

**City of Stevenson Public Works Department  
and  
City of Stevenson**

**CRITICAL AREAS MEMORANDUM OF AGREEMENT**

**Stevenson Municipal Code, Chapter 18.13**

**Approved by Stevenson City Council on \_\_\_\_\_, 2018**

**PURPOSE**

It is the overall intent of this memorandum of agreement (MOA) to provide the City of Stevenson Public Works Department (“Public Works”) with a means for the efficient, reliable, and effective continuance of current and future activities associated with repair, maintenance, and operations while complying with the City’s Critical Areas and Natural Resource Lands Ordinance (Stevenson Municipal Code [SMC] 18.13).

Public Works performs many repairs, upgrades, maintenance, and other operational activities of the City’s infrastructure and facilities on a regular basis. Many involve routine maintenance and repair activities, such as tree pruning, vegetation management, utility pipe repair, culvert clearing, and road repair. Some are associated with emergencies, such as pipe bursts, road repairs, and general public safety. Unlike development or redevelopment, transportation and utility maintenance mitigates the impacts of the original construction of the transportation and utility structure, ongoing roadway use, and preservation of the structure. Maintenance can also lead to habitat improvement. The figure below shows the impact of transportation and utility maintenance on habitat conditions under 3 scenarios:

1. If transportation and utility maintenance were to cease altogether, habitat conditions would decline.
2. With current transportation and utility maintenance practices, habitat conditions would improve slowly.
3. With implementation of this MOA, habitat conditions would improve at a greater rate.

## Impact of Road Maintenance on Habitat Conditions

Figure 2

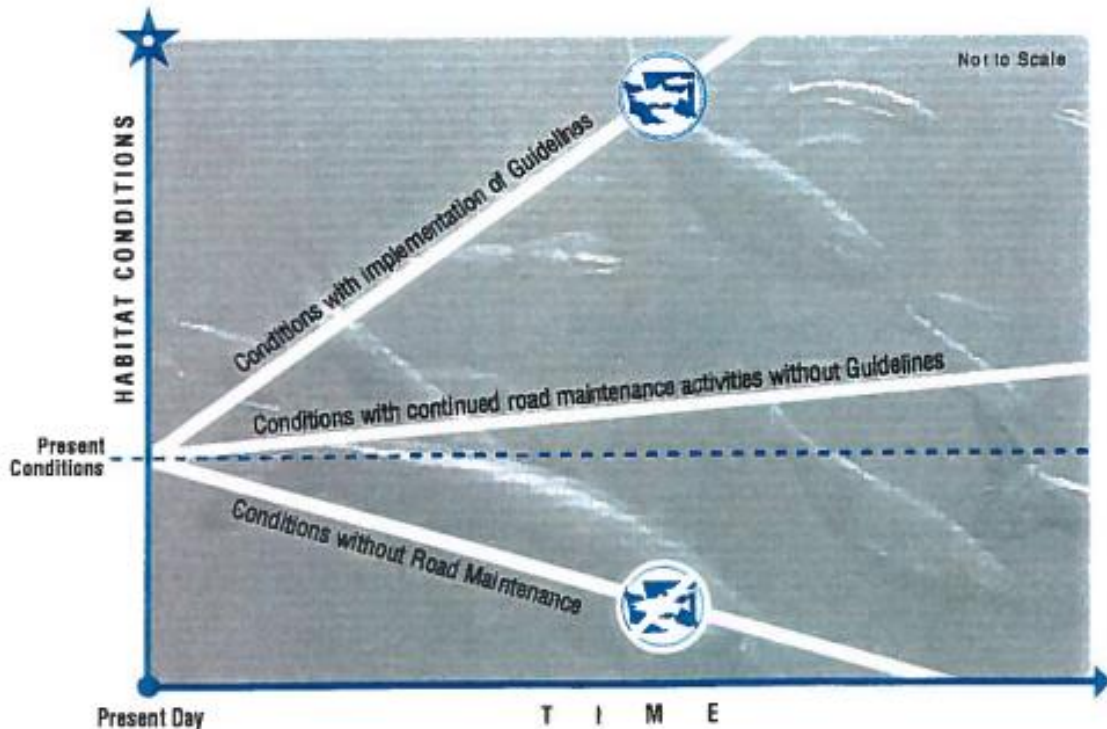


Figure: WSDOT Road Maintenance Endangered Species Act Guidelines, Introduction

### **EXPEDITED REVIEW REQUEST**

The activities included under this MOA are considered under an expedited review process. The activities included in this MOA require a critical areas permit under SMC 18.13 but are exempt from the requirements to provide a critical areas report. A critical areas permit is required for activities listed under the expedited review process per SMC 18.13.025 (D)(3). A critical areas management plan has been prepared in association with this MOA (Attachment A). This MOA and the associated management plan will serve as the required critical areas permit issued by the City. The management plan describes covered activities and includes mitigation measures and best management practices (BMPs) for those activities when applicable.

Public Works seeks a critical areas permit to conduct activities within designated critical areas for city utilities and associated facilities under the provisions of SMC 18.13.025. Critical area reports are normally required for activities within designated critical areas. However, activities listed in the Public Works critical areas management plan (Attachment A) are not required to provide a critical areas report per the following code provisions:

**Section 18.13.025 (D) (1) Vegetation Removal.** When located in areas other than a wetland or wetland buffer, the following types of vegetation removal are eligible under this section, provided the removal is conducted as stated below.

- a. View Maintenance. Selective pruning of trees to maintain, create, or expand views shall be subject to all of the following requirements:
  - i. Pruning shall not include removal of understory vegetation;
  - ii. Pruning shall not involve the topping of trees;
  - iii. Pruning shall not include the removal of more than 1/3rd of the limbs of an individual tree;
  - iv. Pruning shall not include the removal of more than ten percent of the canopy cover over the property's critical areas and protective buffers.
  - v. Pruning shall not compromise the health of the tree(s); and
  - vi. Pruning shall not occur more frequently than once every five years.
- b. Hazard Tree Removal. A hazard tree may be removed or converted to a wildlife snag subject to the following standards:
  - i. Where not immediately apparent to the Administrator, a written report by a certified arborist or other qualified professional is required to evaluate potential diseases or safety hazards.
  - ii. The applicant shall demonstrate that the hazard cannot be eliminated by pruning, crown thinning, or other technique that retains some of the tree's ecological function.
  - iii. The removed tree or vegetation should be left near the location it was removed from unless the Administrator or qualified professional warrants its removal to avoid spreading disease or pests.
  - iv. Any removed tree shall be replaced within one year with new trees using a mitigation ratio of 2:1 and in accordance with an approved replacement plan. Replacement trees shall be species that provide similar ecological functions as the removed tree and have a minimum 1-inch DBH.
  - v. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned prior to receiving expedited review provided that within fourteen days following

such action, the responsible party shall submit a restoration plan that demonstrates compliance with the provisions of this Chapter.

- c. Weed Control. Removal or control of invasive or noxious weeds included on the Skamania County Noxious Weed List is encouraged subject to the following standards and guidelines:
  - i. Coordination with the Skamania County and Washington State Noxious Weed Control Program is encouraged prior to undertaking removal projects to ensure that the control and disposal technique is appropriate.
  - ii. Removal of invasive species and noxious weeds within geologically hazardous areas and areas exceeding 15,000 square feet shall not be granted expedited review under this section.
  - iii. Removal shall occur using hand labor or light mechanical methods that do not result in substantial ground disturbance;
  - iv. Where removal results in bare soils that may be subject to erosion or recolonization by invasive or noxious species, the impacted area shall be stabilized using BMPs and planted with native species according to the planting standards of SMC 18.13.057(E).
- d. Fire Safety. Pruning vegetation for fire safety is encouraged subject to the following limitations:
  - i. Pruning of the tree canopy cover shall be limited to those branches and foliage less than ten feet from the ground.
  - ii. Pruning shall not include the removal of more than one-third of the limbs of an individual tree;
  - iii. Pruning shall not result in the removal of a significant tree.
  - iv. While removal of understory vegetation may be allowed under this section, groundcover vegetation shall remain present in a non-degraded state.

**Section 18.13.025 (D)(2) Emergencies.** Emergency activities requiring immediate remediation or preventative action to avoid threatening the public health, safety, and welfare, or risking damages to private or public property, are eligible under this section, provided that:

- a. Emergency related activities that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, the

activities must have the least possible impact to the critical area and/or its buffer;

- b. The person or agency undertaking such action shall notify the City within one working day following the commencement of the emergency activity. Following such notification, the City shall determine if the action taken was within the scope of the emergency actions allowed in this subsection. If the City determines that the action taken or part of the action taken is beyond the scope of allowed emergency actions, enforcement action is authorized, as outlined in section 18.13.075 of this Chapter;
- c. After the emergency, the person or agency undertaking the action shall fully restore and/or mitigate any impacts to the critical area and buffers resulting from the emergency action in accordance with the approved critical area report and mitigation plan prepared in accordance with the procedures outlined in this Chapter for a new development permit; and
- d. Within thirty days after the emergency, the person or agency undertaking the action shall consult with the City and any applicable state/federal agency to determine and schedule any needed follow up actions for restoration, mitigation, or modification of emergency work;

**Section 18.13.025 (D)(3) Utilities.** Repair, operation, maintenance, replacement, reconstruction, and relocation of the utilities and works listed herein, provided that:

- a. Any such activity occurs within an improved right-of-way and/or does not extend outside the previously disturbed area;
- b. If the City initiates the activity, it is consistent with the Comprehensive Plan and/or anticipated in another duly approved infrastructure plan;
- c. All persons, utility providers, public agencies, or homeowners' associations file memoranda of agreement with the City specifying best management practices to be used in situations of emergency and usual and customary repair, operation, and maintenance;
- d. The Administrator determines that no reasonable alternative exists, based on environmental and topographic conditions; and
- e. Utility and works eligible for this exemption include:
  - i. Existing belowground or aboveground public utilities, facilities, and improvements, such as streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, navigational aids, utility lines, domestic water systems, storm and sanitary sewer systems, open space, and parks and recreational facilities,

- ii. Existing private roads, streets, driveways, and utility lines and facilities, and
- iii. Existing, intentionally created artificial wetlands or surface water systems including irrigation and drainage ditches, grass-lined swales and canals, detention facilities, farm ponds, and landscape or ornamental amenities;

**Section 18.13.025 (D) (4) Trails.** Trails less than 8 feet wide used for non-motorized travel, provided that:

- a. The trail surface shall meet all other requirements, including water quality standards set forth in the Stormwater Management Manual for Western Washington (Ecology Publication #14-10-055), as amended; and
- b. Trails must be located within the outer twenty-five percent of the most protective applicable critical area buffer and designed to avoid erosion hazard areas and to avoid damage to or removal of significant trees;

**Section 18.13.025 (D) (5) Site Investigation.** Minimal site investigative work required by a city, state, or federal agency, or any other applicant, such as surveys, soil logs, percolation tests, and other related activities;

**Section 18.13.025 (D) (6) Activities Subsequent to Previous Review.** Development permits and approvals that involve both discretionary land use approvals (such as subdivisions, rezones, or conditional use permits), and construction approvals (such as building permits) if all of the following conditions have been met:

- a. The provisions of this Chapter have been previously addressed as part of another approval;
- b. There have been no material changes in the potential impact to the critical area or buffer since the prior review;
- c. There is no new information available that is applicable to any critical area review of the site or particular critical area;
- d. The permit or approval has not expired or, if no expiration date, no more than five years has elapsed since the issuance of that permit or approval; and
- e. Compliance with any standards or conditions placed upon the prior permit or approval has been achieved or secured.

## **APPLICABILITY**

This MOA applies to activities listed and described in the Public Works management plan. Activities covered by this MOA meet the expedited review criteria listed in SMC 18.13.025 and are located in previously disturbed areas. Previously disturbed areas are locations that have been altered through a previously permitted use that typically included some ground disturbance or construction. These permitted uses are typically included in capital facility or transportation plans and are part of long-term strategies or elements associated with goals listed in the Stevenson Comprehensive Plan. These activities and projects are included in plans, such as the

- Stevenson Comprehensive Plan
- Six-year Transportation Improvement Program
- General Sewer Plan
- Water System Plan Update

## **DEFINITIONS**

“Development” means activity upon the land consisting of construction or alteration of structure, earth movement, dredging, dumping, grading, filling, mining, removal of any sand, gravel, or minerals, driving of piles, drilling operations, bulkheading, clearing of vegetation, or other land disturbance. Development includes the storage or use of equipment or materials inconsistent with the existing use. Development also includes approvals issued by the City that binds land to specific patterns of use, including but not limited to, subdivisions, short subdivisions, zone changes, conditional use permits, and binding site plans. Development does not include the following activities:

- a. Interior building improvements
- b. Exterior structure maintenance activities, including painting and roofing.
- c. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning, and weeding.
- d. Maintenance of the following existing facilities that does not expand the affected area; septic tanks, (routine cleaning); wells, individual utility service connections; and individual cemetery plots in established and approved cemeteries. (SMC 18.13.010)

“Previously Disturbed Areas” include those areas that were disturbed through land clearing activities previously authorized by the City or prior to permit requirements. Previously disturbed areas includes lands that were disturbed for road, utility, rail, and other infrastructure development within the City.

“Normal maintenance” includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC 173-27-040(2)(b)).

"Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location, and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resources or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including, but not limited to, its size, shape, configuration, location, and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment (WAC 173-27-040(2)(b)).

### **MEMORANDUM OF AGREEMENT PARAMETERS**

The following provisions are agreed to in association with this MOA:

- This MOA is applicable to all existing and future facilities and activities identified within this agreement and the associated management plan that are located within areas meeting the definition of a designated critical area within SMC 18.13.010, including geologically hazardous areas, fish and wildlife habitat conservation areas, wetland areas, frequently flooded areas, critical aquifer recharge areas, and buffers as established, and all activities as identified in Section 18.13.025 (D).
- The approval of this MOA meets the requirements associated with a critical areas permit and expedited review request, and as such, the activities mitigated in compliance with this Agreement do not require the submission and approval of separate critical areas permits for the duration of this MOA;
- This MOA applies within the city limits of Stevenson and all areas annexed by the City during the duration of this MOA;
- For all activities identified within this MOA, no mitigation will be required beyond the mitigation identified within this Agreement;
- An annual report shall be submitted per the provision below.
- Approval of this Agreement does not require the alteration or relocation of existing infrastructure owned or operated by the City;
- The provisions contained within this Agreement apply only to Public Works employees, Public Works contractors, and vendors working under the direction of Public Works;
- This Agreement will be in effect until December 31, 2023 unless the mitigation measures agreed to herein are found to pose a significant public health, safety, or reliability issue; in that case, either and/or both party(ies) may open the Agreement.



### **IMPACT AVOIDANCE AND MINIMIZATION**

Activities identified within this MOA and the management plan (Attachment A) shall make all attempts to avoid impacts to critical areas. All Public Works employees, contractors, and vendors will use reasonable methods to avoid potential adverse impacts to critical areas and will receive training in the approved procedures and standards identified for work within critical areas. If impacts cannot be avoided, all reasonable methods to minimize necessary impacts to critical areas shall be used. The expedited review process under Chapter 18.13 does not give permission to degrade a critical area or ignore the risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the activity shall be restored, rehabilitated, or replaced at Public Works' expense.

### **GENERAL STATEMENT**

The approval of this MOA and the management plan functions as a critical area permit review that the City's Planning Director has reviewed and determined that no reasonable alternatives to the proposed activities exist. The Planning Director reserves the right to submit written findings during review of annual monitoring reports. Public Works agrees to obtain a critical areas report for activities that are determined to require a critical areas report per SMC 18.13 based on that review.

### **REPORTING AGREEMENT**

Activities covered under this MOA and as part of the management plan will be compiled into an annual report prepared by Public Works and submitted to the City's Planning Department. The annual report will include the following elements for each activity completed pursuant to this MOA during the year:

- Dates for duration of the project (start/completion)
- Details on project location (written description or map)
- Description of project actions

The annual report will also describe any problems or incidents with any persons or agencies during the prior year and any mitigation and other remedial actions and outcomes. Any project that includes vegetation monitoring will also be included in this report. The annual report will be provided to the City's Planning Department at the end of the 4<sup>th</sup> quarter of the fiscal year.

### **EXTENSION**

Public Works requests the option to extend this MOA and the associated management plan (Attachment A) in one-year increments after the passing of the initial five-year authorization.

### **ENFORCEMENT**

The following code sections are provided as reference in relation to enforcement of this MOA and management plan:

- SMC 18.13.075 Penalties – Violations

**ATTACHMENTS:**

A: Critical Areas Management Plan

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Scott Anderson, Mayor

ATTEST:

\_\_\_\_\_  
Leana Kinley, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kenneth B. Woodrich, PC  
City Attorney