

CHAPTER 7

DEFINITIONS

7.1 GENERAL

For the purpose of this Master Program, certain terms and their derivations shall be construed as specified in this section. Some terms used in this Master Program may have a different definition and application under other City of Mountlake Terrace regulations. Words in the singular include the plural, the plural the singular. The words “shall” and “will” are mandatory; the word “may” is permissive.

Additional definitions applicable to this master Program and adopted by reference herein, are found in RCW 90.58 and Chapters 173-26 and 173-27 WAC. The following definitions apply throughout this Program, unless otherwise indicated.

If a definition is not included here, the city shall rely on definitions found in applicable citations in the Revised Code of Washington (RCW), Washington Administrative Code (WAC), the Mountlake Terrace Municipal Code (MTMC), and finally a standard dictionary, in that order. In case of conflict with the MTMC, the definition within the RCW, WAC, and/or this Master Program shall prevail.

7.2 DEFINITIONS

"Act" means the Washington State Shoreline Management Act, Chapter 90.58 RCW.

“Administrator” or “Shoreline Administrator” means the person, per MTMC 18.05.310, responsible for administering and interpreting the City of Mountlake Terrace Shoreline Master Program and Chapter 16.10 MTMC.

"Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation; agricultural activities do not include community gardens, “pea patches,” or personal gardens that are accessory to a residential use.

“Anadromous fish” means fish, such as wild salmon, that migrate up rivers from the sea to breed in fresh water.

“Applicant” means the person, party, firm, corporation, or other entity that proposes or has performed any activity that affects a shoreline or critical area.

“Aquaculture” is the culture or farming of food fish, shellfish, or other aquatic plants and animals.

“Aquifer” means, generally, any water-bearing soil or rock unit. Specifically, a body of soil or rock that contains sufficient saturated permeable material to conduct ground water and yield economically significant quantities of ground water to wells or springs.

“Aquifer recharge area” means an area where, due to permeable soils, water infiltrates from the surface to ground water aquifers. Recharge areas are classified as “low,” “medium” or “high” based on the soil and ground water conditions and risks depending on the combined effects of hydrogeological susceptibility to contamination and contaminant loading potential, as follows:

- a. Low significance/low susceptibility recharge areas – uplands and sloping areas underlain by soils consisting largely of silt, clay or glacial till.
- b. Medium significance/medium susceptibility – upland areas underlain by soils consisting largely of sand and gravel, and valley floors underlain by soils consisting largely of sand, silt and clay in which there is a significant upward component to ground water flow within the valley alluvium.
- c. High significance/high susceptibility – valley floors, uplands and sloping areas underlain by soils consisting largely of sand and gravel in which there is a predominantly downward or lateral component to ground water flow, and which serve as a source of drinking water.

“Aquifer susceptibility” means a contributory factor of potential contamination of an aquifer that results from soil, rock and ground water characteristics within a recharge area.

“Aquifer vulnerability” means the combined effect of aquifer susceptibility and contaminant loading potential; it includes hydrogeologic, land use and other factors that affect the potential for ground water contamination.

“Artificially created wetland” means wetlands created from non-wetland sites through purposeful, legally authorized human action, such as irrigation and drainage ditches, grass-lined swales, canals, retention or detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities.

"Associated wetlands" means those wetlands which are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act.

"Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

“Base flood” or “100-year flood” means a flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the “100-year flood.” The base flood is determined for existing conditions, and is shown on Flood Insurance Rate Maps (FIRM), current version; unless a more complete basin plan including projected flows under future developed conditions has been completed and adopted by the City of Mountlake Terrace, in which case these future flow projections shall be used. In areas where the flood insurance study for the City includes detailed base flood calculations, those calculations may be used.

“Base flood elevation” or “BFE” means the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD) or other datum specified on the Flood Insurance Rate Map (FIRM).

“Boat launch or ramp” means graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

“Boating facilities” means public or private dry storage and wet-moorage facilities and structures; boat launch ramps, covered moorage, boathouses, mooring buoys, and marine travel lifts. For the purposes of this Master Program, "boating facilities" excludes docks serving four or fewer single-family residences.

“Boathouse” means a structure designed for storage of vessels located over water. Boathouses should not be confused with "houseboats.”

“Buffer” or “buffer area, critical area” means a naturally vegetated and undisturbed, enhanced or revegetated zone surrounding a critical area and which protects the critical area from adverse impacts to its integrity and value and is an integral part of the resource’s ecosystem.

“Building setback” means an area that is the outermost portion of a critical area buffer and that may provide a transition between the primary portion of the critical area buffer and the potential location of a building.

“Bulkhead” means those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting existing primary structures and/or appurtenant structures from loss or damage by erosion.

"Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

“City” means the City of Mountlake Terrace.

“Clearing” means the removal of timber, brush, grass, ground cover or other vegetative matter from a site which exposes the earth’s surface of the site, or any actions which disturb the existing ground surface.

“Commercial facilities” means a category of land use that includes commercial services, offices, retail, eating/drinking establishments, studios, and similar facilities, excluding unless otherwise specified uses

within the following categories: home occupations, medical/health care, recreation/entertainment/cultural facilities, lodging, schools/day care centers, membership organizations, public service facilities, and industry, except as the definition may be amended by Title 19 MTMC.

“Comprehensive Plan” means the City of Mountlake Terrace Comprehensive Plan as now adopted or hereafter amended.

"Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within this Master Program;

“Contaminant loading potential” means the availability within an aquifer recharge area of any potential physical, chemical, biological, or radiological substance that enters the hydrological cycle and may cause a deleterious effect on ground water resources.

“Creation of critical areas” means the purposeful and legally authorized construction or forming of a wetland or stream from an upland (non-wetland or dry) site through artificial means.

“Critical aquifer recharge areas” means areas where an aquifer that is a source of drinking water is both highly susceptible and vulnerable to contamination. High significance/high susceptibility recharge areas – generally uplands and sloping areas underlain predominantly by sand and gravel, and valley floors underlain by relatively coarse alluvium – are considered to be critical recharge areas unless site-specific information demonstrates little or no contaminant loading potential.

“Critical area” or “environmentally critical area” means areas that possess important natural functions and embody a variety of important natural and community values. Such areas include wetlands, streams, fish and wildlife habitat, geologic hazard areas, aquifer recharge areas, flood hazard areas, and areas with significant trees and vegetation. If not conducted properly, development or alteration of such areas may cause significant impacts to the valuable functions and values of these areas and/or may generate risks to the public health and general welfare, and/or to public and private property.

“Critical area report” means a report prepared by a “qualified consultant” (as that term is defined in this section) to determine the presence, type, class, size, function and/or value of an area subject to these regulations. Also, see “Stream reconnaissance report,” “Wetland impact assessment report,” and “Wildlife report.”

“Critical erosion hazard areas” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Soil Conservation Service (SCS) (now known as the Natural Resource Conservation Service) as having “severe” or “very severe” erosion hazards. This includes, but is not limited to, the following group of soils when they occur on slopes of 15 percent or greater: Alderwood-Kitsap (AkF), Alderwood gravelly sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD) and Indianola (InD). Additional soil groups may be identified through site-specific analysis.

“Critical geologic hazard areas” means lands or areas subject to high or severe risks of geologic hazard, including critical erosion hazard areas, critical landslide hazard areas, and critical seismic hazard areas.

“Critical habitat,” “critical wildlife habitat,” or “critical fish and wildlife conservation area” means habitat areas associated with threatened, endangered, sensitive, monitor or priority species of plants or wildlife and which, if altered, could reduce the likelihood that the species will maintain and reproduce over the long term. Such areas are identified herein with reference to lists, categories and definitions of species promulgated by the Washington Department of Fish and Wildlife (Nongame Data System Special Animal Species) as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted currently or hereafter by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.

“Critical landslide hazard areas” means lands or areas where there is a high (Class III) or very high (Class risk of landslide due to a combination of slope, soil permeability and water.

“Critical seismic hazard areas” means lands or areas where there is a high risk of seismic events and damage.

“Department” means the City of Mountlake Terrace Community and Economic Development Department, or successor agency, unless the context indicates a different City department.

“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 obstruction; storage of equipment and materials; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlaying lands subject to the Act at any state of water level. “Development” does not include dismantling or removing structures if there is no other associated development or re-development.

“Director” means the Director of the City of Mountlake Terrace Community and Economic Development Department, or his/her designee.

“Dock” means a structure designed to protrude overwater or float upon the water, and which is attached to the shoreline and is used for moorage or other water-related activity such as swimming or diving.

“Dredging” means the removal of earth, sand, sludge or other materials from the bottom of a stream, river, lake, bay or other water body. Provided that the creation of temporary depressions or contour alterations of tidelands or bedlands through the use of aquacultural harvesting equipment approved by the Department of Fisheries shall not be construed to be dredging as defined in this Master Program.

“Earth/earth material” means naturally occurring rock, soil, stone, sediment, or a combination thereof.

“Ecological functions” or “shoreline functions” means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem. See WAC 173-26-200(2)(c).

“Ecosystem-wide processes” means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

“Emergency” means an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the master program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements (RCW 90.58.030(3)(e)(ii) and WAC 173-27-040(2)(d)).

“Enhancement” means the improvement of an existing viable wetland, stream or habitat area or the buffers established for such areas, through such measures as increasing plant diversity, increasing wildlife habitat, installing environmentally compatible erosion controls, increasing structural diversity or removing plant or animal species that are not indigenous to the area. Enhancement also includes actions performed to improve the quality of an existing degraded wetland, stream or habitat area. See also “Restoration.”

“Erosion” means a process whereby wind, rain, water and other natural agents mobilize and transport soil particles.

“Erosion hazard areas” means lands or areas that, based on a combination of slope inclination and the characteristics of the underlying soils, are susceptible to varying degrees of risk of erosion. Erosion hazard areas are classified as “low” (areas sloping less than 15 percent) or “high” (areas sloping 15 percent or more) on the following Soil Conservation Service (SCS), now known as the Natural Resource Conservation Service (NRCS), soil types: Alderwood-Kitsap (AkF), Alderwood gravelly sandy loam (AgD), Kitsap silt loam (KpD), Everett (EvD) and Indianola (InD). Additional soil groups may be identified through site-specific analysis.

“Excavate or excavation” means the removal or displacement of earth material by human or mechanical means.

"Exempt" developments are those set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515, and in Chapter 6 of this Master Program when consistent with these citations, which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the Act and the local master program;

“Exotic” means any species of plant or animal that is foreign and not indigenous to the Mountlake Terrace area.

"Fair market value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

"Feasible" means, for the purpose of this Master Program, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

- a. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- b. The action provides a reasonable likelihood of achieving its intended purpose; and
- c. The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

"Fill" (verb) means the addition of soil, sand, rock, gravel, sediment, earth-retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

"Fill/fill material" (noun) means a deposit of earth material placed by human or mechanical means.

"Filling" means the act of transporting or placing (by any manner or mechanism) fill material from, to, or on any surface water body or wetland, soil surface, sediment surface, or other fill material.

"Float" or "recreational float" means a floating structure that is moored, anchored, or otherwise secured in the water offshore and that may be associated with a fixed-pile pier, or may be a standalone structure, such as platforms used for swimming and diving.

"Floating home" means a structure designed and operated substantially as a permanently based over water residence. Floating homes are not vessels and lack adequate self-propulsion and steering equipment to operate as a vessel. They are typically served by permanent utilities and semi-permanent anchorage/moorage facilities.

"Flood hazard areas" means those areas subject to inundation by the base flood. "Flood Insurance Rate Map (FIRM)" means the official map prepared as part of (but published separately from) the Flood Insurance Rate Study on which the Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazards and the applicable risk premium zones.

"Floodplain" means the area subject to inundation by the base flood.

"Floodway" means the area that has been established in Federal Emergency Management Agency Flood Insurance Rate Maps (FEMA FIRMs) or floodway maps.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, as defined and regulated by the Forest Practices Act, RCW 76.09.

"Frequently flooded areas" are lands in the flood plain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high groundwater. These areas include, include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency

(FEMA) National Flood Insurance Program (NFIP).

“Geologic hazard areas” means lands or areas characterized by geologic, hydrologic and topographic conditions that render them susceptible to varying degrees of potential risk of landslides, erosion, or seismic or volcanic activity; and areas characterized by geologic and hydrologic conditions that make them vulnerable to contamination of ground water supplies through infiltration of contaminants to aquifers.

"Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties.

Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

“Grading” means any excavating, filling, clearing, leveling, or contouring of the ground surface by human or mechanical means.

“Habitat management” means management of land and its associated resources/features to maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. This does not imply maintaining all habitat or individuals of all species in all cases.

“Hearings board” means the Shorelines Hearings Board established by the Act.

"Height" is measured from average grade level to the highest point of a structure: Provided, That television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included: Provided further, That temporary construction equipment is excluded in this calculation;

“High impact land use” means land uses which are likely to have significant adverse impacts to critical areas because of the intensity of the use, levels of human activity, use of machinery or chemicals, site design or arrangement of buildings and structures. High impact land uses include, but are not limited to, active recreation, residential, institutional, commercial, and industrial land uses.

“Houseboat” means a vessel, principally used as an over water residence. Houseboats are licensed and designed for use as a mobile structure with detachable utilities or facilities, anchoring and the presence of adequate self-propulsion and steering equipment to operate as a vessel. Principal use as an overwater residence means occupancy in a single location, for a period exceeding two months in any one calendar

year. This definition includes liveaboard vessels.

“Hydrologically isolated” means wetlands which: (1) have no surface water connection to a lake, river, or stream during any part of the year; (2) are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream; and (3) have no contiguous hydric soil between the wetland and any lake, river, or stream. May also be a pond excavated from uplands with no surface water connection to a stream, lake, or other wetland.

“In-kind wetland mitigation” means replacement of wetlands with substitute wetlands whose characteristics closely approximate those destroyed or degraded by a regulated activity.

"In-stream/lake structure" means a structure placed by humans within a stream or lake waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

“Intentionally created streams” means streams created through purposeful human action, such as irrigation and drainage ditches, grass-lined swales, and canals. This definition does not include stream modifications performed pursuant to City authorization, such as changes or redirection of stream channels.

“Industrial” means those fields of economic industry that include natural resource extraction, construction, manufacturing, processing, trucking, freight distribution, communication, production or distribution of power, sanitary services, mini-warehouses, warehouse storage, large-scale cleaning facilities, large-scale vehicle service stations, research and development laboratories, machine shops, wholesale sales/trade and distribution, solid waste facilities, and operations that may involve noise, vibration, or odor not appropriate to commercial or residential areas.

“Landfill” means the creation of or addition to, a dry upland area (landward of the OHWM) by the addition of rock, soil, gravels and earth or other material. “Landfill” does not include solid or hazardous waste.

“Landslide” means episodic downslope movement of a mass of soil or rock.

“Landslide hazard areas” means areas that, due to a combination of slope inclination, relative soil permeability, and hydrologic conditions are susceptible to varying degrees of risk of landsliding. Landslide hazard areas are classified as Classes I through IV based on the degree of risk as follows:

- a. Class I/Low Hazard. Areas with slopes of less than 15 percent.
- b. Class II/Moderate Hazard. Areas with slopes of between 15 percent and 40 percent and that are underlain by soils that consist largely of sand, gravel or glacial till.
- c. Class III/High Hazard. Areas with slopes between 15 percent and 40 percent that are underlain by soils consisting largely of silt and clay.
- d. Class IV/Very High Hazard. Areas with slopes steeper than 15 percent with mappable zones of emergent water (e.g., springs or ground water seepage), areas of known (mappable) landslide deposits regardless of slope, and all areas sloping more steeply than 40 percent.

The slopes referenced above include only those where the surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

“Lot coverage” includes the portion of the lot that is covered by buildings, parking surfaces, patios and walkways in shoreline jurisdiction.

“Low impact land use” means land uses which are not likely to have significant adverse impacts to critical areas because of the intensity of the use, levels of human activity, use of machinery or chemicals, site design or arrangement of buildings and structures. Depending on the specific context, examples of low impact land uses may include utility facilities and passive recreation.

“Master Program” means the comprehensive shoreline use plan for the City of Mountlake Terrace and the use regulations together with maps, diagrams, charts or other descriptive material and text, a statement of desired goals and standards developed in accordance with the policies enunciated in Section 2 of the Shoreline Management Act of 1971.

“Mining” means the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses.

“Mitigation” means measures to mitigate unavoidable environmental impacts not otherwise avoided or mitigated by compliance with the Master Program and other applicable regulations to assure no net loss of shoreline ecological functions, in accordance with WAC 173-26-201(2)(e).

“Mitigation sequencing” means considering or performing mitigation actions, as defined in the definition of “mitigation,” in a preferred sequence as follows, in accordance with WAC 173-26-201(2)(e):

- a. Avoiding the impact altogether by not taking a certain action or parts of an action;
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- d. Reducing or eliminating the impact over time by preservation and maintenance operations;
- e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

“Moorage” means any device or structure used to secure a vessel for temporary anchorage, but which is not attached to the vessel (such as a pier or buoy).

“Moorage piles” means structural members that are driven into the lake bed to serve as a stationary moorage point. They are typically used for moorage of small boats in the absence of, or instead of, a dock or pier. In some cases, moorage piles may be associated with a dock or pier.

“Mooring buoy” means a floating object anchored to the bottom of a water body that provides tie up capabilities for vessels.

“Native vegetation” means vegetation existing on a site or plant species which are or were indigenous to the area in question.

"Natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

“Nonconforming use” means an existing shoreline use that was lawfully established prior to the effective date of the Act or the applicable master program, but which does not conform to present use regulations due to subsequent changes to the master program.

“Nonconforming development” or “nonconforming structure” means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.

“Nonconforming lot” means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.

"Non-water-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

“Off-site mitigation” means performance of mitigation actions, pursuant to standards established in this Master Program, on a site or in an area other than that proposed for conduct of a regulated activity.

"Ordinary high water mark," abbreviated OHWM, means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water;

“Out-of-kind mitigation” means replacement of wetlands or habitat with substitute wetlands or habitat whose characteristics do not closely approximate those adversely affected, destroyed or degraded by a regulated activity.

“Overwater structure” means any device or structure projecting over the ordinary high water mark, including, but not limited to piers, docks, floats, and moorage.

“Parking, Principal Use” is commercial parking which is the principal use on the property and is not accessory to another use.

"Party of record" includes all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the

application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.

“Permanent erosion control” means continuous on-site and off-site control measures that are needed to control conveyance or deposition of earth, turbidity or pollutants after development, construction, or restoration.

“Permit” means that required by the Act for substantial development of shorelines, to be issued by the local government entity having administrative jurisdiction and subject to review by the Department of Ecology and the Attorney General.

"Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.

“Pier” means a fixed structure which abuts the shoreline and is used for moorage or other water-related activities such as fishing, swimming and diving.

“Plant association of infrequent occurrence” means one or more plant species which because of the rarity of the habitat and/or the species involved, or for other botanical or environmental reasons, do not often occur in the City of Mountlake Terrace. Examples include but are not limited to:

- a. Wetlands with a coniferous forested class or subclass consisting of trees such as western red cedar, Sitka spruce or lodge pole pine growing on organic soils;
- b. Bogs with a predominance of sphagnum moss, or those containing sphagnum moss, and typically including one or more species such as Labrador tea, sundew, bog laurel or cranberry.

“Priority habitat/species” or “priority wildlife habitat/species” means habitats and species of local importance and concern in urban areas, as identified by the Washington Department of Fish and Wildlife Priority Habitat and Species (PHS) program. “Priority species” are wildlife species of concern due to their population status and their sensitivity to habitat alteration. “Priority habitats” are areas with one or more of the following attributes: comparatively high wildlife density; high wildlife species richness; significant wildlife breeding habitat; significant wildlife seasonal ranges; significant movement corridors for wildlife; limited availability; and/or high vulnerability. General types of priority habitat identified in the PHS program – some of which do not occur in the City of Mountlake Terrace – include Aspen stands, cliffs, meadows, oak woodlands, old growth/ mature forests, riparian areas, shrub- steppe, snag-rich areas and wetlands.

"Provisions" means policies, regulations, standards, guideline criteria or environment designations.

"Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development;

“Qualified Consultant” means, for purposes of these regulations, a person who has attained a degree from an accredited college or university in the subject matter necessary to evaluate the critical area in question (e.g., biology, ecology or horticulture/arboriculture for wetlands, streams and wildlife habitat and significant vegetation, geology and/or civil engineering for geologic hazards and aquifer recharge areas),

and/or who is professionally trained and/or certified or licensed by the state of Washington to practice in the scientific disciplines necessary to identify, evaluate, manage and mitigate impacts to the critical area in question and who has at least two years of experience in the relevant discipline.

“Recreational facilities” means facilities such as parks, trails, and pathways, whether public, private or commercial, that provide a means for relaxation, play, or amusement. For the purposes of this Master Program, recreational facilities are divided into two categories:

- a. Water-dependent (i.e. – moorage facilities, fishing piers, recreational floats) and
- b. Non-water-dependent (i.e. – sports fields, golf courses, and RV camping)

“Redevelopment” means development of a site that contains or has contained real estate improvements such as buildings or other structures, mining, dredging, filling, grading, paving, or excavation.

“Regulated activity” means activities that have a potential to significantly impact a critical area that is subject to the provisions of this Master Program. Regulated activities generally include but are not limited to any filling, dredging, dumping or stockpiling, draining, excavation, flooding, clearing or grading, construction or reconstruction, driving pilings, obstructing, shading, clearing or harvesting.

“Residential Development” means single-family residences, multifamily development, and the creation of new residential lots through land division.

"Restore," "restoration," or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions. See also “Enhancement.”

“Secondary habitat” means areas that offer less diversity of animal and plant species than priority habitat but that are important for performing the essential functions of habitat.

“Seismic hazard areas” means areas that, due to a combination of soil and ground water conditions, are subject to risk of ground shaking, subsidence or liquefaction of soils during earthquakes. These areas are typically underlain by soft or loose saturated soils (such as alluvium), have a shallow ground water table and are typically located on the floors of river valleys.

"Shall" means a mandate; the action must be done.

"Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this Master Program; the same to be designated as to location by the Department of Ecology.

- a. Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent

land extending landward two hundred feet therefrom.

- b. Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(d)(ii) are not subject to additional regulations under this Master Program;

"Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

"Shoreline master program" or "master program" means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

"Shoreline stabilization" includes actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods. Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization. Examples of shoreline stabilization measures include:

- Vegetation enhancement;
- Upland drainage control;
- Biotechnical measures;
- Beach enhancement;
- Anchor trees;
- Gravel placement;
- Rock revetments;
- Gabions;
- Concrete groins;
- Retaining walls and bluff walls;
- Bulkheads; and

- Seawalls.

“Shoreline stabilization, hard” means structural stabilization measures with solid, hard surfaces, such as concrete bulkheads. Hard shoreline stabilization measures include:

- Gravel placement
- Rock revetments
- Gabions
- Concrete groins
- Retaining walls and bluff walls
- Bulkheads

“Shoreline stabilization, soft” means stabilization measures that rely on less rigid materials, such as biotechnical vegetation measures or beach enhancement. Soft shoreline stabilization measures include:

- Vegetation enhancement
- Upland drainage control
- Beach enhancement
- Anchor trees
- coir rolls or biotechnical measures

"Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

"Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

"Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this Master Program, against taking the action.

"Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

“Site” means the location containing a regulated critical area and on which a regulated activity is proposed. The location may be a parcel or portion thereof, or any combination of contiguous parcels where a proposed activity may impact a critical area.

“Slope” means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal

distance to vertical distance.

“Solid waste” means all garbage, rubbish trash, refuse, debris, scrap, waste materials and discarded materials of all types whatsoever, whether the sources be residential or commercial, exclusive of hazardous wastes, and including any and all source-separated recyclable materials and yard waste.

“Stream reconnaissance report” means a type of critical area report prepared by an applicant’s qualified consultant to describe a stream and to characterize its conditions, wildlife, habitat values and water quality.

“Streams” means those areas where surface waters 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 intended to include artificially created irrigation ditches, canals, storm or surface water devices or other entirely artificial watercourses unless they are used by salmonids or created for the purposes of stream mitigation.

“Structural diversity, vegetative” means the relative degree of diversity or complexity of vegetation in a wildlife habitat area as indicated by the stratification or layering of different plant communities (e.g., ground cover, shrub layer and tree canopy); the variety of plant species; and the spacing or pattern of vegetation.

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

"Substantial development" shall mean any development of which the total cost or fair market value is set forth in RCW 98.58.030(3)(e) and WAC 173-27-040.

“Substantial improvement” means any repair, reconstruction or improvement the cost of which, during any three-year period, is more than 50 percent of the market value of the structure either (A) before the improvement is started, or (B) before the damage occurred if the structure damaged is being replaced. An improvement occurs when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure.

Substantial improvement does not include (A) an improvement undertaken solely to comply with existing state or local health, sanitary or safety code specifications which are necessary to assure safe conditions; or (B) alteration of a structure listed on the national register of historic places or a state inventory of historic places.

"Substantially degrade" means to cause significant ecological impact.

“Substrate” means the soil, sediment, decomposing organic matter or combination of those located on the bottom surface of the wetland, lake, stream or river.

"Temporary erosion and sedimentation control" means on-site and off-site control measures to control conveyance or deposition of earth, turbidity or pollutants during development, construction, or restoration.

"Utilities" means services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

"Utilities, Accessory" means small-scale distribution and collection facilities connected directly to development within the shoreline area. Examples include local power, telephone, cable, gas, water, sewer and stormwater service lines.

"Utilities, Primary" means trunk lines or mains that serve neighborhoods, areas and cities. Examples include solid waste handling and disposal sites, water transmission lines, sewage treatment facilities and mains, power generating or transmission facilities, gas storage and transmission facilities and stormwater mains and regional facilities.

"Utility" includes natural gas, electric, telephone and telecommunications, cable communications, water, sewer, or storm drainage and their respective facilities, lines, pipes, mains, equipment and appurtenances.

"Variance" is a means to grant relief from the specific bulk, dimensional or performance standards set forth in the master program and not a means to vary a use of a shoreline.

"Vessel" includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

"Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

"Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

"Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

"Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this Master Program, the term "water quantity" refers only to development and uses regulated under this Master Program and affecting water quantity, such as impermeable surfaces and

storm water handling practices. Water quantity, for purposes of this Master Program, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

"Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- a. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- b. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

"Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

- a. A project that involves less than ten miles of stream reach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed, or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
- b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with the primary emphasis on using native vegetation to control the erosive forces of flowing water; or
- c. A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

"Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act.

"Weir" means a fence or enclosure set in a waterway for taking fish or a dam in a stream or river to regulate the water level or divert its flow.

"Wetlands" or "wetland areas" see MTMC 16.15.500, Definitions, in the Critical Areas Ordinance 2731.

"Wetland impact assessment report" means a report prepared by a "qualified consultant," as that term is defined in this Master Program, that identifies, characterizes and analyzes potential impacts to wetlands consistent with applicable provisions of these regulations. A wetland impact assessment may be combined with and include a formal wetland delineation.

“Wildlife habitat” means areas, including naturally occurring ponds, that provide food, protective cover, nesting, loafing, breeding or movement for fish and wildlife and with which individual species have a primary association.

“Wildlife report” means a report, prepared by a qualified consultant, that evaluates plant communities and wildlife functions and values on a site, consistent with the format and requirements established by this Master Program.