

ORDINANCE NUMBER 118 -99  
AMENDMENTS TO THE MASON COUNTY RESOURCE ORDINANCE

AN ORDINANCE amending the following sections of the Mason County Resource Ordinance, Ordinance 77-93, as amended: Section 17.01.110 Aquatic Management Areas, Section 17.112 Terrestrial Management Areas, Section 17.01.040, Establishment of Designated Lands, Section 17.01.120 Development Review Process, and Section 17.01.240 Definitions, under the authority of Chapters 36.70 and 36.70A RCW.

WHEREAS, the Board of County Commissioners held a public hearing on July 13, 1999, to consider the recommendations of the Planning Commission, the Mason County Department of Community Development and citizens on the proposed amendments; and the Board provided for a written public comment period for changes from the Planning Commission version, which were under consideration;

WHEREAS, the Mason County Planning Commission formulated its recommendations after a public hearing on June 16, 1999, and approved findings of fact;

WHEREAS, these hearings were duly advertised public hearings;


WHEREAS, these amendments are intended to comply with the Orders of the Western Washington Growth Management Hearings Board, Case No. 95-02-0073;

WHEREAS, the Mason County Board of County Commissioners formulated its decision after the public hearing and written comment period and has approved findings of fact to support its decision as ATTACHMENT A;


NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of County Commissioners of Mason County hereby approves and ADOPTS the amendments to the Mason County Resource Ordinance, #77-93, as amended, as described by ATTACHMENT B.

DATED this 12th day of October, 1999.

Board of County Commissioners  
Mason County, Washington

  
Cynthia D. Olsen, Chair

ATTEST:

  
Clerk of the Board

opposed

Mary Jo Cady, Commissioner

  
John A. Bolender, Commissioner

APPROVED AS TO FORM:

  
Prosecuting Attorney

**Mason County Board of County Commissioners  
Comprehensive Plan and Development Regulation Amendments  
October 12, 1999**

**FINDINGS OF FACT**

**1.**

Under consideration is a proposal to amend the Mason County critical area regulations intended to designate and protect critical fish and wildlife habitat areas. The changes are proposed to update the county regulations and to address the concerns of the Western Washington Growth Management Hearings Board in case #95-2-0073.

**2.**

The county performed a substantial public participation process and the record provides background information on the proposal. Public participation included: the Planning Commission (PC) workshop of November 9, 1998; PC public hearing November 16, 1998; PC workshop November 23, 1998; PC workshop January 19, 1999; community workshops March 29, April 6, April 12, and April 15, 1999; PC public hearing June 16, 1999; and Board of County Commissioners public hearing July 13, 1999. In addition, public participation was provided through the SEPA review process and other written public comment.

**3.**

**STREAM (AQUATIC MANAGEMENT AREA) BUFFERS - DISCUSSION**

Mason County received a substantial amount of scientific information as well as expressions of opinion and preference on the issue of stream buffers. Much of this dealt with anadromous fish and the needs of the fish for upland habitat protection near streams and waterways. Such protection is addressed in the amended ordinance by buffers established along water bodies.

Mason County retained consultants, Applied Environmental Services, Inc.(AES), to assist in the collection and analysis of best available science and in the preparation of the ordinance. In a review letter dated June 11, 1999, AES concluded that buffers as proposed at 100 feet for types 1, 2, and 3 streams, 75 feet for type 4 streams, and 50 feet for type 5 streams provided adequate protection of value and function for aquatic management areas. AES went on to say that, while there was no consensus on buffer requirements, the proposed buffers appear to be within the range provided by best available science (pages 8 - 10).

Similar recommendations were provided earlier by Dr. James Buell in his letters dated November 16 and 21, 1998. Dr. Buell recommended a buffer of 100 feet for

types 1, 2, and 3 streams, 50 feet for types 4 and 5 streams. There were also recommendations from the Department of Community, Trade and Economic Development (DCTED) in a white paper dated March 16, 1998, on compliance with the GMA and response to ESA listings of salmon. The paper proposed a minimum 100 foot buffer for healthy salmon streams as the "Best Available Science (done by King County and UW researchers)." The AES letter, the DCTED white paper, and Dr. Buell's comments provide much of the foundation for the buffers recommended by the Planning Commission.

Other scientifically based recommendations on buffers were reviewed and can be found in the record from the Washington Department of Fish and Wildlife (WDFW) (Millard Deussen dated October 6, 1998, November 16, 1998 and July 12, 1999); the Skokomish Tribe (Jim Park dated July 13, 1999; Marty Erath dated November 16, 1998); the Point No Point Treaty Council (Byron Rot dated July 7, 1999; Sally Nickelson dated July 9, 1999; Carol Bernthal dated November 16, 1998); AES (Wayne Wright dated November 18 and 23, 1998); and DCTED (Chris Parsons dated September 25, 1998).

Given the state of best available science in such a complex field, such recommendations are judgements by the scientist or others making the recommendations. Such recommendations may have their flaws (some noted in Dr. Buell's letters cited above), and others may reflect the values of the scientist rather than the limits imposed by science (as noted in Upstream - Salmon and Society in the Pacific Northwest, National Research Council, page 142).

Differences in buffer recommendations also strongly reflect the intended purpose of the recommendation. If the buffer is intended to protect the aquatic management areas and fish and aquatic resources, then smaller buffers are usually found to be adequate. As more general wildlife benefits are added to the purpose of the buffer, then the buffer recommendations tend to widen to include possible habitat for more and more wildlife species. But even the wider buffers, such as those recommended by WDFW, do not provide total wildlife protection. WDFW stated: "Maximum protection from a fish and wildlife perspective would likely involve no development anywhere." (Management Recommendations for Washington's Priority Habitats - Riparian, page 88).

But, whatever reservations may exist, the scientific studies and the recommendations drawn from them establish a range of action supportable by the best available science.

AES, as noted above, was retained by the county to assist it in developing the fish and wildlife amendments and in sorting through the science and science based

testimony. Initially, AES compiled information and scientific studies and assisted in negotiations with the parties who had petitioned the GMHB on this issue, along with a few other parties. The buffer width was not agreed to in the negotiations (PC Minutes, November 9, 1998, page 3), but the county consulted with AES and determine to propose in its first draft for public review (dated October 23, 1998) a 150 foot buffer on type 1, 2, and 3, streams, 100 foot on type 4 streams and 75 foot on type 5 streams. This buffer program was consistent with that recommended by AES (letter dated November 18, 1998, page 12) to address both stream buffers and general wildlife usage. On pages 5 and 6, Mr. Wright notes that even 150 feet (his recommendation) is not adequate for all wildlife functions, but would meet all other habitat functions (except for microclimate, if treated separately from temperature effects and not together with temperature, as Mr. Wright recommended). As discussed in the letter, wildlife functions have the greatest range of possible buffers, from 8 meters to 300 meters (25 feet to 984 feet). The letter expressed Mr. Wright's concerns that wildlife functions analysis in the WDFW riparian report was summary in nature and that the data set for wildlife not representative nor well analyzed.

On January 19, 1999 and after considering the substantial testimony and written information received to that date, the Planning Commission (at the fourth workshop or public hearing held by the Planning Commission on this the draft proposal) directed county staff to revisit the aquatic management area buffers to see if they could be reduced. Mason County requested that AES review the question of whether reduced buffers for aquatic management areas, buffers comparable to those presented by Dr. Buell and those in use by other counties, were scientifically justified and within the range of buffers supportable by best available science. The result was the AES letter of June 11, 1999 as discussed above. With the reduced buffers, the requirements for site specific buffer reductions were amended to include a Habitat Management Plan.

Other written comment, which in some cases provided scientific information, was provided on buffers by: Bart Robbins dated July 13, 1999; Helena James dated July 9, 1999; Norm Schaaf of Merrill & Ring dated June 17 and June 2, 1999 and November 12, 1998; Jean and John Springer dated April 22 and October 5, 1999; Bill Quigley undated; Bob Sund dated December 26, 1999; Chris Snapp of Green Crow dated November 23, 1998; Irene Davis dated November 19, 1998; Linda and Vic Gusti(?) dated November 23, 1998; Alexander Mackie dated November 9 (with attachment from Dr. Buell), 16 and 23, 1998; Lynda Links dated November 18, 1998; Ken Howard dated November 30, 1998; James and Carol Swindall dated November 30, 1998; David Craig of the US Forest Service dated November 19, 1998; Dennis Yakovich undated and received November 23, 1998; Richard Guest of the Skokomish Tribe dated November 16, 1998.



Mason County determined that the buffers must be within that range supported by the science. However, the county also considered the need to harmonize the goals of GMA; it considered the burden on the land owner versus their share of the responsibility for the current status of the fish species; it considered the strongly expressed desire for the restrictions on the land owners and citizens to be no more than was necessary to achieve the desired purposes; it considered the risk to the resource; and it considered coordination and consistency with the buffers and protections of neighboring jurisdictions.

As a general rule, interference with other goals of the GMA increase as buffers increase. WDFW stated: "Maximum protection from a fish and wildlife perspective would likely involve no development anywhere." (Management Recommendations for Washington's Priority Habitats - Riparian, page 88) However, the county believes that the appropriate protection of fish and wildlife habitat is compatible with the pursuit of other goals. The attempt of the county to balance the GMA goals contained in RCW 36.70A.020 (9) and (10) - the encouragement of the conservation of fish and wildlife habitat and to protect the environment and water quality - with other goals of the act results in buffers of a reasonable width which make provision for some activity within the buffers. Considerations to advance other GMA goals include, but are not limited to: continuing existing housing and keeping land available and thus more affordable for housing (goal 4); continuing existing business and keeping costs of protection low (goal 5); only imposing proportional and necessary regulations (goal 6); more timely and less burdensome permitting (goal 7); providing for agricultural use and natural harvests (goal 8); allowing recreational and educational trails and activities (goal 9); responding to citizen requests for clarity, minimum restrictions, flexibility, and consistency with adjoining jurisdictions (goal 11); and providing for roads and utilities (goal 12).

From a regulatory perspective, using standard buffers has several advantages. It does not require detailed analysis of every site and project, which saves time and expense for all parties. Citizens can easily learn what the standards are, making them easier to follow, reducing unintentional violations, and making a violation more discernable. They have a greater appearance of fairness.

However, having only standard buffers does not provide for flexibility or adjustments for the individual site. Many scientists commented that science supports site specific adjustments because there are important site specific variables. In addition to the standard or generic buffers, the draft ordinance provides for flexibility and adjustability by allowing an increase or decrease the buffer with suitable documentation. Reduction in the buffer requires the safeguard of a Habitat Management Plan, with review and comment by the state and affected tribes.

The ordinary high water mark (OHWM) is defined in the Resource Ordinance and is used for defining the edge of the stream and the inner edge or beginning of the buffer. Although there are suggestions to use the edge of the floodplain or the stream's channel migration zone (CMZ) for the inner, or water, edge of the buffer, this would have the effect of prohibiting development in the floodplain. To follow the logic of prohibiting development in the entire floodplain would require taking the land because, if one did not prohibit all construction in the valleys, then one would still have to provide for stabilization of the river banks. Preventing such stabilization efforts is exactly the purpose for not allowing development. Existing development would also have to be phased out, or allowed to be destroyed. This is a recommendation which appears based on values more than science. "The bioconservative values are more concerned with protecting nature in its "uncontrolled state" and might believe that "nature knows best." Those differing but equally science-based approaches can lead to profound differences in how people weigh interventions..." UPSTREAM , page 142. This approach is conceptually inconsistent with the provision for bank stabilization (G.9.) and in generally with any provision that allows development or investment in the river valleys (flood plains or CMZ) or continued human activity. The ordinance does provide for unstable areas and existing erosion in its provisions for increasing the buffers (D.3.d.).

The county's overall strategy for the aquatic management area is one of protection and enhancement. In addition to the protection provided from new development by the regulations, Mason County is acting in partnership with volunteers, tribes, conservation districts, the state, other jurisdictions and the Federal government to enhance the environment, particularly for anadromous fish.

The county recognizes that more will be learned about specific conditions in Mason County and that the related science can change. The effectiveness of the plan and its implementing regulations will be reviewed no later than 2002, and at least every five years thereafter as required by RCW 36.70A.130 (1). In addition, the county has established a policy of considering amendments each year, and any significant new information or change in scientific knowledge can be incorporated in the regulations.

The county also notes that the fish and wildlife regulation does not stand alone in protecting the functions and values of aquatic management areas. Many of the functions and values provided by the buffer to the stream are also addressed by other regulations. The most directly related of these include: Water quality and water flow protections from the Mason County Storm water Management Ordinance #141-97, which uses the Department of Ecology Storm water Management Manual and requires the use of Best Management Practices, as

defined in the Manual. Water quality, erosion, mass wasting, siltation issues are also addressed in the Landslide Hazard Area and Erosion Hazard Area provisions of the Mason County Resource Ordinance, Section 17.01.100 and 17.01.104, respectively. The Wetlands section of the Resource Ordinance provides additional protection to wetlands that often make up important parts of the riparian systems and affect water quality, water quantity, and provided additional valuable habitat areas in the wetlands and their buffers. Health Department regulations governing sewage and solid waste protect water quality, as do critical aquifer recharge area regulations. Generally, these regulations prevent, minimize, or mitigate impacts from development near the aquatic management areas or their buffers.

#### **STREAM (AQUATIC MANAGEMENT AREA) BUFFERS - FINDINGS**

**A.**

Mason County finds that adopting standard buffers designed to protect fish species and necessary associated habitat is an appropriate approach to protecting the functions and values of those critical areas.

**B.**

Mason County finds that buffers of 100 feet for types 1, 2, and 3 streams, 75 feet for type 4 streams, and 50 feet for type 5 streams provided adequate protection of value and function for aquatic management areas within the range of options supported by the best available science.

**C.**

Mason County finds that the level of protection, exemptions, permitted uses, and provisions for flexibility in the regulations harmonize the goals of the GMA by providing for the advancement of other goals of the GMA together with an appropriate level of protection to the functions and values of the critical area.

**4.**

#### **Terrestrial Management Area Protections - Discussion**

Terrestrial management protections are intended to protect species that are not aquatic. The proposal was developed with consideration of guidelines for adopting comprehensive plans, Chapter 365-195 WAC, and protects the habitats of those species that were identified as being of local importance. The proposal also provides a method by species might be listed in the future. There was no documentation or proposal for any species other than those protected herein, except for candidate species in the WDFW Priority Habitat and Species Program (PHS) and some special plant species. The plant species were removed because on review of the WAC, other regulations developed under the GMA, and Hearings Board decisions indicated that such protections were not necessary under the fish

and wildlife critical area requirements of the GMA. The candidate species and habitats were removed because testimony was presented that their listing was not substantial scientific evidence that the species were of local or state importance as such species merely need to be nominated to be candidate species and do not go through a scientific review. It was also found that WDFW does have authority to protect such species.

The process of protection for terrestrial management areas is that all major development (Major new development includes and is limited to all activities which require subdivision, short subdivision, or large lot subdivision approval, mobile home park or RV park approval, grading permit approval, or building permit approval, provided that this does not include repair, remodel, or alteration of existing buildings which do not increase the foot print of the building by more than 10%) is to be processed under the ordinance. Almost any activity that requires a permit from the county is reviewed to determine if it is located in an area to which the regulations applies -- that is, if it is a fish and wildlife protection area. Current information is used to determine if this is so; and, if such review is necessary, it is done through preparing a Habitat Management Plan (HMP). The HMP must address WDFW management recommendations, avoid impacts or provide mitigation, and receive timely review by WDFW and tribes. It can only be approved when impacts are avoided or mitigated. This process is very similar to the one in place in Mason County to protect bald eagles since 1993 and which has worked well without being unduly burdensome to the public nor administratively difficult.

Habitats protected under the Resource Ordinance include wetlands protected under provisions contained in Section 17.01.070 and instream habitats and riparian areas protected under the aquatic management areas provisions.

#### **Terrestrial Management Area Protections - Findings**

##### **A.**

Mason County finds that adopting an administrative review process, which includes site specific environmental review and management according to best available science, is an appropriate approach to protecting the functions and values of habitat for terrestrial -- that is: non-aquatic -- species.

##### **B.**

Mason County finds that the level of protection, exemptions, permitted uses, and provisions for flexibility in the regulations harmonize the goals of the GMA by providing for the advancement of other goals of the GMA together with an appropriate level of protection to the functions and values of the critical area.



5.

A determination of non-significance (DNS) was issued by Mason County on November 11, 1998. After review of the comments received and consideration of the changes proposed since that issuance, it was determined by the Department of Community Development that no significant adverse impacts are expected from this action.

6.

The Board finds that the amendments are consistent with the county-wide planning policies.

7.

The draft proposal was substantially changed based on public comments during the review process. As detailed in the Department of Community Development memorandum of July 13, 1999, the revisions were intended achieve the following purposes:

- to make to regulation easier to understand, which is vital to successful implementation;
- to provide for public education, which was identified as important for the implementation of the ordinance and the long-term well being of the fish and wildlife;
- to include incentives and compensation to property owners, seen as a matter of fairness and important to public cooperation;
- to enhance protection for eelgrass and kelp beds, seen as important to supplement protection currently provided by other regulations;
- to establish buffers which are appropriate, necessary, and, if justified, comparable to those of nearby counties, which was seen as important to protect property rights, coordinate protections with other counties, and to advance other goals;
- to provide necessary relief to the public by applying variance and reasonable use provisions, which address site and project specific concerns resulting from the general provisions;
- to provide for a variety or gradient of buffers, which was seen as necessary to address site specific environmental needs and to not apply requirements which were more restrictive than necessary to the purpose.

8.

**Other consideration by the Board - Discussion**

In addition to the discussion contained herein, the Board considered its action in detail in two meetings held August 25 and 27, 1999. In those meetings it considered the final form of the proposal and possible changes to it. A number of

minor changes intended to clarify or better implement the intent of the regulations developed into an August 31, 1999 draft, which details the rationale for the changes. Many comments were received by the Board on the Planning Commission recommendation where the Board believed the proposal should not be changed. The rationale for this is briefly presented in an August 31, 1999 paper: Response to Comments. Changes from the Planning Commission recommendations of June 16, 1999, were released for public comment in a draft dated September 21, 1999. This opportunity was advertised on September 23, 1999, and parties to the Hearings Board case were notified directly. Comments were due in writing on October 5, 1999. The Board considered these comments at its meeting on October 12, 1999, together with a staff memorandum of the same date.

#### **Finding**

The Board finds that these meetings and documents supplement these findings in explaining the basis for action on this proposal.

#### **9.**

##### **Growth Management Hearings Board Compliance - Discussion**

The original order of the Growth Management Hearings Board (GMHB), Case #95-2-0073, expressed concern over the lack of protection for type 5 waters, with respect to fish and wildlife habitat protection. Through the course of subsequent procedures, the GMHB issued a stipulated order, February 10, 1999, in which several areas for improvement were identified. The proposal responds to these issues by using best available science to adopt specific and enforceable buffers for type 1 to 5 waters (subsection D); to define the activities that might occur in the appropriate buffers for type 1 to 5 waters (subsections F and G); to detail the review process for projects, including a reporting/notification process to assure adequate environmental protection (subsections J and K) ; to identify and protect species of local importance and associated habitats, in addition to those species and their associated habitat otherwise identified as state or federal endangered, threatened or sensitive species (subsections B and H); to specify the standards to be used in the administrative process (subsections J.5. and K).

The buffers for aquatic management areas and the protections for terrestrial areas are discussed above. The administrative processes are defined in the ordinance and set up a logical review process which allows for the tribes and other agencies to comment on major new development and require detailed review only when appropriate. The HMP report requirements and the review standards in subsection J.5. are essentially unchanged from the original draft, which was negotiated and had the support of the involved tribes and other petitioners.

**Compliance - Findings**

The Board finds that the proposal addresses the orders of the Growth Management Hearings Board by establishing clear and enforceable protections, standards, permit review processes for fish and wildlife habitat areas, and by designating species and habitats of local importance.

**10.**

The Board finds that the proposed amendments balance the goals of the Mason County comprehensive plan and the goals of the Growth Management Act.

**From the preceding findings, it is concluded amendments to the Mason County Resource Ordinance, as herein proposed, should be adopted.**

A handwritten signature in black ink, appearing to read "Cynthia Olsen", written over a horizontal line.

Chair, Mason County Board of County Commissioners

October 12, 1999

Date

**SECTION 1: DELETE THE EXISTING SECTIONS 17.01.110 AQUATIC MANAGEMENT AREAS AND 17.01.112 TERRESTRIAL MANAGEMENT AREAS, AND ADOPT A NEW SECTION 17.01.110 TO READ AS FOLLOWS:**

**17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

**A. PURPOSE.**

Fish and wildlife habitat conservation means land management for maintaining species in suitable habitats within their natural geographic distribution so that isolated populations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean intergovernmental cooperation and coordination is critically important in a region. In some cases, it is sufficient to assure that a species will usually be found in certain regions across the state. The provisions for the protection of habitat contained in this section can not succeed in their purpose of supporting viable populations of fish and wildlife species unless other agencies and the public also act to protect the species. In the case of anadromous fish, the Statewide Salmon Recovery Strategy identifies that it will take a balanced approach to addressing the factors of decline that are within human control, including harvest, hatchery, habitat, and hydropower. The intent of this Section is to:

1. Protect critical habitat features to support genetically viable populations of fish and wildlife species and allow for commercial and non-commercial uses;
2. Protect the biological, physical, and chemical components of water quality for the benefit of aquatic and terrestrial resources, as well as human consumptive uses;
3. Ensure that natural stream and marine shoreline functions such as flow patterns, production of sediment and large woody debris are maintained with minimal interference or impact to private property;
4. Protect habitat for federal or state listed endangered, threatened or sensitive fish and wildlife.
5. Encourage non-regulatory methods of habitat retention whenever practical, through education, and the Open Space Tax Program.
6. To supplement the Shorelines Master Plan for Mason County to preserve and protect critical fish and wildlife habitat pursuant to (WAC 365-190-080(5)). It is the intent that this ordinance will compliment and supplement the Shorelines Master Plan.

**B. FISH AND WILDLIFE HABITAT CONSERVATION AREA CATEGORIES.**

Fish and wildlife habitat conservation areas include both aquatic and terrestrial management areas. The following categories shall be used in classifying critical areas under this ordinance:

1. Aquatic Management Areas
  - a. Commercial and recreational shellfish areas.
  - b. Kelp and eelgrass beds; herring and smelt spawning areas.

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- c. Naturally occurring lakes and ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat.
  - d. Streams.
  - e. Saltwater Shorelines, and Lakes 20 Acres and Greater in Surface Area.
  - f. Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity.
  - g. State Department of Natural Resources natural area preserves and natural resource conservation areas.
2. Terrestrial Management Areas
- a. Areas with which Federal or State endangered, threatened and sensitive species of fish and wildlife have a primary association. Species known to be found in Mason County are listed in Table 1. Protection of species habitats is determined by the State or Federal listing, and their actual presence near the site subject to review. Other listed and protected species may be found in Mason County, which are not in Table 1.
  - b. Areas that contain habitats and species of local importance. Roosevelt elk (*Cervus elaphus roosevelti*) and Dolly Varden (*Salvelinus Malma*) are classified as a species of local importance because of calving grounds located in Mason County and because of the current status of the Dolly Varden population, which is not listed, but which is threatened enough to be actively proposed for Federal listing.

TABLE 1 Endangered, threatened, or sensitive fish and wildlife species known to be found in Mason County	
COMMON NAME	SCIENTIFIC NAME
Bald eagle	<i>Haliaeetus leucocephalus</i>
Northern spotted owl	<i>Stridex occidentalis</i>
Hood Canal - Summer run chum	<i>Oncorhynchus keta</i>

### C. DESIGNATION

The areas classified in Section B above as Fish and Wildlife Habitat Conservation Areas are hereby designated under RCW 36.70A.060 and RCW 36.70A.170, as critical areas requiring proper land management to protect their value and functions.

### D. ESTABLISHMENT OF BUFFERS ON AQUATIC MANAGEMENT AREAS

1. Aquatic Management Areas shall have Buffers and Building Setbacks established.
  - a. Buffers or setbacks shall be maintained along the perimeter of Aquatic Management Areas, as listed in Table 2. Distances shall be measured horizontally from the ordinary high water mark (OHWM).
  - b. Buffers shall be retained in their natural condition, except as provided elsewhere in this section.
  - c. Building Setback Lines: A building setback line of fifteen (15) feet is required from the edge of any buffer area.



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2. Provision for Decreasing Buffer: For major new development the Director may decrease the buffer after consultation with the Washington State Department of Fish and Wildlife and affected Tribe(s), and after review of a habitat mitigation plan, if the County determines that conditions are sufficient to protect the affected habitat. A Habitat Mitigation Plan shall be required. Without a public hearing the Director may reduce the buffer width by up to 25%, but the buffer shall not be less than 25 feet (see Section 17.01.150 Variance Criteria). Any additional buffer reduction beyond the 25% must go through the public review process (Section 17.01.120.L). The order of sequence for such buffer reductions shall be as follows:
  - a. use of buffer averaging maintaining 100% of the buffer area under the standard buffer requirement with no reduction in overall habitat quality of the buffer;
  - b. reduction of the overall buffer area by no more than 25% of the area required under the standard buffer requirement with no reduction in overall habitat quality of the buffer;
  - c. enhancement of existing degraded buffer area and replanting of the disturbed buffer area using native vegetation;
  - d. maintain natural or approved designed infiltration of storm water where soils permit; and,
  - e. retention of existing native vegetation on other portions of the site that provides equivalent or greater habitat value in order to off set habitat loss from buffer reduction.
3. Provision for Increasing Buffer: The Director shall increase the buffer width on a case-by-case basis when a larger buffer is necessary to protect the structure, function and value of Fish & Wildlife Conservation Areas. The buffer shall be increased or other protections shall be provided in order to prevent a significant adverse environmental impact by a proposed project on those functions and values. This determination shall be supported by appropriate documentation; however, the county shall not require additional information from the applicant solely for the purpose of increasing the buffer as provided in this subsection. Such determination shall be attached as a permit condition and shall demonstrate that:
  - a. A larger buffer is necessary to maintain viable populations or critical habitat of endangered, threatened, or sensitive species; or
  - b. The adjacent land is susceptible to severe erosion and erosion control measures will not effectively prevent adverse impacts to the FWHCA; or
  - c. If the FWHCA contains variations in sensitivity, increasing the vegetation area widths will only be done as necessary to preserve the structure, function and value of the FWHCA.
  - d. If the FWHCA lies within an area where there is evidence of a migrating stream or river channel, increased protection may be necessary. Based upon site habitat conditions and species presence, the aquatic management area buffer may be extended.
  - e. If streams are located in ravines (side slopes of 33% or greater for 10 feet or greater in height as measured from OHWM to slope break), the minimum buffer width shall be the minimum buffer required for the stream type, or a buffer width which extends 25 feet beyond the top of the slope, whichever is greater.

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Table 3 Fish Habitat Conservation Area Development Standards									
Streams									
Water Type		Buffer				Building Setback from Buffer			
1		100 feet				15 feet			
2		100 feet				15 feet			
3		100 feet				15 feet			
4		75 feet				15 feet			
5		50 feet				15 feet			
Salt Water Shorelines and Lakes 20 acres and greater which are defined as Type 1 Waters of the State.									
Type of Use		Mason County Shoreline Master Program Designation							
		Urban		Rural		Conservancy		Natural	
		Buffer	Building Setback from Buffer	Buffer	Building Setback from Buffer	Buffer	Building Setback from Buffer	Buffer	Building Setback from Buffer
Recreational Development:									
A.	Campsites, picnic facilities and related structures	10 feet	15 feet	35 feet	15 feet	85 feet	15 feet	85 feet	15 feet
B.	Access roads, restrooms	35 feet	15 feet	85 feet	15 feet	85 feet	15 feet	200 feet	x
C.	Accessory Uses, structures, parking, commercial services	60 feet	15 feet	85 feet	15 feet	135 feet	15 feet	200 feet	x

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Table 3 (Continued)		Saltwater Shorelines and Lakes 20 acres and greater which are defined as Type 1 Waters of the State						
Type of Use	Mason County Shoreline Master Program Designation							
	Urban		Rural		Conservancy		Natural	
	Buffer	Building Setback from Buffer	Buffer	Building Setback from Buffer	Buffer	Building Setback from Buffer	Buffer	Building Setback from Buffer
Water Dependent Commercial Development <sup>1</sup>	0 feet	15 feet	35 feet	15 feet	35 feet	15 feet	200 feet	x
Non-Water Dependent Commercial Development	35 feet	15 feet	60 feet	15 feet	85 feet	15 feet	200 feet	x
Single Family Residential <sup>2</sup>	0 feet	15 feet	10 feet	15 feet	35 feet	15 feet	200 feet	x
Multi-Family Residential, 35 feet or less	15 feet	15 feet	35 feet	15 feet	200 feet	x	200 feet	x
Multi-Family Residential, over 35 feet	35 feet	15 feet	85 feet	15 feet	200 feet	x	200 feet	x

Note: "x" means that the use is not permitted in that designation.  
Designations and uses are as defined or applied in the Shoreline Master Program.

<sup>1</sup>The buffer may be reduced or eliminated to the extent necessary for the water dependent use. When the buffer is reduced or eliminated, the minimum building setbacks shall be 15 feet in Urban, 50 feet in Rural, and 50 feet in the Conservancy designations

<sup>2</sup> The building setback required may be adjusted as provided in the Shoreline Master Program, Chapter 7.16.080

### E. STEWARDSHIP OPTIONS AND INCENTIVES

The purpose of this subsection is to encourage property owners to protect critical areas and their buffers and to reduce the burden on property owners from the application of the Resource Ordinance regulations. Options given below may be used individually, or they may be combined for greatest effect and benefit.

1. Open Space Bonus: Any property owner, except on land designated as Long-Term Commercial Forest Lands, Agricultural Resource Lands or Mineral Resource Lands, may apply for a performance subdivision as provided in Chapter 16.22, Mason County Code. Approval of such a subdivision provides for a development density bonus - that is, it allows more lots for development - in exchange for the protection of critical areas and meeting other design requirements.
2. Open Space Tax Assessment: Any property owner may apply for current use property tax assessment for lands which are fish and wildlife habitat conservation areas or their buffers pursuant to RCW 84.34.
  - a. The land proposed for current use tax assessment shall be in a separate tract or a conservation easement.
  - b. Any person who owns an identified critical area or its associated buffer may place a conservation easement over that portion of the property. A conservation easement is a legal agreement a property owner makes to restrict the type and amount of development that may occur on a parcel. Each easement is tailored to the particular property and to the interest of the individual owner. The property owner grants an easement to an appropriate governmental agency or non-profit land trust. It provides significant property and federal income tax benefits to the property owner. The purpose of the easement shall be to preserve, protect, maintain, restore and limit future use of the property affected. The terms of the conservation easement may include prohibitions or restrictions on access and shall be approved by the property owner and the county.
3. Density Credit: On lands containing FWHCAs or their buffers, the county shall allow a transfer of density for residential uses from the portion of the property containing the critical areas or buffers to that portion of the property that does not contain critical areas or buffers - that is, the property could be developed with the same number of lots it would have if critical areas were not present - provided that such transfer does not create any adverse impacts to the critical area that can not be adequately mitigated and provided that all other development regulations can be met.
4. Tax Re-assessment: The owner of any property that has been affected by a permit decision by the county may request an immediate re-assessment by the Mason County Assessors Office, as provided by RCW Chapter 84.
5. Conservation Futures: If approved by a vote of the people of Mason County, Mason County shall use conservation futures revenue to compensate affected property owners for the impact of protecting fish and wildlife through the purchase of conservation easements on impacted land or the impacted land.
6. Education: The county encourages proper stewardship on land to provide benefits to fish and wildlife. The county shall provide educational information to the public

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through its sponsorship of the Washington State Cooperative Extension Service, the Mason Conservation District, or through the provision of informational materials in its offices.

### F. ACTIVITIES WHICH DO NOT REQUIRE A MASON ENVIRONMENTAL PERMIT

The following uses shall be allowed, within a FWHCA or its buffer to the extent that they are not prohibited by any other applicable law or ordinance, provided they are conducted so as to minimize any impact on the values and functions of the FWHMA, and provided they are consistent with any county approved Resource Ordinance Special Study (such as a Habitat Management Plan or Geotechnical Report) or any state or Federally approved management plan for an endangered, threatened, or sensitive species.

1. The remodel, repair, or change of use of an existing building within its existing footprint, plus or minus ten percent and provided that such expansion does not increase any intrusion into the aquatic management area or buffer. Reconstruction of structures destroyed by fire or other means, provided that completed application for reconstruction occurs within the previous structural footprint and within two years of the destruction. This provision is intended to apply only to that portion of a building which lies within a FWHCA or its buffer.
2. The removal from buffer areas of noxious weeds designated in Chapter 17.10 RCW.
3. Ongoing and existing activities (such a lawn and garden maintenance).
4. Buffer alterations for view corridors are allowed with emphasis placed on limbing and selective timber removal minimized to the extent possible. View corridor improvement actions which include the removal of trees larger than six inches in diameter at breast height will require Mason County approval.
5. The removal of danger trees from buffers provided they are documented to pose a direct threat to property and life. Removal of danger trees shall be mitigated by planting a total of six (6) new trees seedlings each a minimum three years old and each of the same species as the removed tree or native species trees. If the replacement is judged to be unnecessary, the Director may request the applicant place the downed danger tree within the buffer as habitat.
6. The enhancement of a buffer by planting indigenous vegetation.
7. The construction of trails which shall be unpaved when located in the buffer areas and elevated when located in wetlands, which are not intended for motorized use, and which are no wider than three (3) feet, unless additional width is necessary for safety along a precipice, steep hillside, or other hazardous area.
8. Harvesting of Wild Crops: Harvesting wild crops which do not significantly affect the viability of the wild crop, the function of the Fish and Wildlife Habitat or regulated buffer (does not include tilling of soil or alteration of the Fish and Wildlife Habitat Conservation Area).
9. Any of the General Exemptions authorized by Section 17.01.130.



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### G. DEVELOPMENT AND ACTIVITIES REQUIRING A MASON ENVIRONMENTAL PERMIT IN AQUATIC MANAGEMENT AREAS OR THEIR BUFFERS

A Mason Environmental Permit shall be obtained from the County, using the administrative review process in this Chapter, before undertaking the following activities in FWHCAs or their buffers:

1. The removal, excavation, grading, dumping, discharging or filling of any material unless part of a project which has been permitted pursuant to this section or for which no permit is required.
2. The destruction or alteration of aquatic management areas or their buffers through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of the aquatic management area or buffer, unless part of a project which has been permitted pursuant to this section or for which no permit is required.
3. New Residential Construction and Major New Development: New residential construction and major new development is not permitted within an aquatic management area or its buffer, except as provided for elsewhere in this chapter.
4. Stream Crossings: All stream crossings should be discouraged and alternatives should be explored. Any private or public road expansion or construction which is proposed and must cross streams classified within this Ordinance, shall comply with the following minimum development standards:
  - a. Bridges or arch/bottomless culverts shall be required for all Type 1, 2 and 3 streams (which have anadromous fish habitat). Fish passage shall be provided, if necessary to address man-made obstructions on site. Other alternatives may be allowed upon a showing that, for the site under review, the alternatives would be less disruptive to the habitat or that the necessary building foundations were not feasible. Submittal of a Habitat Management Plan which demonstrates that the alternatives would not result in significant impacts to the Fish and Wildlife Habitat Conservation Area (FWHCA) may be required if the information necessary to determine if the permit requirements contained in subsection J. 5. have been met. The plan must demonstrate that salmon habitat will be replaced at a minimum 1:1 ratio.
  - b. Crossings shall not occur in salmonid spawning areas unless no other reasonable crossing site exists. For new development proposals, if existing crossings are determined to adversely impact salmon spawning or passage areas, new or upgraded crossings shall be located as determined necessary through coordination with the Washington State Department of Fish and Wildlife and affected Tribe(s);
  - c. Bridge piers or abutments shall not be placed either within the floodway or between the ordinary, high water marks unless no other reasonable alternative placement exists;
  - d. All stream crossings shall be required to pass 100 year projected flood flows, even in non-fish bearing Type 4 and 5 streams. In addition, crossings for Type 1, 2, or 3 should allow for downstream transport of large woody debris;
  - e. Crossings shall serve multiple properties whenever possible.
  - f. Where there is no reasonable alternative to providing a culvert, the culvert shall be the minimum length necessary to accommodate the permitted activity.

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5. Stream Relocation: Stream relocations are discouraged except for the purpose of fisheries restoration and require a Habitat Management Plan. Stream relocation shall only be permitted when adhering to the following minimum performance standards and when consistent with Washington State Department of Fish and Wildlife Hydraulic Project Approval.
  - a. The channel, bank and buffer areas shall be replanted with native vegetation that replicates a natural, undisturbed riparian condition; and,
  - b. For those shorelands and waters designated as Frequently Flooded Areas pursuant to Section 17.01.090, a professional engineer licensed in the State of Washington shall provide information demonstrating that the equivalent base flood storage volume and function will be maintained.
  - c. Relocated stream channels shall be designed to meet or exceed the functions and values of the stream to be relocated as determined by the monitoring in the Habitat Management Plan.
6. Land Divisions: In order to implement the purpose of this section and the County Comprehensive Plan, to accommodate design innovation, creativity, and flexibility, and to achieve a level of environmental protection that would not be possible by typical lot-by-lot development, the use of the Performance Subdivision process (Title 16 Mason County Subdivision Ordinance) is strongly encouraged. Divisions of land (Subdivisions, Short Subdivisions, Large Lot Subdivisions) shall comply with the following development standards:
  - a. In order to avoid the creation of non-conforming lots, each new lot shall contain at least one building site that meets the requirements of this Ordinance, including buffer requirements for habitat conservation areas. This site must also have access and a sewage disposal system location that are suitable for development and does not adversely impact the FWHCA.
  - b. After preliminary approval and prior to final land division approval, the Director shall require the common boundary between a required buffer and the adjacent property be identified using signs. In lieu of signs, alternative methods of buffer identification may be approved when such methods are determined by the Director to provide adequate identification to the buffer and the FWHCA.
  - c. Buffer areas shall be dedicated as permanent open space tracts, functioning as critical areas buffers.
7. Agricultural Restrictions: In all development proposals which would permit introduction of agriculture adjacent to FWHCA, damage to the area shall be minimized by the following methods:
  - a. Implementation of the farm conservation plan agreed upon by the Mason Conservation District and the applicant, to protect the water quality of the aquatic management area. The conversion of wood lots to other agricultural uses will require such a farm plan. (The farm conservation plan is not in lieu of a HMP.); and/or,
  - b. Fencing located not closer than the outer buffer edge.
  - c. A Mason Environmental Permit is not required for those agricultural activities defined in 17.01.070 (Wetlands) which could also occur in a FWHCA.
8. Utilities: Placement of utilities within designated Fish and Wildlife Habitat Conservation Areas may be allowed pursuant to the following standards:

- a. Construction of utilities may be permitted in FWHCA's or their buffers, only when no practicable or reasonable alternative location is available and the utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below. Utilities are encouraged to follow existing or permitted roads where possible.
  - b. Construction of sewer lines or on-site sewage systems are not permitted in FWHCA's or their buffers, except that they may be permitted in a buffer area when the applicant demonstrates it is necessary to meet State and/or local health code requirements; there are no other practicable alternatives available; and construction meets the requirement of this section. Joint use of the sewer utility corridor by other utilities may be allowed.
  - c. New Utility Corridors shall not be allowed in FWHCA's with known locations of federal or state listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as state candidate or state monitor, except in those circumstances where an approved Habitat Management Plan is in place;
  - d. Utility corridor construction and maintenance shall protect the environment of Fish and Wildlife Habitat Conservation Areas and their buffers.
    - (1) New utility corridors shall be aligned when possible to avoid cutting trees greater than 12 inches in diameter at breast height (four and one-half feet) measured on the uphill side.
    - (2) New utility corridors shall be revegetated with appropriate native vegetation at not less than pre-construction vegetation densities or greater, immediately upon completion of construction or as soon thereafter as possible due to seasonal growing constraints. The utility shall ensure that such vegetation survives for a three year period;
  - e. Utility towers should be painted with brush, pad or roller and should not be sandblasted or spray painted, nor shall lead base paints be used.
9. **Bank Stabilization:** A stream channel and bank, bluff, and shoreline may be stabilized when naturally occurring earth movement threatens existing legal structures (structure is defined for this purpose as those requiring a Building Permit pursuant to the Uniform Building Code), public improvements, unique natural resources, public health, safety or welfare, or the only feasible access to property, and, in the case of streams, when such stabilization results in maintenance of fish habitat, flood control and improved water quality. Bluff, bank and shoreline stabilization shall follow the standards of the Mason County Shoreline Master Program, Landslide Hazard Areas, and any floodplain management plan adopted by the Board of Commissioners.

The Director may require that bank stabilization be designed by a professional engineer licensed in the State of Washington with demonstrated expertise in hydraulic actions of shorelines. For bank stabilization projects within FWHCAs, emphasis shall be placed on bioengineering solutions (vegetation versus hard surfaces) unless proved by the applicant to be infeasible. Bank stabilization projects may also require a Hydraulic Project Approval from the Washington Department of Fish and Wildlife and will be determined after consultation with WDFW.
10. **Gravel Mining:** Gravel mining is discouraged within FWHCAs or their buffers, and it shall not be permitted if it causes significant adverse environmental impact, but it may be allowed following the review and approval of a Habitat Management Plan, including a detailed mining and reclamation plan.

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11. Forest Practices, Class IV General : Timber harvesting with associated development activity involving land conversions from Forest Use, or otherwise meeting the DNR definition as a Class IV General application, shall comply with the provisions of this Ordinance including the maintenance of buffers, where required.
12. Road/Street Repair & Construction: Any private or public road or street expansion or construction which is allowed in a Fish and Wildlife Habitat Conservation Area or its buffer shall comply with the following minimum development standards:
  - a. No other reasonable or practicable alternative exists and the proposed road or street serves multiple properties whenever possible;
  - b. Public and private roads should provide for other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc.; and,
  - c. The road or street construction is the minimum necessary, as required by the Department of Public Works and Fire Marshall, and shall comply with the Department of Public Works' guidelines and Fire Code to provide public safety and mitigated storm water impacts. Minimum necessary provisions may include projected level of service requirements.
  - d. Construction time limits shall be determined in consultation with the Washington Department of Fish and Wildlife in order to ensure species and habitat protection.
13. Conservation: Any conservation, preservation, or enhancement projects to protect functions and values of the critical area system, including activities and mitigation allowed pursuant to the mitigation priorities identified in Section J.
14. Outdoor Recreation, Education and Trails: Activities and improvements which do not significantly affect the function of the Fish and Wildlife habitat or regulated buffer (including viewing structures, outdoor scientific or interpretive facilities, trails, hunting blinds, etc.) may be permitted in FWHCA or their buffers.
  - a. Trails and other facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or other such previously disturbed areas;
  - b. Trails and other facilities shall be planned to minimize removal of trees, shrubs, snags and important wildlife habitat;
  - c. Viewing platforms, interpretive centers, benches and access to them, shall be designed and located to minimize of wildlife fish, or their habitat and/or critical characteristics of the affected conservation area.
  - d. Trails, in general, shall be set back from streams so that there will be no or minimal impact to the stream from trail use or maintenance. Trails shall be constructed with pervious surfaces when feasible and trails within FWHCAs are not intended to be used by motorized vehicles.
15. Mobile home or RV parks: new or expanded mobile home or RV parks shall comply with the following development standards:
  - a. Lots or spaces and other improved areas shall be outside of the aquatic management area and its buffer. Roads, utilities, and trails may encroach on the buffer or aquatic area as provided elsewhere in this section . The project as a whole shall not adversely impact the FWHCA.
  - b. The common boundary between a required buffer and the adjacent property shall be identified using signs or alternative methods determined by the Director to provide adequate identification to the buffer and the FWHCA.

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- c. Buffer areas shall be designated as open space and preserved to the extent possible.
16. Chemicals Application or Storage: Chemical applications are not permitted within FWHCAs unless expressly approved as part of a farm plan, forest practices application or for the control of invasive or noxious plant species. In cases where approved chemical applications occur as part of a forest practices application or farm plan, proper reporting procedures shall be followed. Chemical storage shall not be permitted within a aquatic management area or its buffer.
17. All development in tidal/saltwater submerged lands shall mitigate impacts to eel grass and kelp beds. If eel grass or kelp is known or suspected in the vicinity, then an aquatic vegetation survey is required identify the location of eel grass or kelp.

### H. ACTIVITIES WHICH REQUIRE A MASON ENVIRONMENTAL PERMIT IN TERRESTRIAL MANAGEMENT AREAS

All major new development projects that are associated with known locations Terrestrial Management Areas will require the submittal and County approval of a Habitat Management Plan (HMP). In the case of bald eagles, an approved Bald Eagle Management Plan by the Washington State Department of Fish and Wildlife meets the requirements for a HMP. This sub-section is not intended to apply to aquatic species as provisions in the aquatic management areas are intended to provide protection for those species.

### I. HABITATS AND SPECIES OF LOCAL IMPORTANCE -- LISTING & DELISTING IMPORTANT HABITATS & SPECIES

1. Locally significant species are those which are not state listed as threatened, endangered or sensitive, but which live in Mason County, and the species is special importance to the citizens of Mason County for cultural or historical reasons, or the county is a critically significant portion of their range. Mason County is a critically significant portion of the range of a species when the following conditions apply:
  - a. The species would be extirpated from the state of Washington if it is extirpated from Mason County;
  - b. The species' population would be divided into non-viable populations if it is extirpated from Mason County, where the isolated populations are critical to the survival of the species;
  - c. The species is listed as a state monitor species and Mason County is a significant portion of the range of the species and significant reduction or extirpation of the species from Mason County would result in changing the status of the species to that of state endangered, threatened, or sensitive;
2. Locally significant habitats are those habitats in which significant species live, or which is of special importance to the citizens of Mason County because they have been determined to contribute to the variety of habitats or diversity of species.
3. Regulations prepared to protect locally important habitat and species shall enable and support the economic development of Mason County and the use of resource lands and resources industry, shall enhance the affordability of housing, and otherwise promote the achievement of other goals in the Mason County Comprehensive Plan.



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4. The process for listing or delisting an important habitat or species in Mason County shall be an amendment to this section of the Interim Resource Ordinance. This action may be initiated by request of the State Department of Fish & Wildlife, affected Tribe(s), County staff, or interested citizens. Any such request shall be in writing and shall include:
  - a. The common and scientific names of for species under consideration;
  - b. Habitat location on a map (scale 1:24,000);
  - c. The reasons for the request, including:
    - (1) declining or increasing population,
    - (2) sensitivity to habitat manipulation.
  - d. Habitat management recommendations, including potential uses and restrictions of the habitat areas, seasonally sensitive areas, and other guidelines necessary for the protection of the nominated species.
  - e. Other supporting documentation, including an analysis which weighs the non-environmental impacts of the proposal, addressing economics and land use, against the benefits of the proposed listing.
5. The written request and supporting data may be evaluated by a qualified wildlife biologist or equivalent professional selected by the County.
6. In addition to the above, the County shall consider the following factors when evaluating the request:
  - a. The specificity and scientific validity of the information about the nominated species needs and behaviors;
  - b. The sufficiency of habitat areas currently available to sustain the species over time; and
  - c. The versatility of the proposed habitat area to sustain species other than the one being nominated for local species of importance designation.

### J. APPLICATION REVIEW PROCESS

1. Upon the receipt of an application for development, the Director shall determine whether the requirements of this section apply. The Director may consult with affected Tribes or state agencies in determining that the subject property is shown to be documented habitat for federal or state listed endangered, threatened or sensitive species.
2. Boundaries: The procedures for formal determination of regulated Fish and Wildlife Habitat Conservation Area boundaries are as follows:
  - a. Aquatic Management Areas: The boundary for aquatic management areas shall be the Ordinary High Water Mark (OHWM).
  - b. Terrestrial Management Areas: The boundary of terrestrial management areas may be determined using published databases, resource agency personnel, consultation with affected Tribes, and/or by a qualified environmental professional based upon site specific assessment and species presence.
3. Permit information: When a Mason Environmental Permit is required under this section, it is the applicant's responsibility to provide all necessary and accurate data to the County for its review. This information will include a field delineation by a

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qualified professional (biologist, hydrologist, soil scientist, and/or other expert as circumstances warrant). Formal boundary determination is the responsibility of the County.

- a. When sufficient information exists from the County's natural resource inventory or other sources, the Director may waive the requirement of a field delineation, provided a qualified professional has reviewed and approved such information as reliable.
  - b. When requested by the applicant, or an affected party, the County may perform the data collection, at a fee, in lieu of direct action by the applicant.
  - c. Where Mason County performs a formal determination at the request of the applicant pursuant to subsection b above, it shall be considered a final determination unless contested by the applicant or other affected party.
  - d. Where the applicant has provided the information in support of a permit for a formal determination by the County of the Fish and Wildlife Habitat Conservation Area boundary, the Director shall verify the accuracy of, and may render adjustments to, the boundary determination in compliance with the provisions of this ordinance.
4. When a Mason Environmental Permit is required, the permit shall be obtained from the County using the administrative review process in this chapter prior to undertaking regulated activities in a FWHCA or its buffer.
  5. In addition to any other requirements, permits shall only be granted if:
    - a. The proposed activity avoids adverse impacts to regulated FWHCA, or takes affirmative and appropriate measures to compensate for impacts. Mitigation sequencing should follow the avoidance, reduction, and compensation analysis, in that order of preference, and
    - b. The proposed activity is consistent with an approved Habitat Management Plan, if such a plan is prepared; or
    - c. The proposed activity is approved as a variance or reasonable use exception under this chapter, if applicable.
  6. FWHCA permits shall not be effective and no activity thereunder shall be allowed during the time provided to file and process a permit appeal.

### K. HABITAT MANAGEMENT PLAN (HMP) REQUIREMENTS

A habitat management plan shall be prepared for regulated uses or activities which are located in a priority habitat or within 1/4 mile of a sensitive, threatened, or endangered species point location (den or nest site). The following describes the requirements of a Habitat Management Plan.

A HMP shall consider measures to preserve and protect the wildlife habitat and shall consider effects of land use intensity, buffers, setbacks, impervious surfaces, erosion control and retention of natural vegetation.

This report shall identify how the impacts from the proposed use or activity will be avoided or mitigated through habitat mitigation which meets the purposes of this ordinance. The Management Recommendations for Washington's Priority Habitats and Species (1991), as now or hereafter amended, and consultation with a habitat biologist from the Washington State Department of Fish and Wildlife and affected Tribe(s) and shall be the basis for the report.

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The Habitat Management Plan shall be prepared by a qualified professional and shall be approved in writing by the Director. It shall contain but not be limited to the following information:

1. A map(s) prepared at an easily readable scale, showing:
  - a. The location of the proposed site;
  - b. The relationship of the site to surrounding topographic and built features;
  - c. The nature and density of the proposed use or activity;
  - d. Proposed building locations and sizes;
  - e. A legend which includes:
    - (1) A complete and accurate legal description and total acreage of the parcel;
    - (2) Title, scale, date, and north arrow;
    - (3) Certification by a qualified biologist.
  - f. Existing structures and landscape features including the name and location of all water bodies.
  - g. Location of priority habitat types or priority species point locations.
2. A report which contains:
  - a. A description of the nature, density and intensity of the proposed use or activity in sufficient detail to allow analysis of such land use change upon identified wildlife habitat;
  - b. An analysis of the effect of the proposed use or activity upon fish and wildlife species and their habitats, identified within the Priority Habitat and Species Program as defined in this ordinance which includes species and habitats of local importance.
  - c. A plan which explains how the applicant will avoid, minimize or mitigate adverse impacts to fish and/or wildlife habitats created by the proposed use or activity. This explanation must address the management goals, policies and recommendations presented in this ordinance. Monitoring of mitigation shall be required when appropriate or necessary for effectiveness. Mitigation measures within the plan may include, but are not limited to:
    - (1) Establishment of buffer areas;
    - (2) Preservation of critically important plants and trees;
    - (3) Limitation of access to habitat area;
    - (4) Seasonal restriction of construction activities;
    - (5) Clustering of development and preservation of open space;
    - (6) Sign marking habitats or habitat buffer areas;
    - (7) Title notice or plat dedication warning statements;
    - (8) Conservation easements.
3. Review comments by a habitat biologist from the Washington State Department of Fish and Wildlife (WDFW) and affected Tribe(s) shall be included in the HMP when available. If the HMP recommends mitigation involving federally listed threatened or endangered species, migratory waterfowl or wetlands, the U.S. Fish and Wildlife Service shall receive a copy of the draft HMP and their review comments shall be included in the final report.

This is provided that the Washington State Department of Fish and Wildlife, affected Tribe(s) and, if required, the U.S. Fish and Wildlife Service respond in writing to the Director with review comments or a request for additional information within 15 days from the date of issuance of a draft habitat management plan. If review comments or a request for additional information is not received in the prescribed time frame, the

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tribal, state and/or federal review comments on the habitat management plan shall not be required for completion of the HMP. The Director shall have the authority to approve habitat management plans or require additional information.

### L. RELIEF FROM THE REQUIREMENTS IN THIS SECTION

Specific relief from the requirements of this section may be obtained on a case-by-case basis by applying for a variance (Section 17.01.150) or a reasonable use exception (Section 17.01.120).

## **SECTION 2: AMEND SECTION 17.01.040, ESTABLISHMENT OF DESIGNATED LANDS, SUBSECTION C. 1., TO READ AS FOLLOWS:**

1. Designated resource lands and critical areas are bounded and defined, in part, as shown on the following official maps of Mason County, which together with all explanatory materials contained thereon, are hereby made a part of this Chapter. These maps will automatically be updated as new data becomes available.
  - a. "Mason County Long-Term Commercial Forest and Inholdings Map"
  - b. "Water Type Reference Maps of Mason County", Department of Natural Resources, Types I, II, III, IV, and V Waters Only.
  - c. "Mason County Soil Survey Map", United States Department of Agriculture; Series 1951, No. 9.
  - d. "Mason County Critical Aquifer Recharge Areas Map"
  - e. "The Flood Insurance Study for Mason County", U.S. Federal Emergency Management Agency
  - f. "National Wetlands Inventory", U.S. Fish and Wildlife Service, and all Mason County Maps referencing wetlands.
  - g. The approximate location and extent of critical fish and wildlife habitat areas as displayed in the Washington Department of Fish and Wildlife's (WDFW) Priority Habitat and Species (PHS) Program database.
  - h. Kelp and eelgrass beds, identified by the Department of Natural Resources Aquatic Lands Division and the Department of Ecology, including but not limited to locations of kelp and eelgrass beds compiled in the Puget Sound Environmental Atlas.
  - i. Herring and smelt spawning times and locations outlined in WAC 220-110-240 through 220-110-260 and the Puget Sound Environmental Atlas.

Each map shall state the source or sources of scientific and other methodologies used in the determination of boundaries, and all maps shall be individually stored and available for review at the Mason County Department of Community Development, except for the Priority Habitat and Species Program data, which is available to the public from the WDFW.

**SECTION 3: AMEND SECTION 17.01.120 DEVELOPMENT REVIEW PROCESS, SUBSECTION H.1., TO READ AS FOLLOWS:**

1. Developments lying within one or more designated critical areas may be required by the Director to submit a Special Study or Plan that assures the proposed development does not degrade the functions and values of those critical areas. Those studies include:
  - a. Wetland Delineation Report under Section 17.01.070
  - b. Wetland Mitigation Plan under Section 17.01.070 and 17.01.200 I.
  - c. Aquifer Recharge Area Report under Section 17.01.080
  - d. Geological Report under Section 17.01.100
  - e. Habitat Management Plan under Section 17.01.110

**SECTION 4: AMEND SECTION 17.01.240 DEFINITIONS, BY ADDING THE FOLLOWING DEFINITIONS:**

**Commercial and recreational shellfish areas:** All public and private tidelands or bedlands suitable for shellfish harvest, including commercial and recreational shellfish areas, and including any shellfish protection districts established pursuant to chapter 90.72 RCW

**Conservation Futures:** As provided in section 84.34.220 RCW, conservation futures are the rights in perpetuity to future development which may be acquired by the county on any open space land, farm and agricultural land, and timberland which are so designated under the provisions of chapter 84.34 RCW and taxed at current use assessment as provided by that chapter. Revenue for this purpose is provided by an optional levy on assessed valuation of all taxable property within the county.

**Habitats and Species of Local Importance:** Habitats of local importance include, a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term [WAC 365-190-030(9)]; Species of local importance are those species that are of local concern due to their population status or their sensitivity to habitat manipulation

**Major New Development:** Major new development includes and is limited to all activities which require subdivision, short subdivision, or large lot subdivision approval, mobile home park or RV park approval, grading permit approval, or building permit approval, provided that this does not include repair, remodel, or alteration of existing buildings which do not increase the foot print of the building by more than 10%.

**SECTION 5: AMEND SECTION 17.01.240 DEFINITIONS, BY REPLACING THE EXISTING DEFINITION WITH THE FOLLOWING DEFINITIONS:**

**Streams:** Those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds and defined channel swales. The channel or bed need not contain water year round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses, unless they are used by salmon or used to convey streams naturally occurring prior to construction. For regulatory purposes under this Chapter once streams are identified, the streams are typed following DNR Water Types 1-5(WAC 222-16-030).



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**Danger Tree:** A tree with a high probability of falling due to a debilitating disease, a structural defect, a root bass more than 50% exposed, or having been exposed to wind throw within the past 10 years, and where there is a residence or residential accessory structure within a tree lengh of the base of the trunk, or where the top of a bluff or steep slope is endangered. Where not immediately apparent to the review authority, the danger tree determination shall be made after review of a report prepared by an arborist or forester.