEngineers) as: Class U (Unstable), Class Uos (Unstable old slides), Class Urs (Unstable recent slides, Class I (intermediate) and Class M (Modified) as shown in the Seismic Hazard Map.

~~Shoreline modifications. Those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure.~~

~~Shoreline structure. A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.~~

Species-Any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

* * *

13.11.900.W

~~Water dependent activity. Activity or use which requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operation.~~

~~Water-related activity. Activity or use which is not intrinsically dependent on a waterfront location, but whose operation cannot occur economically without a waterfront location.~~

“Waters of the State”. Lakes, rivers, ponds, streams, inland water, underground waters, salt waters and all other surface waters and watercourses within the jurisdiction of the state of Washington.

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