

CITY OF MILLWOOD, WASHINGTON

RESOLUTION #2013-01

APPROVAL OF SHORELINE MASTER PROGRAM UPDATE

WHEREAS, The City of Millwood ("City") is required under Washington's Shoreline Management Act (Chapter 90.58 RCW) ("SMA") to update its Shoreline Management Program ("SMP") to comply with Washington State laws, statutes and regulations, and

WHEREAS, the City's proposal to update its SMP will adopt goals, objectives and policies for shoreline management, and will revise Chapter 18.14 of the Millwood Municipal Code, and

WHEREAS, the proposal consists of three documents: the Shoreline Master Plan, the Shoreline Cumulative Impacts Analysis and the Shoreline Restoration Plan, and

WHEREAS, the City adopted its first shoreline management ordinance, Ordinance No. 270, in 1996, and

WHEREAS, to insure that all persons and entities having an interest in the shoreline guidelines and master programs are provided with a full opportunity for involvement in both their development and implementation, RCW 90.58.130 requires that the City: shall:

(1) Make reasonable efforts to inform the people of the state about the City's SMP and not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of chapter 90.58 RCW; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state, and

WHEREAS, the City held a Community Visioning meeting on November 8, 2011. The results from the Community Visioning meeting are reflected in the updated Shoreline Master Plan, and

WHEREAS, the City appointed a Shoreline Citizen Advisory Committee consisting of river-front property owners and other citizens and interested parties to serve as a sounding board and to review and provide comments as the SMP documents were developed, and

WHEREAS, Planning staff developed a list of seventeen (17) interested parties (contained in the Attachments) including environmental groups, industry groups and governmental agencies.

WHEREAS, Planning staff met with the Millwood Better for Business group on May 10, 2011 to explain the SMP update process and obtain comments, and

WHEREAS, information about the SMP update was included in ten (10) Mayor's newsletters between August, 2011 and October, 2012. Newspaper articles were published by the Spokesman-Review and Valley News Herald on April 6, 2012 and November 12, 2011.

WHEREAS, the city created a webpage dedicated to the SMP on the city's website, explaining the process, posting draft versions of the documents for public review and comment, and announcing meetings and hearings, and

WHEREAS, the SMP was then submitted to the Millwood Planning Commission on June 25, 2012, for its review and public hearing, and

WHEREAS, the Millwood Planning Commission reviewed the draft documents during a series of open workshop sessions at regular and duly-noticed special meetings in July, August and September 2012, and

WHEREAS, the Millwood Planning Commission conducted a public hearing on the final draft SMP documents during its regular September meeting at 6:00 p.m. on Monday, September 24, with such hearing adjourned and continued to October 15, 2012 and then closed on that date, and

WHEREAS, during the update process, written comments were received from:

- a) Inland Empire Paper Company
- b) Futurewise
- c) Avista Utilities
- d) Washington State Department of Ecology
- e) Washington State Department of Fish and Wildlife
- f) Gonzaga University Legal Assistance, and

WHEREAS, the Millwood Planning Commission also received verbal comments at the public hearing from:

Shirene Young, Inland Empire Paper Company
Wayne Frost, Frost Consulting
Doug Krapas, Inland Empire Paper Company
Jack Bunton, 8915 E South Riverway, Millwood WA
Rial Moulton, 3611 N Dale Rd, Millwood, WA
Kitty Klitzke, Futurewise
Nathan Smith, attorney representing Inland Empire Paper Company, and

WHEREAS, the State of Washington, through section 173-26-090 WAC, requires the City to review its SMP and make amendments necessary to comply with the requirements of

RCW 90.58.080 and any applicable guidelines issued by the Department of Ecology before December 31, 2013, and

WHEREAS, shoreline management in Washington State is a cooperative effort between the state and local government. RCW 90.58.050 states that local government shall have the primary responsibility for initiating the planning required by chapter 90.58 RCW and administering the regulatory program consistent with the policy and provisions of chapter 90.58 RCW. The Department of Ecology shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter. However, Department of Ecology is responsible for adopting guidelines for a local government's SMP, and for reviewing and approving the SMP. DOE established a "Shoreline Master Program Guideline" which local governments are to comply with in the preparation of their SMPs. RCW 90.58.070 states that, in the event the local government fails to adopt a master program in accordance with the mandated time schedule, DOE shall carry out the requirements of RCW 90.58.080 and adopt a master program for the shorelines of the state within the jurisdiction of the local government, and

WHEREAS, Millwood's SMP will become effective when approved by Department of Ecology as provided in RCW 90.58.090(7), and

WHEREAS, Millwood's SMP must achieve the following, according to RCW 90.58.100(1) and WAC 173-26-176:

(1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

2. The master programs shall include, when appropriate, the following, according to RCW 90.58.100(2) and WAC 173-26-191:

(a) An economic development element for the location and design of industries, projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter, and

WHEREAS, the SMP update is subject to the Washington State Environmental Policy Act, Chapter 43.21C RCW. An environmental checklist was prepared and a Determination of Non-significance (DNS) was issued on September 4, 2012. The DNS was distributed to

state agencies on September 5, 2012 for a fourteen-day comment period which expired on September 19, 2012, and

WHEREAS, the update is subject to review under the Washington State Growth Management Act. Draft documents were submitted to Washington State Department of Commerce and other state agencies on September 24, 2012 for the required 60-day review and comment period, and

WHEREAS, Spokane County's SMP update was approved by Department of Ecology on January 22, 2013. The City of Spokane's SMP update was approved Department of Ecology on July 26, 2010. The City of Spokane Valley's SMP is underway, and

WHEREAS, all of the above jurisdictions, plus the City, regulate the Spokane River, a river of Statewide Significance. The regulations for all four jurisdictions are very similar and differ only in shoreline usage. Millwood, being the smallest jurisdiction, regulates a subset of the use types contained in the entire county, and

WHEREAS, public access to the Spokane River is found in numerous and varied points along in the river upstream and downstream from Millwood, and

WHEREAS, Millwood is unique in that less than 2% of the City's shoreline is publicly owned. The draft plan realizes this shortage and promotes public access on public property and encourages private landowners to incorporate public access for future new development projects, where appropriate, and

WHEREAS, comments were received throughout the process from Inland Empire Paper Co., as well as at the end of the process by private citizens, regarding required public access on private property and concerns of public safety, security, and private property rights, and

WHEREAS, in the past, the City has not improved the rights-of-way it owns at Dale Road and the alley east of Marguerite Road. If these easements are improved, local neighbors are concerned that vandalism and litter will increase. Sargent Road currently has historically had access and there have been few, if any complaints. However, throughout this process, the citizens of Millwood have consistently expressed a desire for increased public access on public property, and

WHEREAS, the draft Shoreline Management Plan discusses decisions the City will face if the Inland Empire Paper Co. mill were to cease operating in its current manner at its current location in the City. The City's zoning regulations approve continuation and maintenance of current uses within the I-2 zone. If current uses were to cease and another land use contemplated, current zoning requires application to the City for subdivision and zone change for the required zone that allows the desired development before redevelopment shall proceed. Including this language in the SMP makes the SMP consistent with the Comprehensive Plan and the zoning code, and

WHEREAS, with respect to public access on private property, WAC 173-26-221(4)(d)(iii) states that master plans should require public access in new public and private development unless:

- a) The local government provides more effective public access through a public access planning process; or
- b) It is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitation that may be applicable.

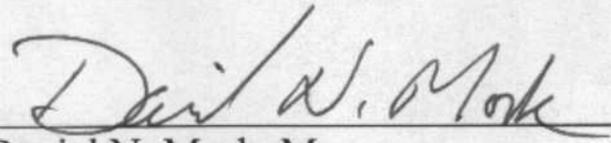
WHEREAS, WAC 173-26-020(35) defines the term "should" as "[a] required action unless there is a demonstrated, compelling reason, based on policy of the SMA, against taking the action." Language within section 18.14.200 of the draft Shoreline Master Plan includes these restrictions, as well as others, to provide the Director with the regulatory ability to allow new development without attached public access restrictions if exceptions are determined to apply. Section 18.14.200(B) draft Shoreline Master Plan also states that any "[r]equirement of public access to shorelines does not confer the right to enter upon or cross private property, except for dedicated and marked public easements," and

WHEREAS, comments received from Inland Empire Paper Co. cited the need to establish the *nexus* and *proportionality* for public access which may be required for private developments. The City acknowledges these requirements, in light of the *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard* decisions and has incorporated the constitutional considerations from these decisions into the SMP, and

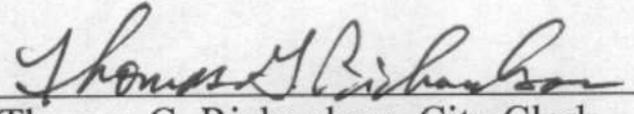
NOW, THEREFORE, the Council of the City of Millwood does resolve:

1. The Written Recommendation of the Millwood Planning Commission, containing its recommended draft SMP, findings of fact, conclusions and recommendation are hereby adopted in support of this decision, and included in the attachments hereto.
2. The draft Shoreline Master Program submitted by the Millwood Planning Commission is hereby adopted with the amendments dated March 7, 2013 which are included in the attachments hereto.

PASSED THIS 12th DAY OF MARCH, 2013.


Daniel N. Mork, Mayor

Attest:


Thomas G. Richardson, City Clerk

Attachment: A. Proposed Amendments dated March 7, 2013
B. Draft Shoreline Master Program v 1.6 (by reference)

Attachment A
Proposed Amendments dated March 7, 2013

Millwood Shoreline Master Program

Staff Report March 7, 2013

In response to public comment received during the Shoreline Master Program (“SMP”) update process and after consultation with the Department of Ecology, the Millwood city council is considering the following revisions to Shoreline Master Plan.

Changes in the draft SMP are proposed in three areas:

1. **Goals and Objectives:** The Public Access Element would be amended by adding an objective and policy statement to achieve public access on private lands where possible without negatively impacting the ultimate goal of “no net loss.” The existing draft does not include a Public Access policy statement concerning access on private property. The Public Access policies PAE 1 and 5 focus on public property. The new Public Access Element policy PAE 6 provides policy direction on private property. The term “encourage” here is in the context of a policy statement, not a regulation. The SMP regulations which follow in chapters 18.14 and 18.16 implement the City of Millwood’s commitment to working with private property owners to increase public access on private property wherever possible, taking into consideration the limitations contained in the statute and other applicable legal principles.

The SMP has policies on “no net loss” in the Conservation Element policy section (18.12.050) but not in the Public Access Element. The new Public Access Element policy PAE 7 adds a policy statement that public access needs to be accomplished in a way that will result in no net loss of shoreline ecological functions.

2. **General Shoreline Policies and Regulations:** The draft SMP focuses on improving public access on the city’s three existing publicly-owned rights of way touching the river, and acquiring public property on the river where possible. For private property, which represents more than 98% of the city’s shoreline, the SMP seeks to improve public access within the constraints listed in the statute and other applicable legal principles. However, the proposed new text would clarify the City’s intent regarding public access and private property.

The goal of no net loss is not addressed adequately in the Public Access part of the Environmental Policies and Regulations section (18.14.020). The draft SMP makes it clear that public access must be accomplished in a way that is compatible with uses, safety, security, or impact to the shoreline environment and with constitutional or other legal limitations. The new language emphasizes the importance of the no net less goal in terms of “impact to the shoreline environment.”

3. **Shoreline Industrial Policies and Regulations:** The draft SMP does not include a clear statement of the preferred land uses in the Shoreline Industrial Environment. The new text language would state the preference of water-dependent and water-related industrial uses over nonwater-dependent and nonwater-oriented industrial uses found in WAC 173-26-241(3)(f).

PUBLIC ACCESS ELEMENT

Goal: Improve and maintain public access to the Spokane River

Objective PAE 1: Improve and maintain public access in City easements

Policy PAE 1.1: Retain public rights-of-way within the shoreline area and where possible provide public visual or physical access to the shoreline.

Objective PAE 2: Allow for more open view spaces in residential areas

Policy PAE 2.1: Minimize impacts to shoreline views in residential environments through development regulations.

Objective PAE 3: Allow for shoreline screening in industrial areas

Policy PAE3.1: Allow natural shoreline screening practices that soften the waterside view of industrial areas. Require the use of native vegetation for screening.

Objective PAE 4: Increase public access to publicly-owned shoreline areas

Policy PAE 4.1: Use commercially reasonable means to acquire rights or interests in real property located in shoreline areas where topography, natural, cultural, and aesthetic features warrant, and support the acquisition of such rights or interests.

Objective PAE 5: Increase recreational opportunities for the public on publicly-owned shoreline areas.

Policy PAE 5.1: Use commercially reasonable means to acquire rights or interests in real property located in shoreline areas that allows for recreational opportunities and where topography, natural, cultural, and aesthetic features warrant, and support the acquisition of such rights or interests.

Objective PAE 6: Encourage public access in connection with private development.

Policy PAE 6.1: Encourage public access in connection with private development, unless such public access is infeasible or unreasonable based on the intensity of the use, is inconsistent with applicable legal requirements, or otherwise due to reasons of property rights, public safety, security, or protection of shoreline ecological functions.

Objective PAE 7: Maintain shoreline ecological functions.

Policy PAE 7.1: Assure that public access improvements result in no net loss of shoreline ecological functions.

Regulations:

18.14.200 Public Access

Public access to the shoreline is the physical ability of the general public to reach and touch the water's edge and/or the ability to have a view of the water and the shoreline from upland locations. There are a variety of types of and components to public access, such as picnic areas, pathways and trails, promenades, street ends, ingress and egress.

The Act requires, in RCW 90.58.100(2)(b), that Shoreline Master Programs shall include, when appropriate, the following: "A public access element making provisions for public access to publicly owned areas." The City encourages private landowners to provide public access opportunities when appropriate.

A. Public Access Policies

1. Public access should be incorporated into all new private and public developments, except for the following types of uses:
 - A. A single family residence;
 - B. An individual multi-family structure containing four (4) dwelling units or fewer;
 - C. Residential subdivisions of four (4) parcels or fewer; or
 - D. Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.
2. Development uses and activities on or near the shoreline should not impair or detract from the public's visual or physical access to the water.
3. Public access to the shoreline should be sensitive to the unique characteristics of the shoreline, should preserve the natural character and quality of the environment, and should assure no net loss of ecological functions.
4. Where appropriate, water-oriented public access should be provided as close as possible to the water's edge without adversely affecting a sensitive environment.
5. Except for access to the water, the preferred location for placement of public access trails is outside the Native Conservation Area. If that is not possible, the trails should be as close to the furthest landward edge of the Native Conservation Area as practical and mitigation is required to replace any vegetation. Public access facilities should provide auxiliary facilities, such as parking and sanitation facilities, when appropriate, and shall be designed for accessibility by people with disabilities. Publicly owned shorelines should be limited to

water-dependent or public recreation uses, otherwise such shorelines should remain protected open space.

6. Public access afforded by public right of way street and alley ends adjacent to the shoreline should be preserved, maintained, and enhanced.
7. Public access on private property, when provided, should be designed to provide for public safety and to minimize potential impacts to private property and individual privacy, which may include consideration by the City of legal and reasonable mitigating circumstances or variances from otherwise applicable land use or development standards, such as providing a physical separation to reinforce the distinction between public and private space, providing adequate space, through screening with landscape planting or fences, or other means.
8. Public views from the shoreline upland areas should be enhanced and preserved.
9. Public access facilities should be constructed of environmentally friendly materials and support healthy natural processes, whenever financially feasible and possible.
10. Public access facilities should be maintained to provide clean, safe access, and to protect the environment.
11. Public access to publicly-owned shoreline areas should be increased through acquisition of rights or interests in real property located in shoreline areas where topography, natural, cultural, and aesthetic features warrant. Commercially reasonable means should be used when acquiring such rights or interests.
12. Recreational opportunities on publicly-owned shoreline areas should be increased through acquisition of rights or interests in real property located in shoreline areas where topography, natural, cultural, and aesthetic features warrant. Commercially reasonable means should be used when acquiring such rights or interests.

B. Public Access Regulations

1. Public access shall be required for all public shoreline development and uses, except where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable. In addition to any other requirements regarding a written determination by the Director under this chapter, any determination by the Director regarding public access shall specifically include written findings and conclusions regarding his determination of infeasibility and/or the constitutional or other legal limitations.
2. With respect to private shoreline development and uses, the physical access requirements of this chapter are not intended to require property owners to increase the public's physical access to shorelines. With respect to future development on private property, the fundamental principle underlying this chapter's public access provisions is

that development on private property should not result in a net loss of the public's existing rights to visual and physical access to the shorelines.

3. Requirement of public access to shorelines does not confer the right to enter upon or cross private property, except for dedicated and marked public easements.

4. Subject to the limitations set forth in B(2), new private shoreline development should provide public access except in the following conditions;

- A. A single family residence;
- B. An individual multi-family structure containing fewer than four (4) dwelling units;
or
- C. Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.
- D. If not excepted in subparagraphs A through C above, a private shoreline development or use that does not provide public access may be authorized provided the applicant demonstrates, and the Director determines, that all reasonable means to providing public access have been exhausted, including but not limited to:
 - a. Regulating access by such means as limiting use to daylight hours;
 - b. Designing separation of uses and activities with such means as fences, terracing, hedges, or landscaping; or
 - c. Providing access that is physically separated from the proposal.
 - d. In addition, the applicant must demonstrate, and the Director determine, that one or more of the following apply:
 - i. Unavoidable health or safety hazards to the public exist which cannot be prevented by any feasible means;
 - ii. Security requirements cannot be satisfied through the application of alternative design features or other solutions;
 - iii. The feasibility of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the benefit derived from the public access being provided; or
 - iv. Unacceptable environmental harm, such as damage to fish spawning areas will result from the public access that cannot be mitigated.

5. New public facilities shall be designed in such manner that the facility, or part of the facility, is readily accessible to and usable by individuals with disabilities, however, full compliance with this regulation is not required where it is structurally impracticable to meet the requirements due to the unique characteristics of terrain.
6. Public access sites shall be connected directly to the nearest public street.
7. Required public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.
8. Public access easements and permit conditions shall be recorded on the deed where applicable or on the face of a plat or short plat as a condition running with the land. Said recording with the Spokane County Recorder's office shall occur at the time of permit approval (RCW 58.17.110).
9. Development shall be constructed as far landward as possible.
10. Physical public access shall be designed to prevent significant impacts to natural systems by employing Low Impact Development techniques.
11. Public access requirements on privately owned lands should be proportional with the scale and character of the development.

18.16.020 Shoreline Environmental Designations

Shoreline Industrial Environment (SIE)

Purpose:

The "shoreline industrial" environment (SIE) is designed to accommodate existing and future industrial development and accessory structures used by the Inland Empire Paper Company. All of the industrial parcels east of the Argonne Road Bridge, extending to the eastern city limit, are placed within the SIE environment. If the Inland Empire Paper Company ceases to use the property for its current industrial use as a paper mill, the existing zoning regulations and the Shoreline Environment Designation for this area will be re-examined.

Please see the map following the tables below for a pictorial representation of the locations for the Environmental Designation.

Designation Criteria:

Assign a SIE designation to shoreline areas if they are inside urban growth areas, include multilot industrial development or are planned and platted for such industrial development.

Management Policies:

1. Regulatory standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.
2. Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.
3. Standards should be established for detailing the range of shoreline modifications allowed within the "shoreline industrial" environment. These standards should ensure that development, or use patterns, do not result in a reduction of shoreline ecological functions or further degrade other shoreline values.
4. The shoreline should be monitored for erosion, either from activities occurring on land or on the water. Action should be taken when such erosion occurs to reduce negative effects.
5. Preference shall be given first, to water-dependent industrial uses over nonwater-dependent industrial uses; and second, to water-related industrial uses over nonwater-oriented industrial uses.

18.16.200 Shoreline Habitat and Natural Systems Enhancement Projects

18.16.240 Industrial Development

A. Industrial Development Policies

1. Priority of any industrial development should be given to water-dependent uses.
2. Over-the-water industrial development should be prohibited.
3. Industrial development in the Shoreline Management Area should include landscaping to enhance the shoreline area.
4. Preference shall be given first, to water-dependent industrial uses over nonwater-dependent industrial uses; and second, to water-related industrial uses over nonwater-oriented industrial uses.

B. Industrial Development Regulations

1. Over-water construction of industrial uses is prohibited, with the exception of those existing facilities necessary for the operation of an associated industrial use. For example, an allowed facility may include pump houses for fire protection.
2. All industrial loading and service areas shall be located on the upland side of the industrial activity. Where necessary, paved access roads, constructed to collect stormwater and not within the Native Conservation Area, may be used shoreward of industrial activity.
3. All industrial development within the Shoreline Management Area shall assure no net loss of shoreline ecological functions.
4. A shoreline setback is not required to be maintained for water-dependent industrial development.
5. Water-related, industrial development shall maintain a shoreline setback equal to the Native Conservation Area. If public access is provided to the shoreline, the setback may be reduced to twenty-five (25) feet from the OHWM. Where on-site public access is provided, industrial development shall dedicate, improve, and provide maintenance for a pedestrian easement that provides area sufficient to ensure usable access to and along the shoreline for the general public. Public access easements shall be a minimum of twenty-five (25) feet in width and shall comply with the public access standards contained in the Public Access section of this Shoreline Master Program.
6. Nonwater-related industrial development shall maintain a minimum setback from the OHWM consistent with the area set forth in MMC 18.16.040.