

# AGENDA

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## BOTHELL SHORELINES BOARD

Bothell City Hall, 18415 101st Avenue NE

Monday, March 11, 2019, 6:00 PM

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1. CALL TO ORDER
2. PUBLIC COMMENTS  
An opportunity for members of the audience to address the Board on a topic NOT scheduled for a public hearing on this evening's agenda. Please limit comments to 3 minutes per speaker.
3. APPROVAL OF MINUTES  
February 25, 2019
4. NEW BUSINESS
5. PUBLIC HEARING  
2019 Shorelines Master Program Updates
6. STUDY SESSION  
None
7. OLD BUSINESS  
None
8. REPORTS FROM STAFF
9. REPORTS FROM MEMBERS
10. ADJOURNMENT

Official tapes of meetings are available through the Community Planning Division.

SPECIAL ACCOMMODATIONS: The City of Bothell strives to provide accessible meetings for people with disabilities. If special accommodations are required, please contact the ADA Coordinator at 425-806-6150 at least three days prior to the meeting.

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# Minutes

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**BOTHELL SHORELINES BOARD**

**REGULAR MEETING** - February 25, 2019 (Rescheduled from February 11, 2019)

**COMMISSIONERS PRESENT:** Patrick Ewing, Ann Aagaard, Ryan Page, Sarah Gustafson, David Bain, Jim Orr, David Cox

**COMMISSIONER ABSENT:** None

**STAFF PRESENT:** Senior Planner Dave Boyd, Council Liaison Mayor Andy Rheaume, consultant Amy Summe of Shannon & Wilson.

**CALL TO ORDER:** The rescheduled Regular Meeting of the Bothell Shoreline Board was called to order by Chair Patrick Ewing on February 25, 2019, at 6:00 p.m. in the Council Chambers at Bothell Town Hall, 18415 101<sup>st</sup> Avenue NE.

**APPROVAL OF MINUTES:**

**GUSTAFSON MOVED TO APPROVE THE MINUTES OF JANUARY 14, 2019 AS AMENDED. ORR SECONDED AND IT PASSED WITH ALL PRESENT IN FAVOR.**

**NEW BUSINESS:** None

**PUBLIC HEARING:** None

**STUDY SESSION:** Continued Review of the Shoreline Jurisdiction/Environment Designation Mapping Changes. Planner Boyd discussed Horse Creek, Sammamish Channel and Wayne Golf Course and 15 other minor mapping changes. Boyd and Summe responded to questions.

Ewing requested that Mayor Rheaume confirm that Council deferred Shorelines to the 2020 docket. Mayor Rheaume responded in the affirmative.

Summe presented two options for compensatory mitigation requirements for wetlands. Aagaard noted that there is a third option to do nothing. Discussion ensued.

**OLD BUSINESS:** Discussion of plans for the March 11, 2019 Public Open House. Boyd distributed flyers for posting to the Commission.

**REPORTS FROM STAFF:** None

**REPORTS FROM MEMBERS:** None

**ADJOURNMENT:**

**ORR MOVED TO ADJOURN, COX SECONDED AND IT PASSED WITH ALL PRESENT IN FAVOR.**

The meeting was adjourned at 7:56 p.m.

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**Public Hearing:  
2019 Shorelines Master Program  
Update**

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# MEMORANDUM

## Community Development Department



City of Bothell

DATE: March 11, 2019

TO: Shorelines Board

FROM: Senior Planner Dave Boyd, Amy Summe of Shannon & Wilson

SUBJECT: Shorelines Board Public Hearing on the 2019 SMP Update

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### Purpose

The March 11 meeting of the City of Bothell Shorelines Board (SB) will introduce for public hearing the potential 2019 updates to Bothell's Shorelines Master Program (SMP):

1. Changes to the Shorelines Element of the *Imagine Bothell...Comprehensive Plan*, reflecting guidance from the Washington State Department of Ecology (Ecology).
2. Changes to Bothell Municipal Code (BMC) Title 13, Shorelines Management, to reflect Ecology guidance.
3. Changes in Shorelines Jurisdiction and Environment Designations to reflect changed conditions since the last SMP update in 2013.

### Shorelines Element of the Comprehensive Plan amendments

The SMP updates require minimal amendments to the Shorelines Element of the *Imagine Bothell...Comprehensive Plan*, both relating to graphics. Figure SMP-1, Shoreline Jurisdiction, shows the extent of the shoreline jurisdiction on a map of the City of Bothell Planning Area. The changes to the shorelines jurisdiction described below are barely discernable on a map of that scale, but it nonetheless needs to be updated to reflect those changes.

Figure SMP-2, Flow Chart, duplicates the shorelines process flow chart included in BMC 13.00.020, part of the Reader's Guide chapter of the Shoreline Management code. Some clarifying changes are proposed for the flow chart in that section, and there is no need to duplicate it in the Comprehensive Plan, so the proposal is to eliminate it and its reference there.

These changes are reflected in **Attachment 1**.

### Shoreline Management Code Amendments

In previous meeting, the Shorelines Board reviewed proposed amendments related to the Ecology Checklist, as well as amendments to make the code clearer and easier to use. There has considerable discussion by the Board regarding proposed amendments to the regulations for off-site mitigation. The proposed amendments are compiled in **Attachment 2**, with options for off-site mitigation provisions at the end of that section. These options have been revised from those presented at the February 25 meeting based on input there, as well as written suggestions received by Board Members Sarah Gustafson and Ann Aagaard (**Attachments 4 and 5**, respectively). As noted at the February 25 meeting, Ecology guidance does not require any changes to this section, but the proposal was in response to Ecology guidance to facilitate use of state-approved off-site mitigation options. Three options are presented for the board's consideration.

## **Shoreline Jurisdiction and Environment Designation changes**

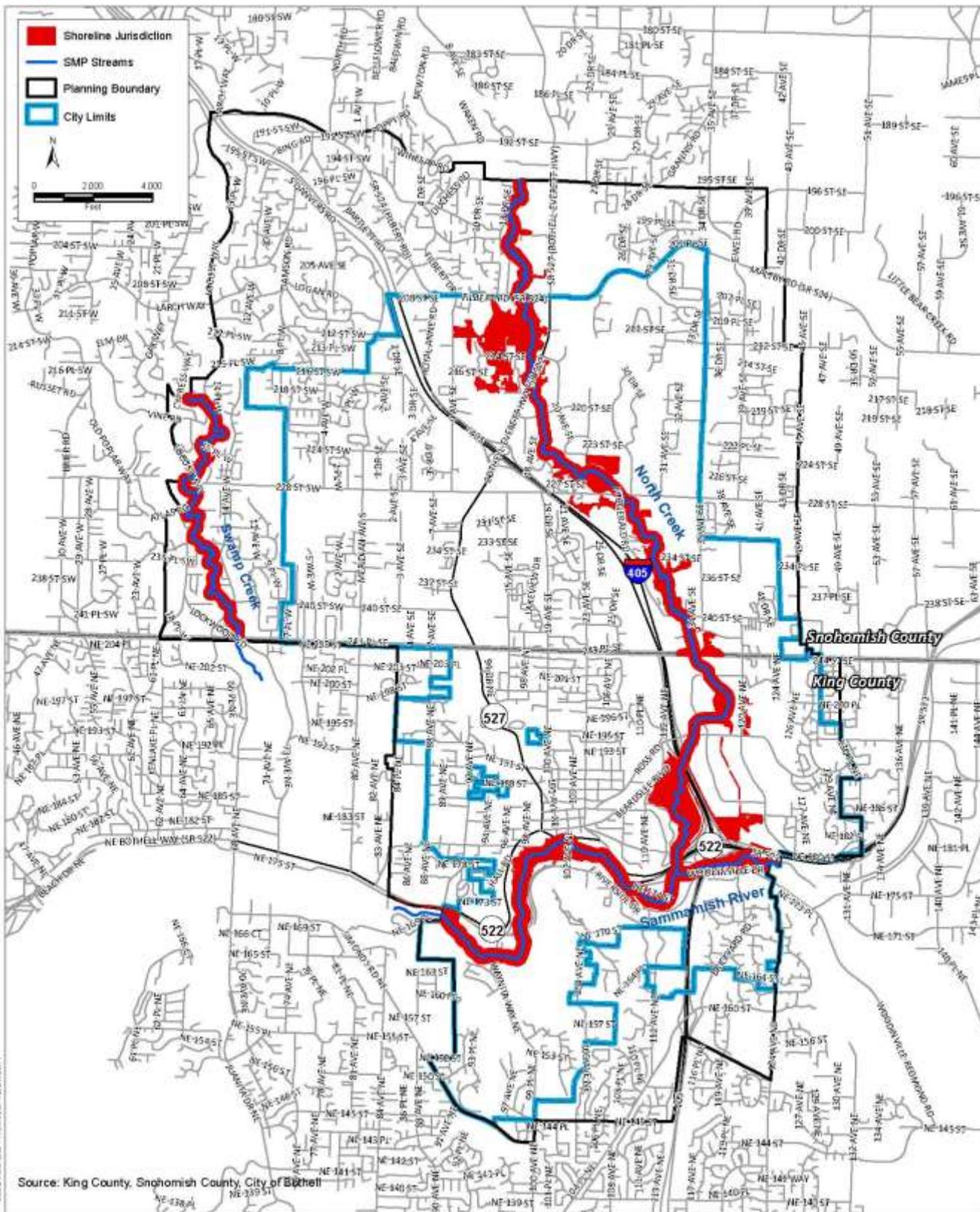
At the January 14 meeting, the Board reviewed shorelines jurisdiction and environment designation changes for three key areas, based on changed conditions. On February 25, other technical changes at 15 other locations were presented. **Attachment 3** includes detailed maps of the three changes based on new conditions, and a Citywide map of the technical changes.

## **Next Steps**

At the March 11 public hearing, the Board may choose to make its recommendations to Council for the 2019 SMP Update, if ready, or the public hearing could be continued to April 8. Staff urges the Board to select one of the options for Section 13.13.020.G.4 to include in a draft to send for Commerce, Ecology and SEPA review in time for adoption by Council prior to the June 30 deadline.

## **Attachments:**

1. Draft Amendments to the Shorelines Element of the *Imagine Bothell...Comprehensive Plan*
2. Draft Amendments to the Shoreline Management code (Title 13 BMC)
3. Proposed Shoreline Jurisdiction and Environment Designation Changes
4. Exhibit from Shorelines Board member Sarah Gustafson: Suggested revisions to BMC 13.13.020.G.4
5. Exhibit from Shorelines Board member Ann Aagaard: Suggested revisions to BMC 13.13.020.G.4



Shoreline Jurisdiction  
City of Bothell Shoreline Master Program

Figure SMP-1. Shoreline Jurisdiction

Imagine Bothell... Comprehensive Plan  
Shorelines Element  
2015 Periodic Plan and Code Update

## A. How to Use This Document

### 1. The Shoreline Master Program (SMP) is divided into five sections ~~(see Figure SMP-2):~~

- Goals and Policies

Goals and Policies define the community's vision for the City's shorelines and provide guidance to the City when evaluating shoreline variances, conditional use permits, interpretations, and future amendments to the SMP.

- Environment Designations -Chapter 13.07

Are analogous to zoning districts and divide the City's shorelines into 6 different environments: Aquatic, Natural, Urban Conservancy, Shoreline Residential, High Intensity, and Marina. Each environment designation contains specific use, development and operating requirements.

Water-oriented uses generally include:

- Water-Dependent: A water-dependent use is a use that is dependent on the water by reason of the intrinsic nature of its operations, and cannot exist in any other location.
- Water-Related: A water-related use is not intrinsically dependent on a waterfront location, but its economic viability is dependent upon a waterfront location.
- Water-Enjoyment: A water-enjoyment use is a use that facilitates public access to the shoreline, or draws substantial numbers of people to the shoreline and provides opportunities for the public to enjoy the shoreline.
- Non-water oriented uses are those uses that do not rely upon a shoreline location and can exist equally well in non-shoreline areas.

- General Development Regulations - Chapter 13.09

Are those regulations and standards applicable to all shoreline developments, uses, and activities. The General Development Regulations are organized by shoreline environments and specific land use and activity regulations

- Use-Specific and Shoreline Modification Regulations and Performance Standards - Chapter 13.11

Are the use-specific regulations applicable to categories of uses such as residential, commercial, boating, recreational and other uses or activities? For example, development of residential uses is addressed under Section 13.11.130. This section contains requirements that are applied to residential developments.

- Administrative Procedures - Chapter 13.17

Are the regulations used in the City's administration and enforcement of the Shoreline Management Program, implementation of the SMP Regulations within Title 13, and the permit application administration and processing procedures for shoreline developments.

### 2. How to determine the applicable regulations and standards that apply to an individual property

A. Locate the property on the environment designations maps in Chapter 13.07.

B. Turn to the use matrix (Section 13.07.080) to determine whether the proposed use or activity is Permitted (P), Conditional (C) or Prohibited (X). If prohibited, an alternative location for the use or activity is necessary;

C. Review the general regulations and performance standards within Chapter 13.09. These requirements, such as environmental protection, vegetation retention, public access, and

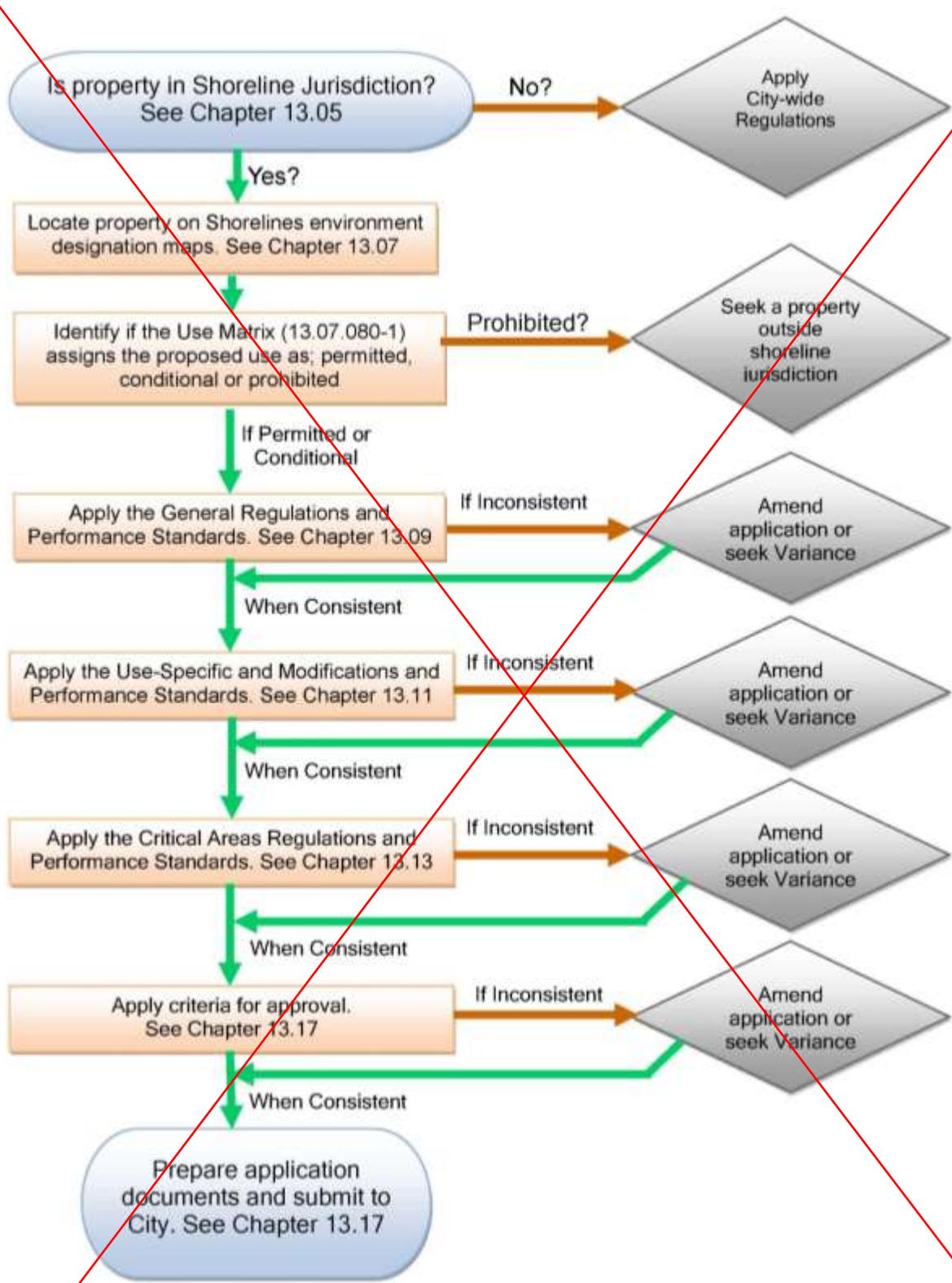


Figure SMP-2. Flow Chart

# DRAFT 2018 Shoreline Master Program Amendments

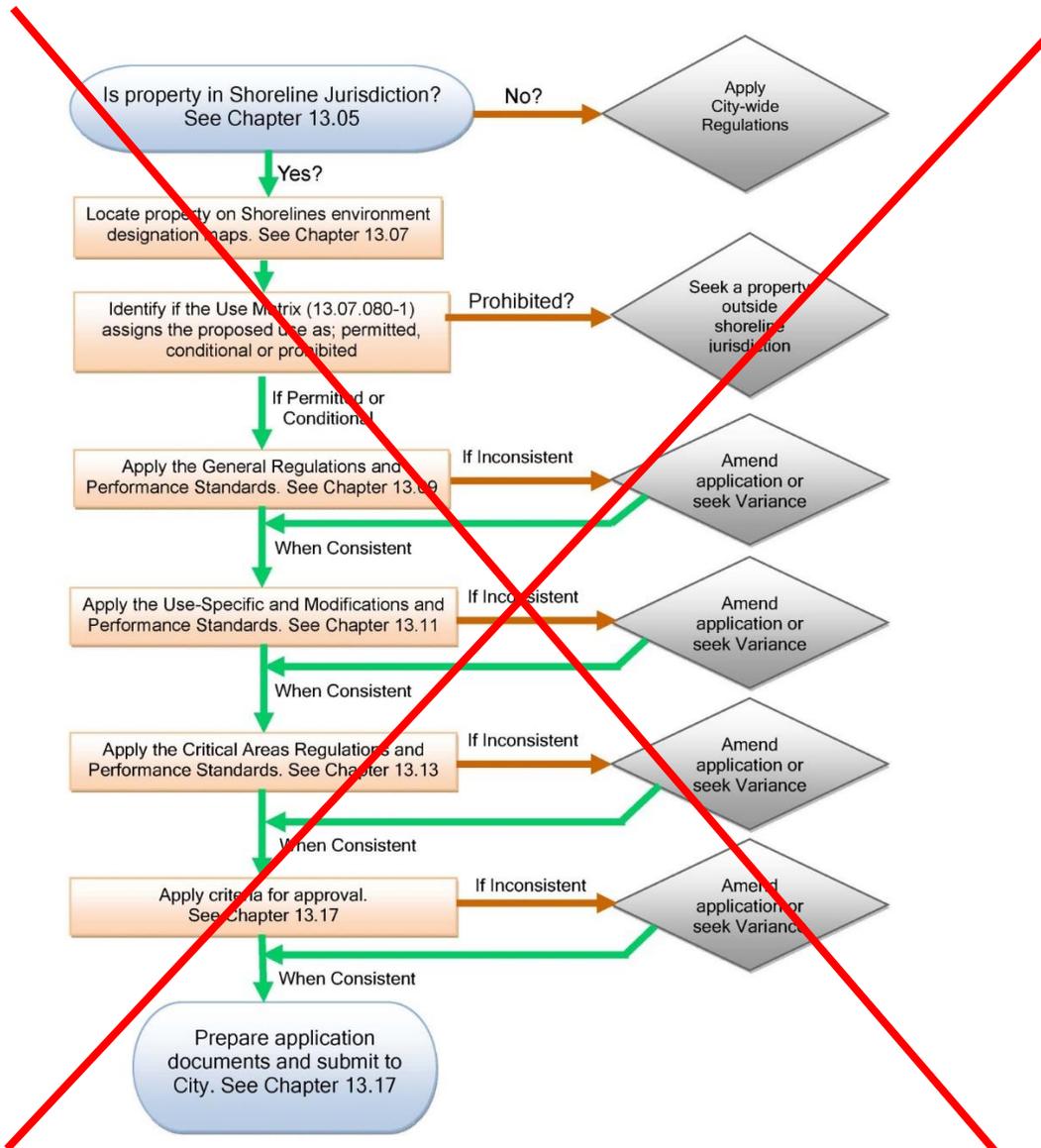
Proposed amendments are shown in underline/~~strikethrough~~ format below, with revisions since the last review in red text. Notes that are not part of the proposed code language are shown in text boxes like this one following the amendments. Skipped sections are indicated by three asterisks:

\* \* \*

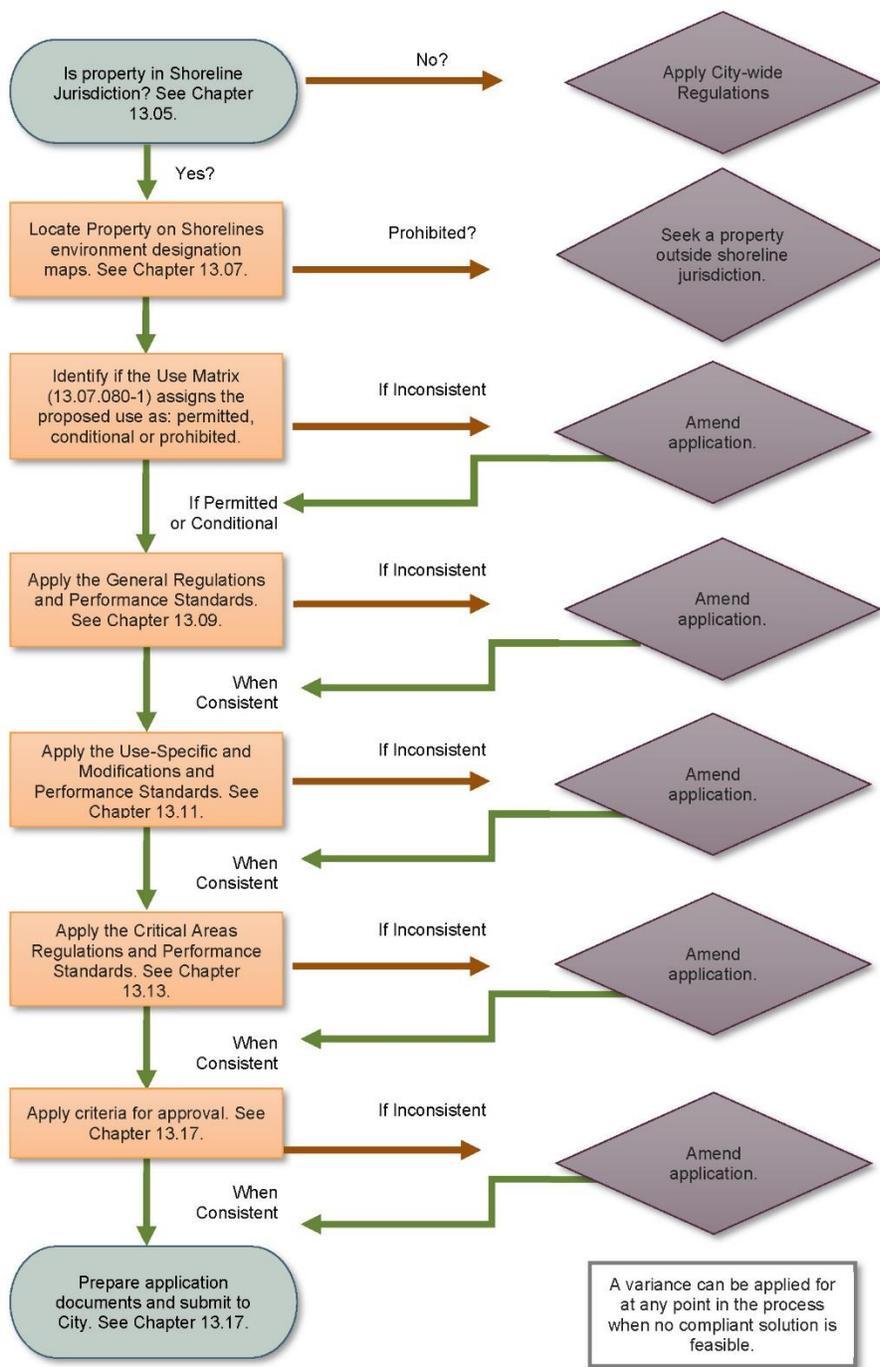
## Title 13 SHORELINE MANAGEMENT\*

### Chapter 13.00 READER'S GUIDE

\* \* \*13.00.020 Flow chart.



New Chart



**Figure 13-1. Flow Chart**

NOTE: Change to flow chart is intended to clarify desire to first amend proposal (seek other options) before seeking variances.

\* \* \*

## Chapter 13.03 DEFINITIONS

### 13.03.010 Definitions.

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Definitions established by WAC 173 and Chapter 90.58 RCW have been incorporated herein. Should definitions in the WAC or RCW be substantively amended, those amendments shall apply in Bothell's shoreline jurisdiction.

NOTE: Addition is response to Ecology SMP Update Checklist item 2017.b regarding changes to WAC definitions.

\* \* \*

"Boat launch" means an inclined slab, set of pads, rails, planks, or graded slope which extends waterward of the OHWM, and is used for transferring watercraft between uplands and the water by means of a trailer, hand, or mechanical device.

NOTE: New definition added to distinguish boat launches from other in-water facilities.

\* \* \*

**"Development"** means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any stage of water level. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the city that binds land to specific patterns of use, including but not limited to subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development does not include the following activities:

- A. Interior building improvements;
- B. Exterior structure maintenance activities, including painting and roofing;
- C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning, and weeding; ~~and~~
- D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; individual utility service connections; and individual cemetery plots in established and approved cemeteries; and
- E. Dismantling or removing structures if there is no other associated development or re-development.

NOTE: Addition is response to Ecology SMP Update Checklist item 2017.b regarding WAC definition of development.

\* \* \*

**“Floodway”** means the area established in effective Federal Emergency Management Agency flood insurance rate maps or floodway maps. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

\* \* \*

**“Wetland ~~categories classes,~~” “~~categories~~classes of wetlands,” or “wetland types”** means the descriptive classes of the wetlands taxonomic classification system of the Washington State Wetland Rating System for Western Washington (Revised), Department of Ecology Publication No. 14-06-02904-06-025.

\* \* \*

**“Wetlands of High Conservation Value”** (formerly called Natural Heritage Wetlands) means those wetlands identified by the Washington Natural Heritage Program at the Department of Natural Resources as either high quality undisturbed wetlands or wetlands that support rare or sensitive plant populations.

NOTE: Addition is response to Ecology SMP Update Checklist item 2016.b regarding the 2014 update of the wetlands rating system.

**“WSDOT facility maintenance and safety improvements”** means the following consistent with RCW 90.58.356:

- A. Maintenance, repair, or replacement that occurs within the roadway prism of a state highway as defined in RCW 46.04.560;
- B. The lease or ownership area of a transit facility, including ancillary transportation facilities such as pedestrian paths, bicycle paths, or both, and bike lanes;
- C. Construction or installation of safety structures and equipment, including pavement marking, freeway surveillance and control systems, railroad protective devices not including grade separated crossings, grooving, glare screen, safety barriers, energy attenuators, and hazardous or dangerous tree removal;
- D. Maintenance occurring within the right-of-way; or
- E. Construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to prevent a decline, lapse, or cessation of service from a lawfully established transportation facility.

NOTE: Addition is response to Ecology SMP Update Checklist item 2017.c regarding the maintenance, repair, and replacement of WSDOT facilities per RCW 90.58.356.

\* \* \*

**Chapter 13.07  
SHORELINE ENVIRONMENT DESIGNATIONS, USE MATRIX, AND DEVELOPMENT  
STANDARDS**

NOTE: Title of chapter amended for wayfinding to indicate that use tables and development standards are here as well.

\* \* \*

**Chapter 13.09  
GENERAL REGULATIONS AND PERFORMANCE STANDARDS**

\* \* \*

**13.09.030 Shoreline vegetation conservation.**

\* \* \*

E. Significant trees located in shoreline jurisdiction outside of wetlands and wetland, stream or shoreline buffers shall be retained using the preferences specified in subsection D of this section as a guide and consistent with the percent of the total in diameter inches of the significant trees located within the net buildable area of the subject property by number provided in Table 13.09.030-1; significant trees shall mean existing trees over eight inches in caliper as measured four feet above grade.

**Table 13.09.030-1. Significant Tree Retention Requirements outside of Wetlands and Wetland, Stream or Shoreline Buffers (Percent by Diameter Inches~~Number~~)**

Shoreline Water Body	Natural	Urban Conservancy	Shoreline Residential	High Intensity/High Intensity-Park or Marina
Sammamish River	NA	65	<u>20</u> 40	<u>20</u> 40
North Creek	90	65	35	35
Swamp Creek	NA	65	35	35

NOTE: Updated tree retention measurement unit (by number to by diameter inches) and increased the 10% minimum retention in SR and HI along Sammamish River to match the new citywide tree retention requirements (20% by diameter).

\* \* \*

I. The shoreline administrator shall require a maintenance bond or other surety be submitted to the city of Bothell to ensure retention of existing trees and plant material during construction. In the event any trees designated by the city to

be retained are removed, the city shall have the option of enforcing any bond posted. Each tree identified for retention shall be bonded pursuant to Table 13.09.030-2:

**Table 13.09.030-2. Tree Diameter and Bonding Required**

Tree Diameter	Amount
8 – <del>12</del> 46 inches	\$ <del>12</del> ,000
Larger than 12 – 16 inches	\$4,000
Larger than 16 – 20 inches	\$ <del>1,58</del> ,000
Larger than 20 – <del>24</del> 30 inches	\$12,000
Larger than 24 – 28 inches	\$16,000
Larger than <del>28</del> 30 inches	\$ <del>3,520</del> ,000

NOTE: Changes made to reflect higher bond requirements found in BMC 12.18.030.F.

\* \* \*

**13.09.050 Public access.**

\* \* \*

C. Except for detached single-family residential dwellings and detached residential subdivisions, shoreline development proposals that have the potential to impact public views of the shoreline from public land or substantial numbers of residences, shall demonstrate protection of shoreline views through implementation of the following standards:

Note: Minor grammatical clarification.

\* \* \*

E. In order to maintain public access, ~~t~~The city shall not vacate such public rights-of-way or easements ~~as a means of retaining public access~~. Public access provided by public street ends, public utilities and rights-of-way shall not be diminished by a proposed use, activity or development.

NOTE: Suggested rearrangement of text adds clarity to the statement.

\* \* \*

**13.09.060 Flood hazard reduction.**

\* \* \*

B. The channel migration zone (CMZ) is considered to be that area of a stream channel which may erode as a result of normal and naturally occurring hydrological and related processes<sup>2</sup> or areas mapped by the Department of Ecology [pending] prepared consistent with WAC 173-26-221(3)(b). Applicants for shoreline development or modification may submit a site-specific channel migration zone special study if they believe these conditions do not exist on the subject property or Ecology's mapping is in error. The CMZ special study must be prepared consistent with WAC 173-26-221(3)(b), and may include, but is not limited to, historic aerial photographs, topographic mapping, flooding records, and field verification.

\* \* \*

2 There are only four potential areas of channel migration have been identified on North Creek in the city. These are identified in the city's shoreline analysis report: 1) in North Creek – Centennial Park (Reach 2), 2) the open space/wetland area just north of 228th in North Creek – Canyon Park assessment unit (lower Reach 3), 3) south of 228th Street SE and north of 240th Street SE along the North Creek – Fitzgerald assessment unit (Reach 4), and 4) west of Interstate-405 and north of the North Creek confluence with the Sammamish River within the North Creek – Campus assessment unit (Reach 6).

NOTE: Endnote worded to more clearly indicate that these are the only CMZs in the City. The mapping effort that Ecology had once been planning was never undertaken, and Ecology has stated that it has no active CMZ mapping projects (per Lynn Schmidt, Ecology Flood Engineer, 28 December 2018). "Hydrological and related" was added to the definition consistent with the definition in WAC 173-26-020(7).

\* \* \*

## Chapter 13.11 USE-SPECIFIC AND MODIFICATION REGULATIONS AND PERFORMANCE STANDARDS

\* \* \*

### **13.11.080 Forest practices.**

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A. Forest practice applications shall meet all local BMC Title Chapter 12.12, state, and federal regulations regarding forest practices and land clearing and ensure no net loss of ecological function. (Ord. 2112 § 3 (Exh. C), 2013).

B. A forest practice that only involves timber cutting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the SMA and may require a substantial development permit, as required by WAC 222-50-020.

NOTE: Addition is response to discussion with the Board regarding Ecology SMP Update Checklist item 2017.e related to forestry regulation clarification.

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### **13.11.140 Shoreline habitat and natural systems enhancement projects.**

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\* \* \*

J. Relief from shoreline master program development standards and use regulations.

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

2. Conditions and criteria for providing relief. The city may grant relief from standards and use regulations in this title when the following apply:

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

i. Land that had not been regulated under this title prior to construction of the restoration project is brought under shoreline jurisdiction; or

ii. Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the Bothell SMP and this title; and

iii. Application of this title would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent.

b. The proposed relief meets the following criteria:

i. The proposed relief is the minimum necessary to relieve the hardship;

ii. After granting the proposed relief, there is net environmental benefit from the restoration project;

iii. Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the Bothell SMP and this title; and

iv. Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section.

c. The application for relief must be submitted to the Washington State Department of Ecology for written approval or disapproval. This review must occur during Ecology's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then Ecology shall

conduct its review when the city provides a copy of a complete application and all supporting information necessary to conduct the review.

i. Ecology shall provide at least twenty days notice to parties that have indicated interest to Ecology in reviewing applications for relief under this section, and post the notice on its web site.

ii. Ecology shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from the city if additional public notice is not required.

4. A substantial development permit is not required on land that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

NOTE: Addition is response to Ecology SMP Update Checklist item 2009.a regarding “relief” procedures for instances in which a shoreline restoration project within a UGA creates a shift in Ordinary High Water Mark..

\* \* \*

### Chapter 13.13 CRITICAL AREAS IN SHORELINE JURISDICTION

\* \* \*

#### 13.13.020 Wetlands.

G. Compensatory Mitigation Requirements. Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the state Department of Ecology Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1), Ecology Publication No. 06-06-011b, Olympia, WA, March 2006 or as revised, as revised.

\* \* \*

NOTE: Board Member Aagaard proposed adding language similar to Ecology guidance on mitigation sequencing in her suggestions in **Attachment 4**. Staff feels the appropriate place for this would be in subsection 3.d below. Since the rest of subsection 3 has not been included in previous reviews, that existing language is included in red for context.

3. Preference of Mitigation Actions. Compensatory mitigation actions shall address functions affected by the alteration to achieve functional equivalency or improvement. Mitigation actions that require compensation shall occur in the following order of preference:

a. Restoring wetlands on upland sites that were formerly wetlands. Wetland restoration refers to actions performed to reestablish wetland functional characteristics and processes that have been lost by alterations, activities, or catastrophic events within an area that no longer meets the definition of a wetland.

b. Creating wetlands on disturbed upland sites such as those with vegetative cover consisting primarily of nonnative introduced species. Wetlands creation refers to actions performed to intentionally establish a wetland at a site where it did not formerly exist. Creation should only be attempted when there is a consistent source of hydrology and it can be shown that the surface and subsurface hydrologic regime is conducive for the wetland community that is being designed.

c. Enhancing significantly degraded wetlands in combination with restoration or creation. Enhancement refers to actions performed to improve the condition of existing degraded wetlands so that the functions they provide are of a higher quality. Such enhancement should be part of a mitigation package that includes replacing the impacted area meeting appropriate ratio requirements.

d. Preserving/ maintaining a wetland to remove threat or prevent decline, such as purchasing land.

Preservation does not result in gain of wetland areas.

NOTE: **Option 0** makes no changes to BMC 13.13.020.G.4. Off-site and out-of-drainage-basin mitigation tools would remain an option for applicants following the standard mitigation sequencing process, *except* that in lieu fee mitigation is not an available tool unless the City developed or was otherwise a party to a new in-lieu-fee program.

NOTE: The following **Option 1** amendments were first presented at the December 10, 2018 Shorelines Board meeting. The only change from existing code is to increase the range of fee-in-lieu programs that could be available to applicants within the City of Bothell. The term “Bothell-sponsored” implies that the City has some direct role in the development, implementation and management of the program. The shift to “Bothell-approved” is intended to allow other programs to be utilized as recommended in Ecology’s most recent wetland guidance. Other off-site and out-of-drainage-basin mitigation tools would remain an option for applicants following the standard mitigation sequencing process.

4. Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, such as a mitigation bank located within Watershed Resource Inventory Area (WRIA) 8, implementation of a project found in the city’s shoreline restoration plan, or a city of Bothell-~~approved~~~~sponsored~~ fee-in-lieu program, compensatory mitigation for ecological functions shall be either in-kind and on site, or in-kind and within the same stream reach or subbasin. Mitigation actions shall be conducted within the same subdrainage basin and on the site as the alteration except when all of the following apply:

- a. There are no reasonable on-site or in-subdrainage basin opportunities or on-site and in-subdrainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the adverse impacts. Consideration should include: anticipated wetland mitigation replacement ratios; buffer conditions and proposed widths; hydrogeomorphic classes of on-site wetlands when restored; proposed flood storage capacity; and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
- b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
- c. Off-site locations shall be in the same subdrainage basin unless:

- (1) Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or
- (2) Credits from a state-certified wetland mitigation bank located within the Sammamish River, North Creek, or Swamp Creek drainage basin are used as mitigation and the use of credits is consistent with the terms of the bank's certification;
- (3) The mitigation occurs as part of a city of Bothell ~~approved~~ sponsored fee-in-lieu program;
- (4) Wetponds established and maintained for control of surface water shall not constitute replacement or enhancement for wetland alterations.

NOTE: The following **Option 2** changes to existing code were developed after discussions with the Shorelines Board at the December 10, 2018 and February 25, 2019 Shorelines Board meetings. In addition to responding to the discussions, this option also incorporates, with some adaptation, written suggestions provided to the City by Board Members Gustafson and Aagaard following the meeting. Language, including more detailed criteria for allowing out-of-kind mitigation, was adapted from Washington Department of Ecology's *Wetland Guidance for CAO Updates Western Washington Version* (Bunten and others, 2016; <https://fortress.wa.gov/ecy/publications/documents/1606001.pdf>). The general term about identified City goals was replaced with two specific plans that have been adopted by the City Council. Staff recommends that these changes provide sufficient guidance for decisions on compensatory mitigation to be administrative, but optional language in [brackets] could also require a Shoreline Conditional Use Permit for off-site mitigation, which has a higher level of public notice and potential public participation, and requires Ecology approval. This Option 2 prevents applicants from using any mitigation tools that result in mitigation outside of the impacted drainage basin. [new or deleted text of the initial version of Option 2 presented at the February meeting is shown in red to distinguish it from the original proposal]

4. Type and Location of Mitigation.

a. Type. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions ("in kind"). ~~The goal shall be for the compensatory mitigation to provide similar wetland functions as those lost, except the City may allow out-of-kind replacement of wetland type of functions when either:~~

~~(1) The lost wetland provides minimal functions, and the proposed compensatory mitigation action(s) will provide equal or greater functions or will provide functions shown to be limiting within a watershed through a formal Washington state watershed assessment plan or protocol; or~~

~~(2) Out-of-kind replacement of wetland type or functions may be allowed if it will best meet watershed goals in the WRIA 8 Salmon Recovery Plan adopted by the City Council in 2005 or the Shoreline Restoration Plan adopted by the City Council in 2013, formally identified by the City, such as support of salmon recovery efforts.~~

b. Location. Compensatory mitigation actions shall be conducted on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable and will provide equivalent or greater replacement of critical area functions and values when compared to on-site mitigation. ~~[The City will review applications for off-site mitigation as a shoreline conditional use following the procedures for a~~

Type III development application pursuant to BMC Title 11, Administration of Development Regulations.]

The City will only allow off-site mitigation is only allowed when an applicant can Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, such as a mitigation bank located within Watershed Resource Inventory Area (WRIA) 8, implementation of a project found in the city's shoreline restoration plan, or a city of Bothell-sponsored fee-in-lieu program, compensatory mitigation for ecological functions shall be either in-kind and on site, or in-kind and within the same stream reach or subbasin. Mitigation actions shall be conducted within the same subdrainage basin and on the site as the alteration except and when all of the following apply:

(1)a- There are no reasonable on-site ~~or in subdrainage basin~~ opportunities or on-site ~~and in subdrainage basin~~ opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the adverse impacts. Consideration should include: anticipated wetland mitigation replacement ratios; buffer conditions and proposed widths; hydrogeomorphic classes of on-site wetlands when restored; proposed flood storage capacity; and potential to mitigate riparian fish and wildlife impacts (such as connectivity);

(2)b- Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and

(3)e- Off-site locations may include state-certified mitigation banks, federally certified fee in lieu programs, applicant-owned properties, or public property subject to agreement with the City, but in all cases the bank or mitigation site shall be in the same subdrainage basin. unless:

~~(1) Established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or~~

~~(2) Credits from a state-certified wetland mitigation bank located within the Sammamish River, North Creek, or Swamp Creek drainage basin are used as mitigation and the use of credits is consistent with the terms of the bank's certification;~~

~~(3) The mitigation occurs as part of a city of Bothell-sponsored fee-in-lieu program;~~

~~(4) Wetponds established and maintained for control of surface water shall not constitute replacement or enhancement for wetland alterations.~~

c. Mitigation banks. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument. If the impacts occur in the service area of more than one bank, preference will be given to a bank that has implemented restoration actions included in the WRIA 8 Salmon Recovery Plan adopted by the City Council in 2005 or the Shoreline Restoration Plan adopted by the City Council in 2013. Use of credits from a wetland mitigation bank certified under Chapter 173-700 WAC is allowed if:

(1) The City determines that it would provide appropriate compensation for the proposed impacts; and

(2) The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and

(3) Replacement ratios for projects using bank credits is consistent with replacement ratios specified in the certified mitigation bank instrument.

d. In-Lieu Fee Mitigation: Credits from an approved in-lieu-fee program may be used when all of the following apply:

(1) The City determines that it would provide environmentally appropriate compensation for the proposed impacts.

(2) The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.

(3) Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the in-lieu-fee program.

(4) The impacts are located within the service area specified in the approved in-lieu-fee instrument, and the fees collected will be applied to a project within the impacted area's subdrainage basin. If the program has more than one project available in the subdrainage basin, preference will be given to the project that will implement restoration actions included in the *WRIA 8 Salmon Recovery Plan* adopted by the City Council in 2005 or the *Shoreline Restoration Plan* adopted by the City Council in 2013.

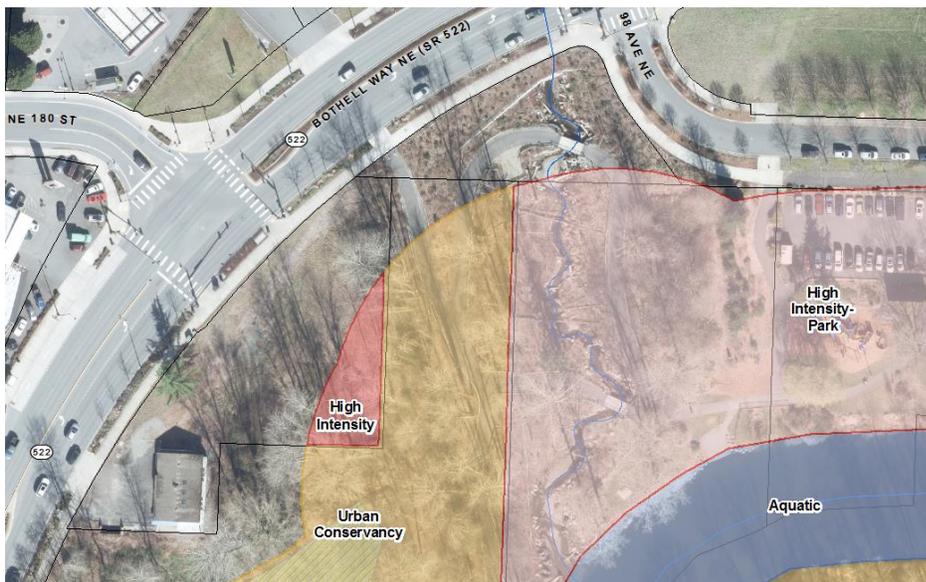
\* \* \*

### Shoreline Jurisdiction / Environment Designation Changes

Part of the scope of the 2019 Shorelines Master Program (SMP) is to do “additional analysis deemed necessary to address changing local circumstances, new information or improved data that has occurred since 2013.” Three areas are covered as described immediately below.

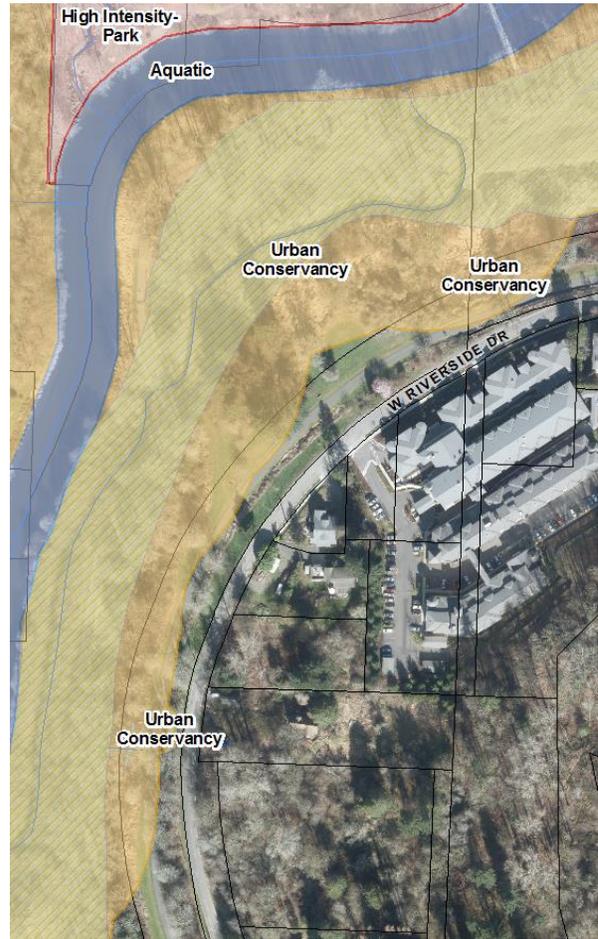
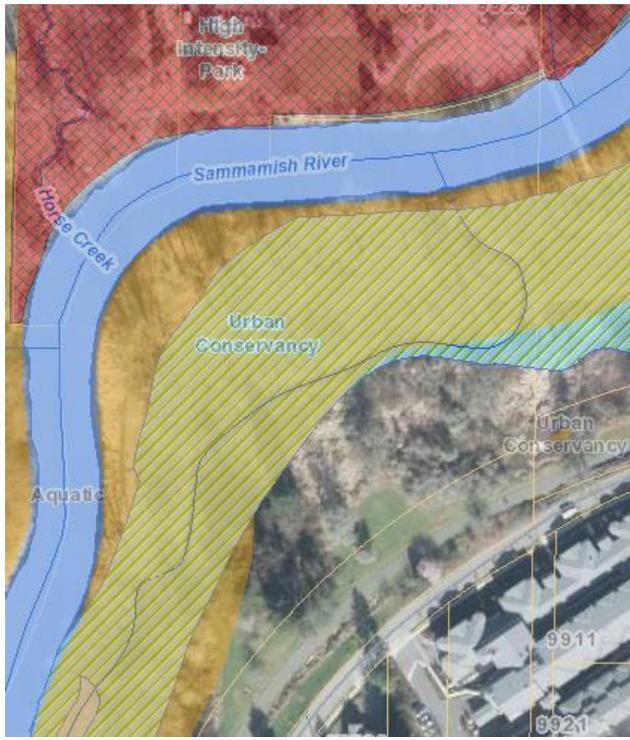
In addition, other mapping changes are proposed to correct previous mapping and update maps to reflect delineations of associated wetlands done since the last SMP update. Those follow the three changes necessary due to changed local circumstances described below.

Horse Creek: The daylighting of Horse Creek in 2015 extended the Ordinary High Water Mark of the Sammamish River a short distance up the new stream channel, which extends the shoreline jurisdiction from the existing condition, as shown on the map below (with current parcels, wetlands, boundaries and designations) to the proposed as shown at the bottom.

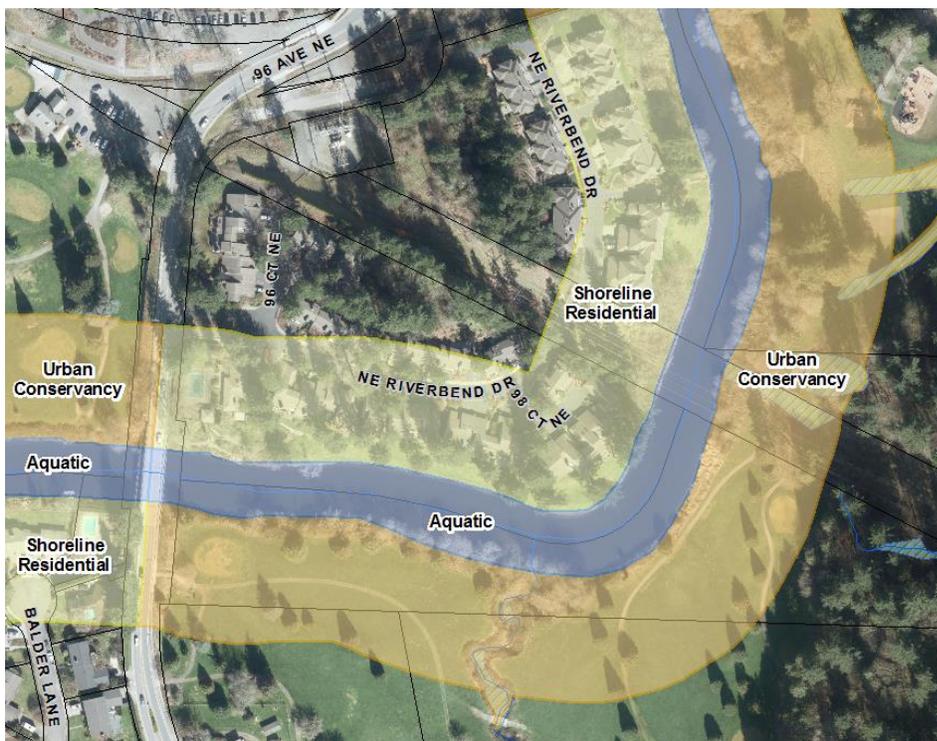


Att-3

**Sammamish River Side Channel:** In 2017, the City constructed a new side channel in Sammamish River Park, across from the Park at Bothell Landing, which extends the Urban Conservancy designation further into the park, from the existing condition, as shown on the map below left (with current parcels, wetlands, boundaries and designations) to the proposed as shown below right.

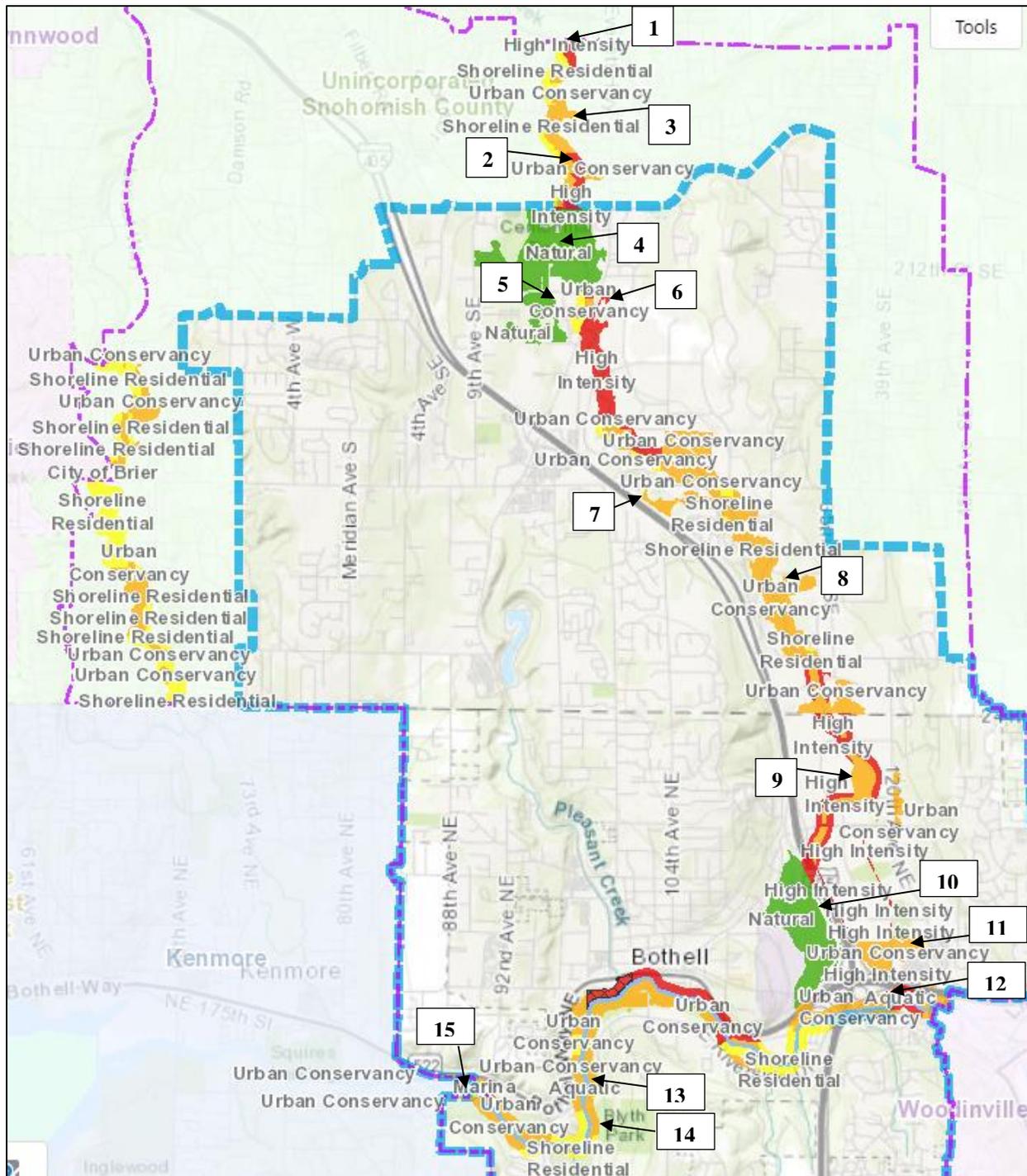


**Former Wayne Golf Course Back Nine:** The City has recently purchased the former Wayne Golf Course. The back nine currently has a split designation: Urban Conservancy within the 100' buffer and Shoreline Residential within the outer 100' of the shoreline jurisdiction, which is no longer appropriate. As part of the purchase, a new wetland delineation was done, as reflected in the map below (with current parcels, wetlands, boundaries and designations) and in the memorandum.



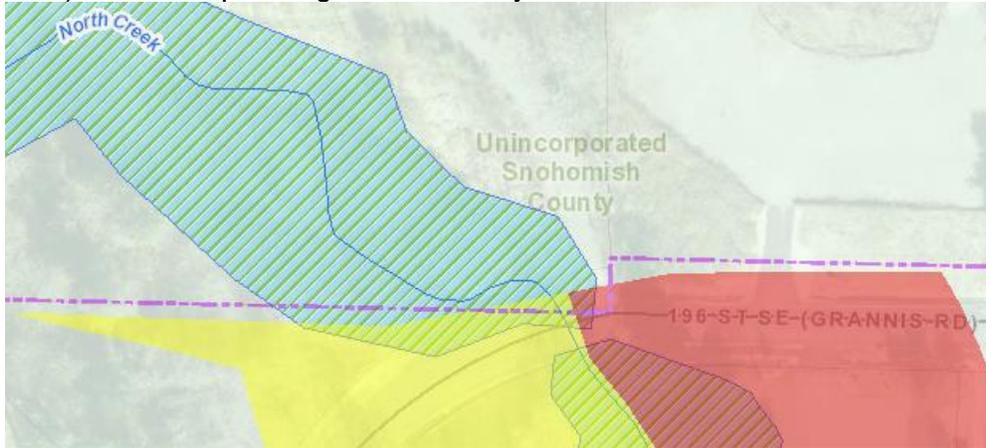
**Parcels with Shoreline Jurisdiction / wetlands mapping discrepancies**

In addition to the three areas described above, the following are minor mapping issues to resolve with the 2019 SMP update, generally starting at the north planning area boundary and working to the south and west. A key map below shows the locations of the detailed maps that follow.

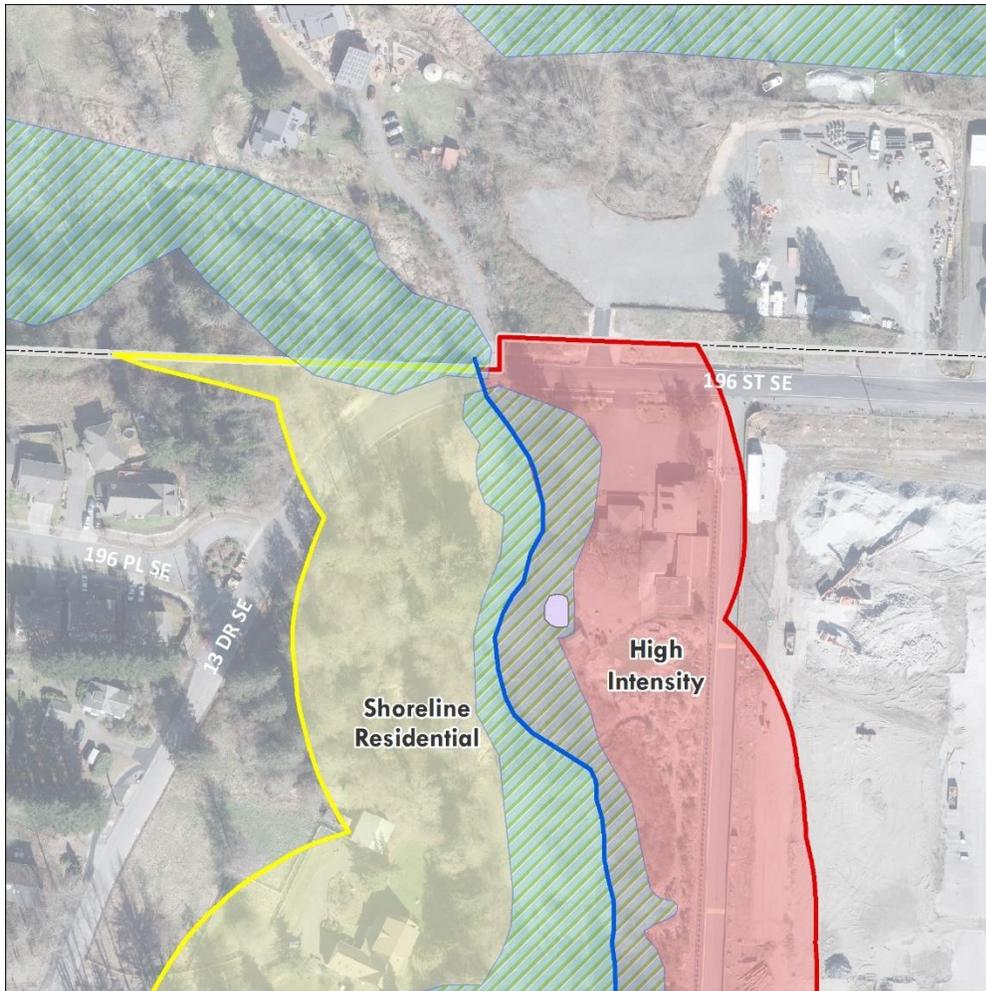


Att-3

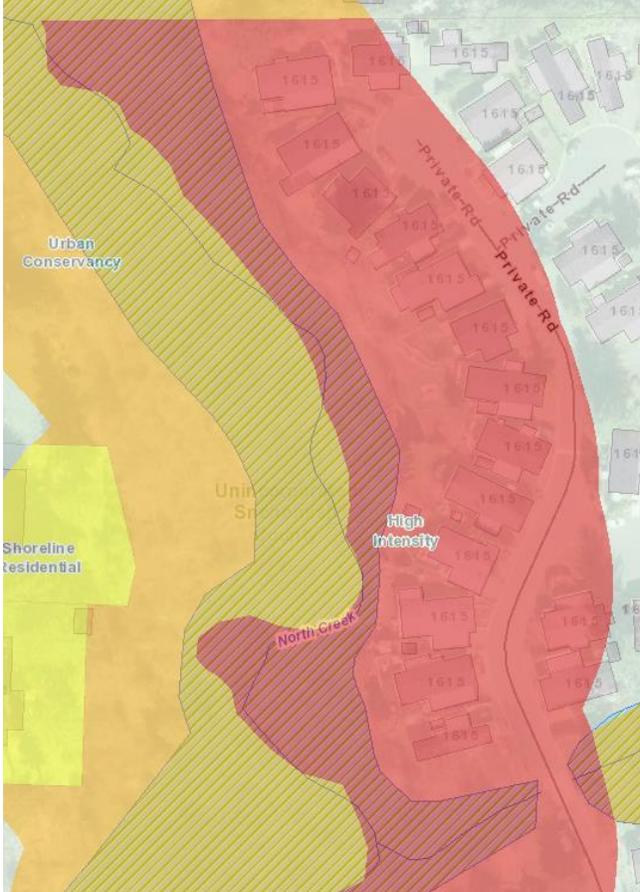
1. Parcel 00958300099600 (SnoCo) and surrounding. Correct 200' buffer (yellow leg to the west) and follow planning area boundary:



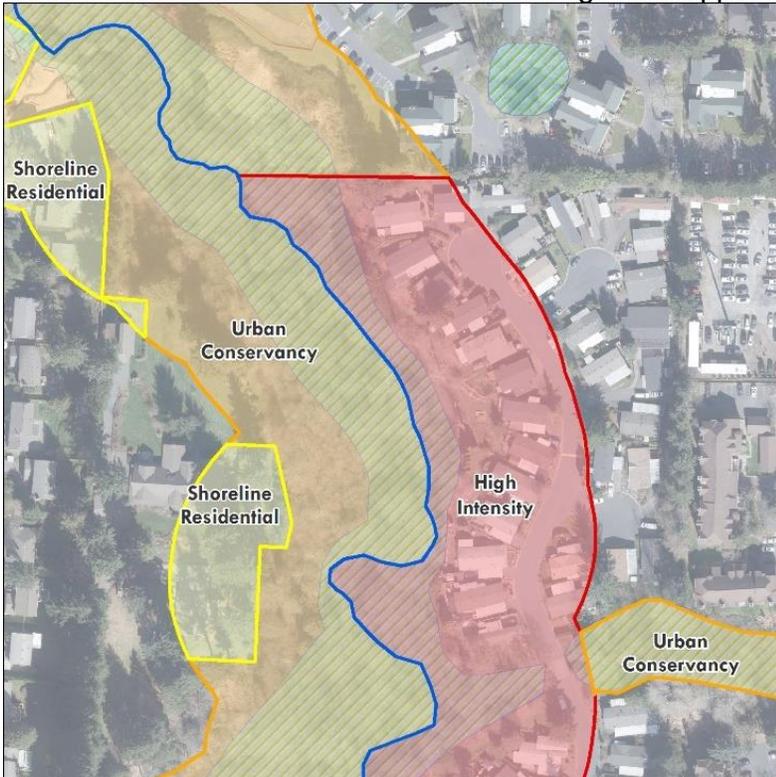
Corrected below:



2. In Snohomish County MUGA (and other areas), North Cr., Subarea boundaries and Shoreline environment boundaries often do not all coincide:

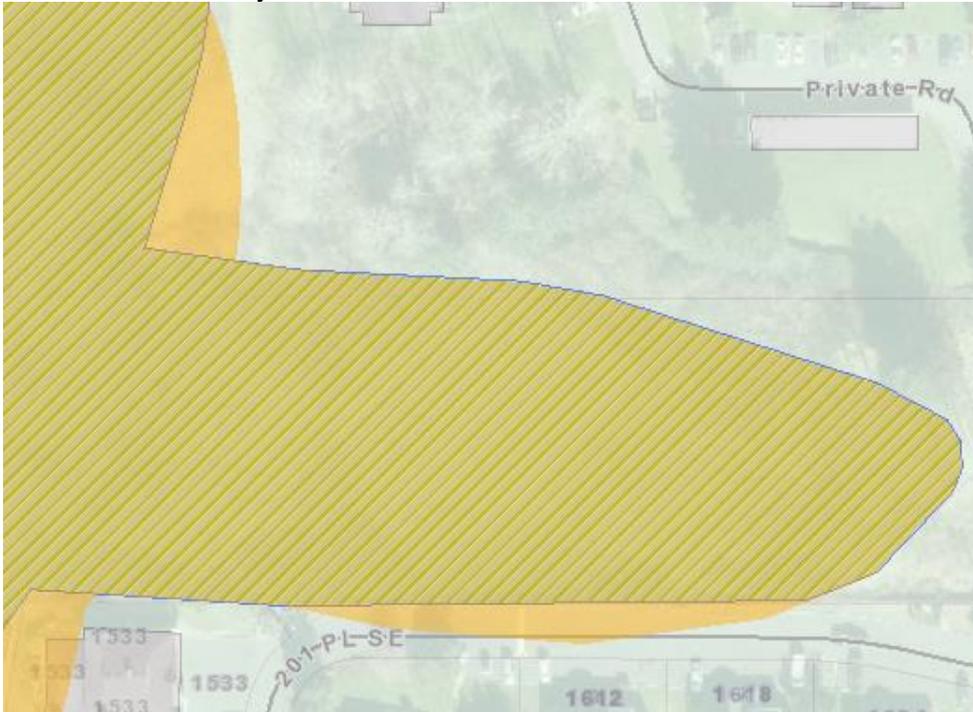


Review base data. The 2012 SMP stream alignment appears to match aerial imagery closely.

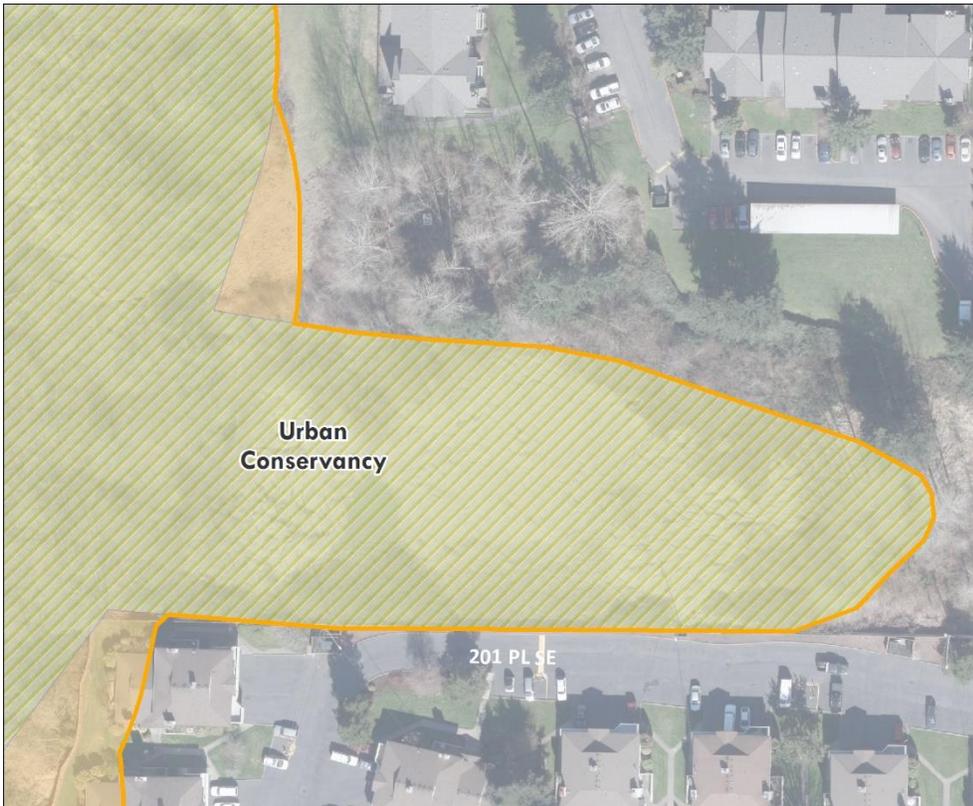


Att-3

3. Parcels 27051900102900, 27051900102600 and 201<sup>st</sup> PI SE ROW (SnoCo): Adjust Shorelines boundary to reflect associated wetlands:



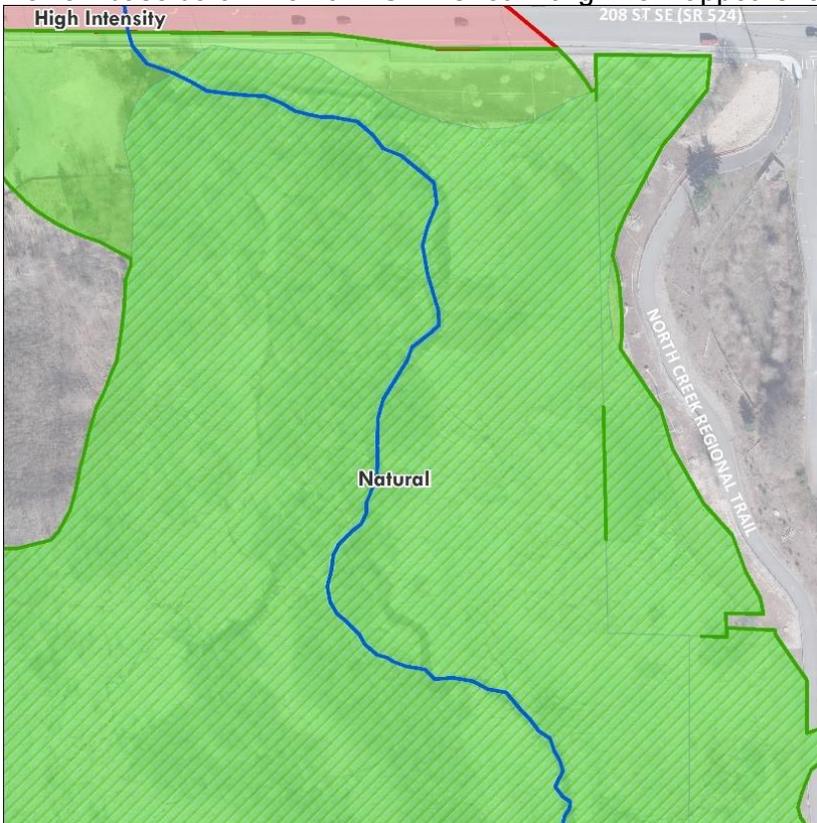
Corrected below:



4. South of SR 524, zoning boundary and North Creek don't coincide, and the eastern branch of the labelled North Creek isn't continuous:



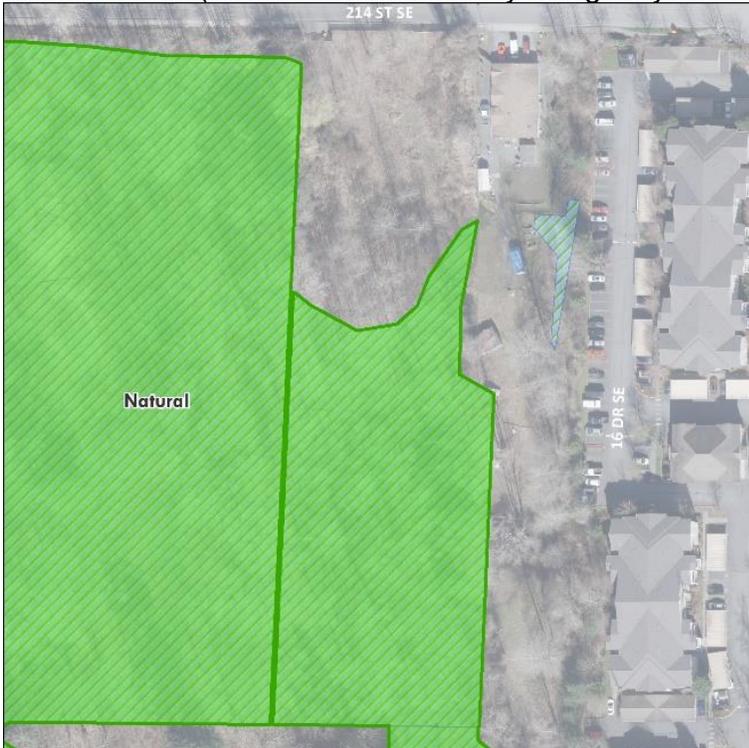
Review base data. The 2012 SMP stream alignment appears to match aerial imagery closely.



5. Parcels 27053000101500 & 27053000101400: Adjust Shorelines boundary per new wetlands delineation:



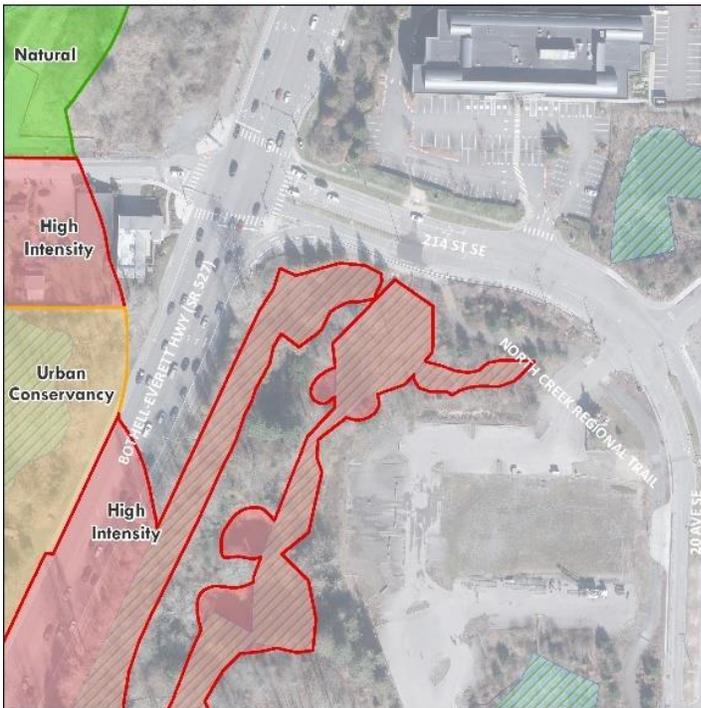
See correction (wetland to east is not hydrologically connected).



6. Parcels 27053000106500 & others - Adjust Shorelines boundary to reflect associated wetlands (extension to east) and ponds (if appropriate):



See correction:



7. Parcel 27053200202100. Adjust Shorelines boundary to reflect associated wetland:



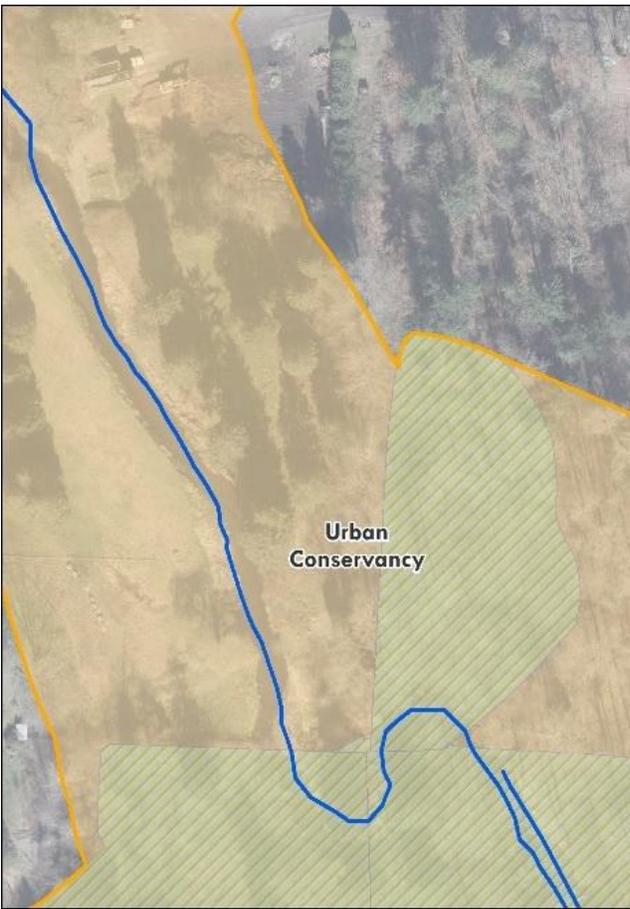
See correction:



8. Parcel 27053200102700. Adjust Shorelines boundary to reflect associated wetland:



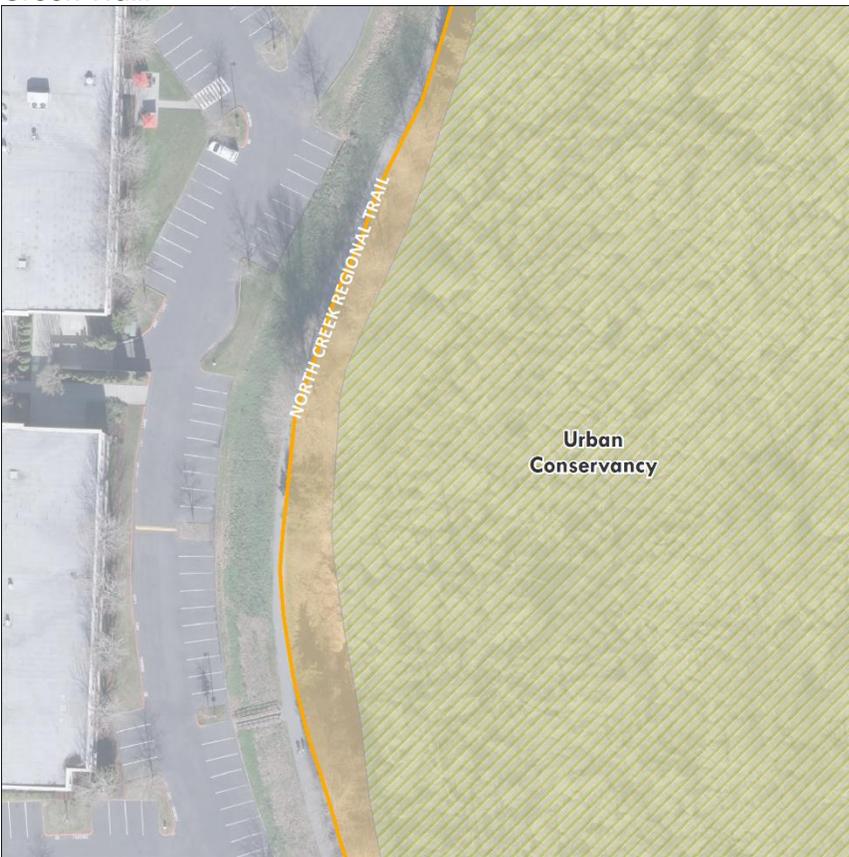
See correction:



9. Parcel 3927000360. Fix slight discrepancy between Shorelines boundary and wetland:



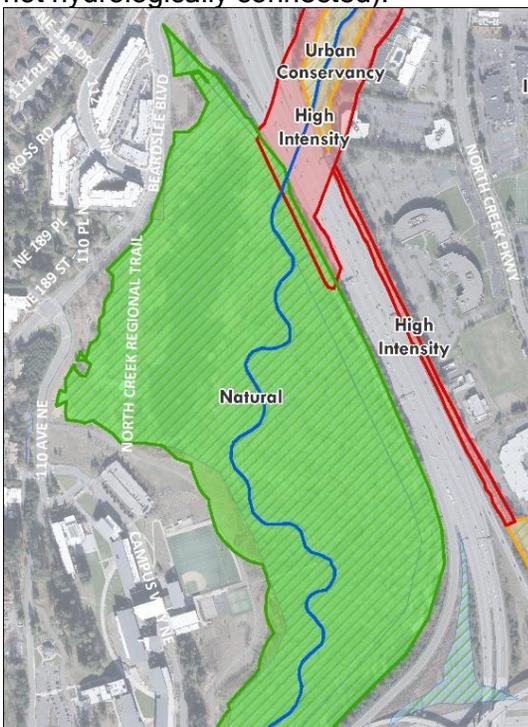
See correction - jurisdiction extends west, including the floodway, which extends to the North Creek Trail:



10. Parcel 0526059057 - show wetland that extends into WSDOT ROW at north end of this parcel and strip along east side as Shoreline Jurisdiction:



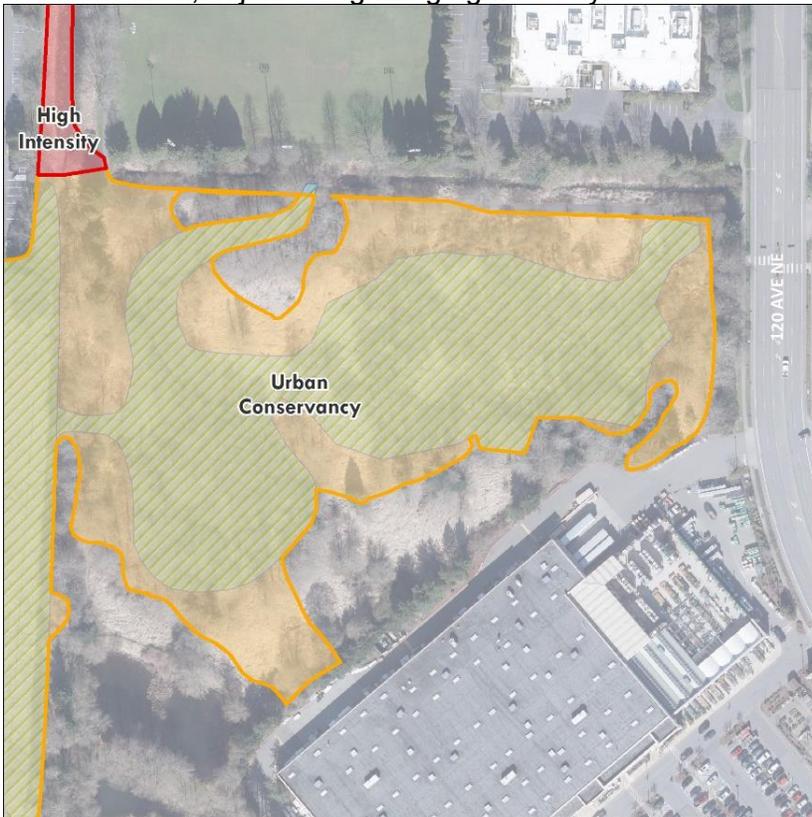
See correction: wetland accounted on northwest and southeast (wetland in middle of ROW is not hydrologically connected):



11. Parcel 0926059139. Adjust Shorelines boundary to reflect associated wetland:



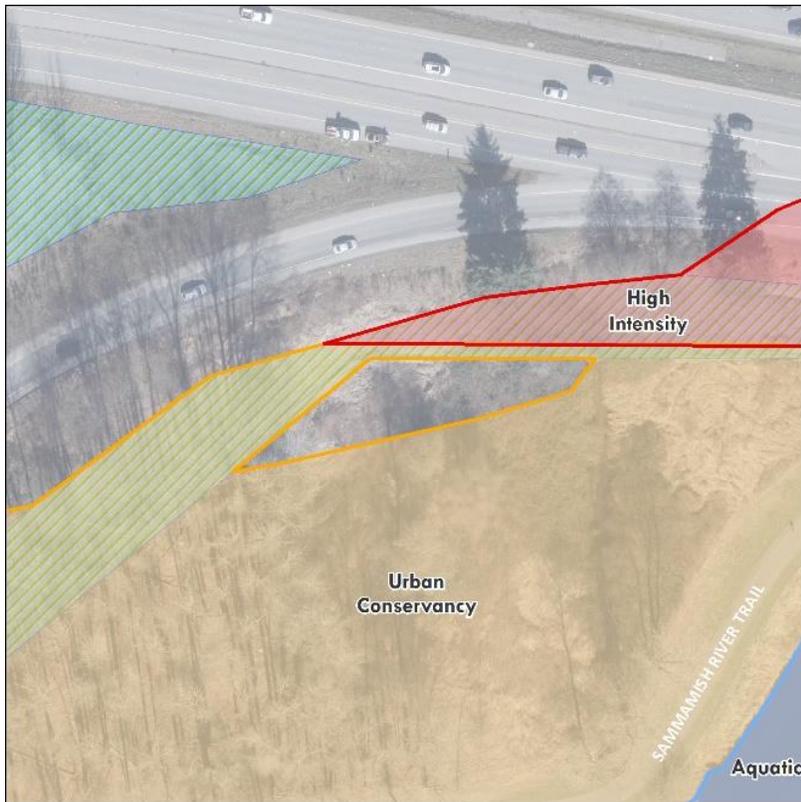
See correction, adjust recognizing right-of-way:



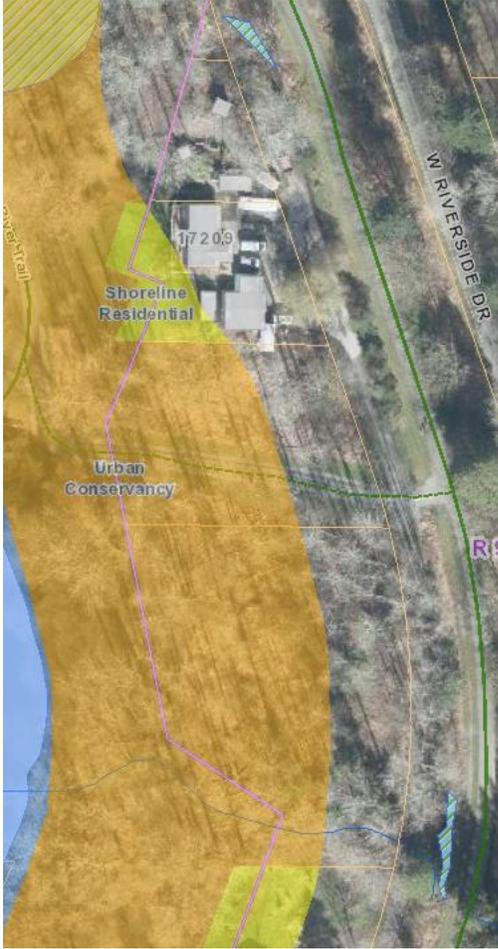
12. Parcel 0926059012 - fix slight discrepancy just north of this parcel:



See correction:



13. Check whether wetlands along West Riverside Trail should be part of Shorelines Jurisdiction:



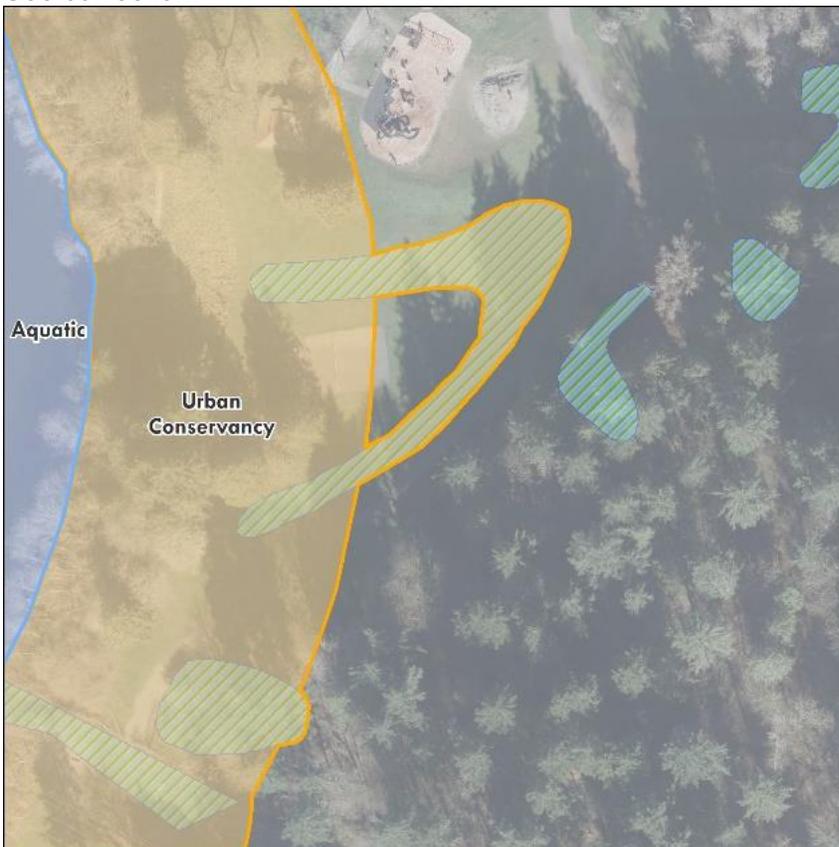
See correction:



14. Parcel 0726059278 & 0726059462 - Extend Shorelines Jurisdiction into newly delineated associated wetlands at Blyth Park:



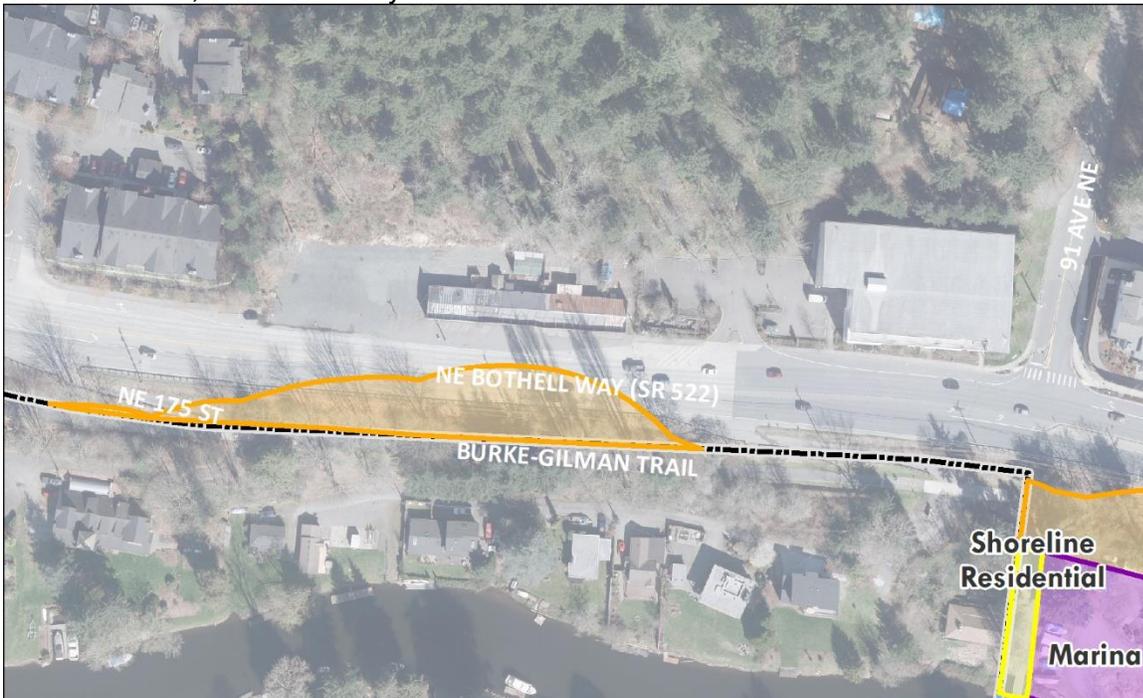
See correction:



15. Parcel 0726059053 - Fix extension of Shoreline Jurisdiction into Kenmore:



See correction, matched to city limits:



**CONSULTANT DRAFT – AMY S. 2/25**

4. Type and Location of Mitigation. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions (“in kind”). Out-of-kind replacement of wetland type or functions may be allowed if it will best meet watershed goals formally identified by the City, such as support of salmon recovery efforts. Compensatory mitigation actions shall be conducted on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. Off-site mitigation is only allowed when an applicant can demonstrate that a higher level of ecological functioning would result from an alternate approach and when all of the following apply:

- a. There are no reasonable on-site opportunities or on-site opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the adverse impacts. Consideration should include: anticipated wetland mitigation replacement ratios; buffer conditions and proposed widths; hydrogeomorphic classes of on-site wetlands when restored; proposed flood storage capacity; and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
- b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
- c. Off-site locations may include state-certified mitigation banks, federally certified fee in lieu programs, applicant-owned properties, or public property subject to agreement with the City, but in all cases the bank or mitigation site shall be in the same subdrainage basin.

**PROPOSED DRAFT – SARAH G 3/1**

4. Type and Location of Mitigation. Compensatory mitigation shall address the functions affected by the proposed project, with an intention to achieve functional equivalency or improvement of functions (“in kind”). ~~The City may allow~~ Out-of-kind replacement of wetland type or functions ~~may be allowed~~ if it will best meet watershed goals formally identified by the City in the Growth Management Act – XX section, such as support of salmon recovery efforts. Compensatory mitigation actions shall be conducted on the site of the alteration except when the applicant can demonstrate that off-site mitigation is ecologically preferable. ~~Off-site mitigation is only allowed~~ The City will only allow off-site mitigation when an applicant can demonstrate that a higher level of ecological functioning would result from an alternate approach and when all of the following apply:

- a. There are no reasonable on-site opportunities or on-site opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the adverse impacts. Consideration should include: anticipated wetland mitigation replacement ratios; buffer conditions and proposed widths; hydrogeomorphic classes of on-site wetlands when restored; proposed flood storage capacity; and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
- b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
- c. Off-site locations shall be approved by the City Council / City Permitting Department. ~~Off-site locations~~ may include state-certified mitigation banks, federally certified fee in lieu programs, applicant-owned properties, or public property subject to agreement with the City, but in all cases the bank or mitigation site shall be in the same subdrainage basin.

**Commented [SG1]:** Consider replacing passive voice here (“may be allowed”) with active voice (“The City will allow”) so it’s clear who has responsibility for these decisions.

**Commented [SG2]:** Question: Where does the City formally identify its watershed goals? If we want to keep the out-of-kind mitigation option, let’s be specific about the goals and standards that will apply. We should point the reader to where these watershed goals can be found. I’d like to review them myself, but don’t know where to find them!

**Commented [SG3]:** I’d like to keep some of the “City-approved” language here. Let’s emphasize that the City has the right and responsibility to ok these programs. When we talk about “City-approved” fee-in-lieu programs, who in the City would actually make the decision to approve those programs?

**Draft 2019 Shoreline Master Program Amendments**  
**Title 13**  
**Shoreline Management**

**13.13.020 Wetlands**

G. Compensatory Mitigation Requirements. Compensatory mitigation for alterations to wetlands shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the state Department of Ecology Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans (Version 1), Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised, as revised.

4. Type and Location of Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, such as a mitigation bank located within Watershed Resource Inventory Area (WRIA) 8, implementation of a project found in the City's Shoreline Restoration Plan, or a City of Bothell sponsored fee-in-lieu program, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach or subbasin. Mitigation actions shall be conducted within the same sub-drainage basin and on the site as the alteration except when all of the following apply:

- a. There are no reasonable on-site or in-sub-drainage basin opportunities or on-site and in-sub-drainage basin opportunities do not have a high likelihood of success, after a determination of the natural capacity of the site to mitigate for the adverse impacts. Consideration should include: anticipated wetland mitigation replacement ratios; buffer conditions and proposed widths; hydrogeomorphic classes of on-site wetlands when restored; proposed flood storage capacity; and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
- b. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
- c. Off-site locations shall be in the same sub-drainage basin unless:
  - (1) established watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or
  - (2) Credits from a state-certified wetland mitigation bank located within the Sammamish River, North Creek, or Swamp Creek drainage basin are used as mitigation and the use of credits is consistent with the terms of the bank's certification;
  - (3) The mitigation occurs as part of a City of Bothell-sponsored fee-in-lieu program
  - (4) Wetponds established and maintained for control of surface water shall not constitute replacement or enhancement for wetland alterations.

## Applicable City of Bothell Comprehensive Plan Policies and Shoreline Master Program Policies

NE-P28 Due to the environmental value of wetlands as well as their economic value in reducing the need for storm water facilities, ensure that development results in no net loss of wetland functions and values, and no net loss of wetland area except in limited circumstances where the lost wetland area provides minimal functions and the mitigation action results in equal or greater wetland hydrological and biological functions, including wetland habitat functions which provide equal or **greater benefits to the functioning of the sub-basin, such as riparian wetland habitat restoration and enhancement, all as determined by a site-specific function assessment.** **Promote the long term increase and enhancement of wetlands.**( emphasis added)

NE-P52 Formulate and implement climate change adaptation strategies that address the impacts of climate change to public health and safety, the economy, public and private infrastructure, water resources, and habitat.

NE-P29 Consider effective ways of wetland mitigation such as mitigation banking or fee-in-lieu mitigation for public capital improvement projects that are linear in configuration, such as road and utility projects.

NE-P3 Adopt and maintain critical areas regulations which include best available science to protect natural topographic, geologic, vegetation, fish and wildlife habitat, and hydrologic features, with **special consideration given to conservation or protection measures necessary to preserve or enhance anadromous fisheries.**( emphasis added)

**RCW36.70A.172** Critical Areas: (1) In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

### **Bothell Shoreline Master Program Policies**

SMP-P101 Conserve and protect critical areas within shoreline jurisdiction from loss or degradation.

SMP-P102 Locate and design public access within and adjacent to critical areas to ensure that ecological functions are not adversely impacted.

Wetlands

SMP-P103 Protect and manage shoreline-associated wetlands, including maintenance of sufficient volumes of surface and subsurface drainage into wetlands, to sustain existing vegetation and wildlife habitat.

### **Suggested changes to the current language consistent with the these adopted Comprehensive Plan Policies and Bothell Shoreline Master Program Policies:**

Change the word[ *sponsored* ]to **approved** in section 4 with the following additions:

1. City of Bothell add language to this ordinance detailing information necessary for approval for mitigation banks or fee- in- lieu based on the following order for in-kind mitigation.

**Add the following language additions:**

Off –site mitigation shall be limited to public capital improvement projects consistent with policy NEP-29

Compensation shall occur in the following order of preference based on in-kind mitigation:

- a). Restoring wetlands on upland sites that were formerly wetlands. This includes reestablishment and rehabilitation.
- b). Creating /establishing wetlands on disturbed upland sites, such as those with vegetative cover consisting primarily of nonnative species.
- c). Enhancing significantly degraded wetlands: or
- d). Preserving/ maintaining a wetland to remove threat or prevent decline, such as purchasing land. Preservation does not result in gain of wetland areas.

**Mitigation Banking.** The City may consider and approve mitigation banking as a form of compensatory mitigation for wetland impacts when it is clearly demonstrated that the use of a bank will provide equivalent or greater replacement of critical area functions and values when compared to on-site mitigation; provided, that all of the following criteria are met:

1. Banks shall only be used when they provide significant ecological benefits including long-term conservation of critical areas, important species, habitats, and when they are consistent with the City comprehensive plan and create a viable alternative to the piecemeal mitigation for individual project impacts to achieve adopted Watershed(WIRA 8) Goals, including net gain in Habitat and Salmon populations.
2. The bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule (Chapter 173-700 WAC) or as revised, and Chapter 90.84 RCW and the federal mitigation banking guidelines as outlined in the Federal Register Volume 60, No. 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain State and federal certification.
3. Preference shall be given to mitigation banks that implement restoration actions that have been identified formally by an adopted shoreline restoration plan in the Lake Washington/Cedar/Sammamish (WRIA 8) Watershed Chinook Salmon Conservation Plan.

**Fee- in- Lieu:** Currently, King County fee in lieu is located east of Woodinville in little Bear Creek Basin. Should Snohomish County establish a fee in lieu program, City of Bothell use of that program shall be guided by same criteria as mitigation banks after establishing specific approval criteria based on preferences established for in-kind compensation, and mitigation restoration actions that have been identified formally by an adopted shoreline restoration plan in the Lake Washington/ Cedar/Sammamish ( WRIA 8) Watershed Chinook Salmon Conservation Plan for net gain in Habitat and Salmon populations.