


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 11/12/13

AGENDA ITEM: Mitigation Agreement for Ecology Wetland Credit	
PREPARED BY: Brooke Ensor DEPARTMENT: Engineering	DIRECTOR APPROVAL: 
ATTACHMENTS: Mitigation Agreement for Ecology Wetland Credit	
BUDGET CODE:	AMOUNT:

SUMMARY:

The attached agreement allows the City to potentially receive wetland mitigation credit for future project wetland impacts that are only regulated by the Washington State Department of Ecology. The City will potentially receive wetland mitigation credit based on the restoration actions taken on City owned property that is part of the Qwuloolt restoration project. This agreement will potentially generate 6.02 wetland credits. These credits are in addition to credits generated by the *Advance Wetland Mitigation Agreement for the City of Marysville, Washington* dated March 2013, signed by the Department of Ecology, Army Corps of Engineers and City.

RECOMMENDED ACTION: Staff recommends City Council authorize the Mayor to sign the attached Agreement with the Department of Ecology for wetland credits.
--

Mitigation Agreement for Ecology Wetland Credit

Between the Washington State Department of Ecology and
the City of Marysville

July 2013



Mitigation Agreement for Ecology Wetland Credit

For the City of Marysville, WA

I. Parties

The parties to this Mitigation Agreement for Ecology Wetland Credit (Agreement), dated the ____ day of ____ 2013, are: The City of Marysville (City), and the Washington State Department of Ecology (Ecology).

II. Purpose of Agreement

The purpose of this Agreement is to document the results of the Ecology review of the Advance Wetland Mitigation Plan, dated April 1, 2013 and attached as Exhibit A to this Agreement; and to memorialize Ecology's expectations as to future generation of compensatory mitigation credits when the City of Marysville's Advance Mitigation Project is completed. This document only applies to credits generated above and beyond those recognized by the US Army Corps of Engineers (Corps) in the *Advance Wetland Mitigation Agreement with the City of Marysville* dated March 2013. These additional credits may be used for wetland impacts that are under Ecology's jurisdiction and which are not under the jurisdiction of the Corps. The property subject to this Agreement includes parcels owned by the City (18.10 acres) and which the City has a permanent flood easement across (3.14 acres) for a total of 21.24 acres.

This Agreement also describes how potential debit projects may become eligible for use of credits generated under this Agreement, and identifies possible debit projects that may qualify for such use, following evaluation on a case-by-case basis.

III. Advance Mitigation Agreement Background

The Advanced Mitigation Project parcels are within the footprint of the overall Qwuloolt Estuary Restoration (QER) Project located within the historic Snohomish estuary. The activities approved for the overall QER Project will restore tidally influenced hydrologic conditions to approximately 400 acres, including the City's advance mitigation area. The QER Project includes levee construction, breaching of the existing levee system, filling of internal site ditches, native vegetation planting and construction of new channels. The overall restoration efforts occurring on the 400 acres include activities undertaken by the Corps 544 Project, Tulalip Tribes, National Oceanic and Atmospheric Administration (NOAA), US Fish and Wildlife Service, and Ecology. The overall QER Project has been underway since 1998, when the Natural Resource Conservation Service obtained a conservation easement under the Wetland Reserve program for most of the agricultural properties behind the Ebey Slough levee. However, the conservation easement does not apply to the City-owned property or City flood easement area.

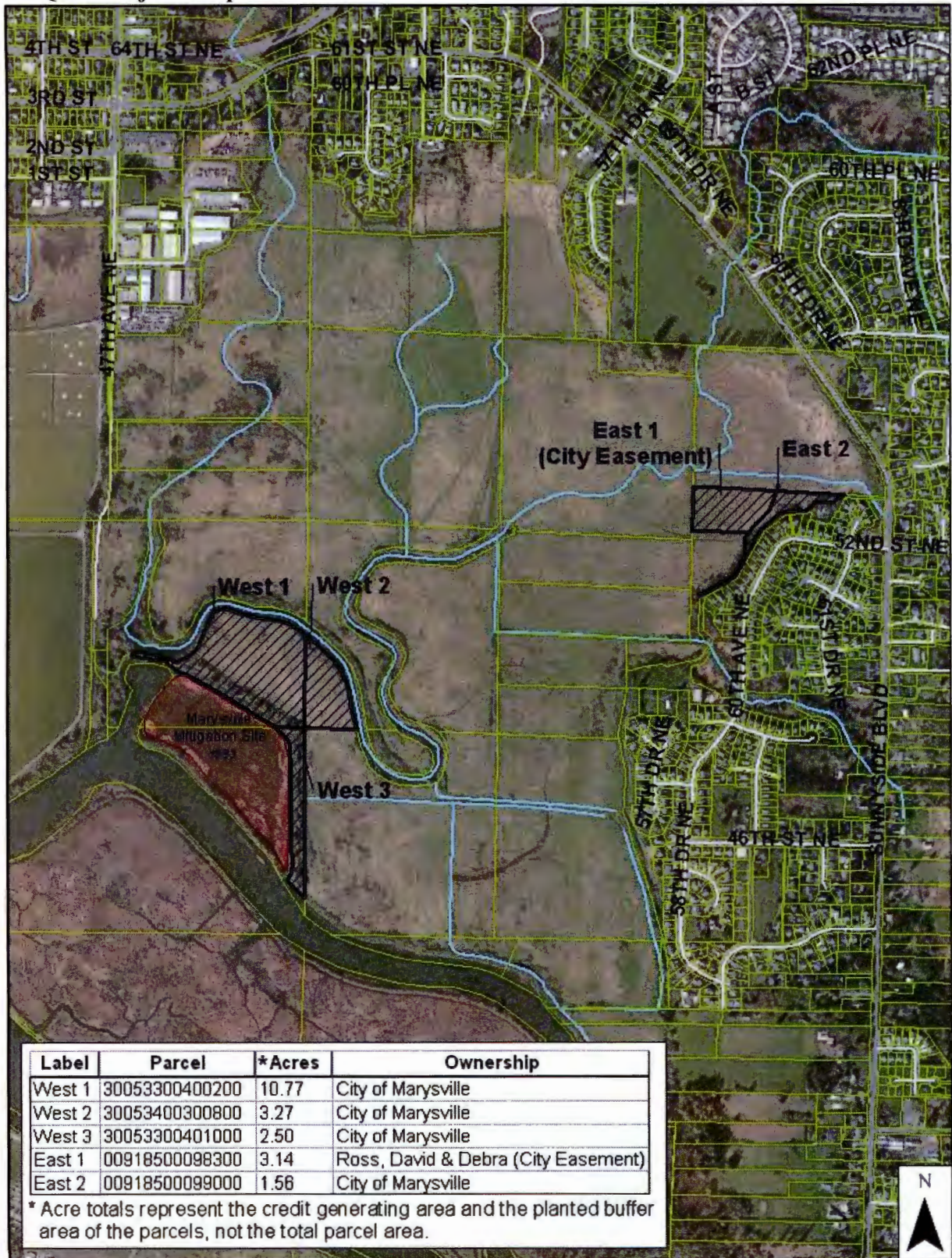
The City-owned properties and City flood easement property that will be considered advance mitigation based on this Agreement are expected to be subject to the ebb and flow of the tides (Figure 1). Therefore, this Agreement pertains to and describes the potential incremental functional lift achieved by the City actions to improve upon the existing site conditions.

The City will be required to obtain a Nationwide Permit 27 for the construction activities related to this Agreement.

IV. Historical Background

The affected area was diked and converted to agricultural land in the late 1800's. The advance mitigation site is part of the former Poortinga Farm and is identified within the Snohomish Estuary Wetland Integration Plan (SEWIP) finalized in 1997. SEWIP is a comprehensive watershed planning tool created "*to integrate the wetland regulatory frameworks of federal, state, and local agencies into one process on the basis of an agreed-upon plan*" (SEWIP, 1997). The SEWIP identifies the Poortinga Property as the top priority for tidal restoration and mitigation options within the Snohomish Estuary. The prioritization of projects in SEWIP was conducted based on the results of habitat assessments at the time of the study, fieldwork to characterize the Ecological Management Unit boundaries within the plan and input from user group committees working with the City of Everett to develop the plan.

FIGURE 1: Site Location map showing City properties and easement area within the QER Project footprint



V. Recitals

WHEREAS, the parties to this Agreement share a common interest to improve the salmonid habitat in the Snohomish Estuary;

WHEREAS, the parties to this Agreement agree that the restoration activities under the Advance Wetlands Mitigation Plan at the site identified in this Agreement have the potential to improve the salmonid habitat in the Snohomish Estuary;

WHEREAS, the advance mitigation site has the potential to restore natural hydrological and tidal processes within a portion of the Snohomish Estuary;

WHEREAS, a process for identifying potential debit projects and a list of potential debit projects have been identified herein;

WHEREAS, the functional lift projected to be derived from implementation of the Advance Wetland Mitigation Plan referenced in and appended to this Agreement is expected to generate compensatory mitigation credits which may be utilized to provide compensatory mitigation for a portion of the potential wetland impacts of the City's debit projects that must undergo mitigation sequencing in accordance with relevant state and local statutes.

WHEREAS, the advance mitigation site is intended to be conducted in conjunction with the Qwuloolt Estuary Restoration (QER) Project in order to maximize the overall ecological benefits of the QER Project in accordance with 33 CFR 332.3(j)(2).

WHEREAS, the City of Marysville intends to retain ownership of their property and associated easement, and is prepared to retain all responsibility associated with the success of the Advance Wetland Mitigation Plan in order to provide potential compensatory mitigation for City of Marysville projects, therefore fulfilling the definition of permittee-responsible mitigation as defined by 33 CFR 332.2.

WHEREAS, the wetland restoration plan for the QER Project was approved by the Corps on November 16, 2010. This restoration plan is detailed in the *Environmental Assessment* written by the Corps and dated December 2010 as well as *Qwuloolt/Poortinga Technical Report* written by the Corps and dated January 17, 2002. The QER wetland restoration plan describes the goals and objectives of the overall project, including the properties associated with this advance mitigation plan.

WHEREAS, under a separate agreement with Ecology and the Corps¹, the City is potentially receiving a total of 10.36 credits that can be used to mitigate for wetland impacts which fall under the jurisdiction of both agencies. The additional potential credit generated (6.02 credits) under this agreement will be available for impacts that are only under Ecology jurisdiction.

¹ Advance Wetland Mitigation Agreement for the City of Marysville, Washington. Dated March 2013.

VI. Agreement

NOW, THEREFORE, in consideration of the aforesaid recitals, the parties agree as follows:

VI.1 Advance Wetland Mitigation Plan

The City has developed an **Advance Wetland Mitigation Plan** detailing the sites to be used and activities to be accomplished in order to establish the advance mitigation effort that is the subject of this Agreement. This plan is hereby incorporated into this Agreement as Exhibit A.

The designs, terms and provisions of the Advance Wetland Mitigation Plan are hereby approved, in concept, by Ecology.

The five City properties and easement area within the restoration footprint (Figure 1) total 21.24 acres, as follows:

TABLE 1: City Properties and Easement Area

Parcel Label	Parcel #	*Acres	Ownership
West 1	30053300400200	10.77	City of Marysville
West 2	30053400300800	3.27	City of Marysville
West 3	30053300401000	2.50	City of Marysville
East 1	00918500098300	3.14	Ross, David & Debra (City Easement)
East 2	00918500099000	1.56	City of Marysville
	Total	21.24	

* Acre totals represent the credit generating area and the planted buffer area of the parcels, not the total parcel area.

VI.2 Credit Generation

For purposes of credit calculation, it is assumed that 100% of the acreage is wetland² (Cereghino, 2006). According to the SEWIP plan and the Salmon Overlay to SEWIP, these wetlands are rated as the lowest quality wetlands in the lower Snohomish estuary. They are palustrine wetlands dominated by reed canarygrass (*Phalaris arundinacea*). A credit ratio will be applied to the City property and easement area in order to account for the low level of wetland function that is currently provided. Credits generated from the return of this area to its proper hydrogeomorphic wetland type (tidally influenced) will be a ratio of 1.2:1 for the Western properties and 1.5:1 for the Eastern properties. There is a total of 16.54 acres on the West, potentially generating 13.77-acre credits. There is a total of 4.7 acres on the East, where restoration actions will occur, but 0.8 acres of East 2 is

² Much of the City acreage within the QER footprint was likely effectively drained twelve years ago when the project planning process started. In the intervening years, maintenance of drainage channels within the district ceased and drainage started to fail. As a result, wetland hydrology has slowly reinstated on most if not all of the City's properties.

expected to be buffer and will not generate credit. Therefore, a total of 3.9 acres on the East will be potentially generating 2.6-acre credits. Credit ratios may be adjusted per section VI.5 below depending on site development. These acre-credit amounts are for the entire project including the credits accounted for in the *Advance Wetland Mitigation Agreement for the City of Marysville, Washington* dated March 2013. The additional credits generated under this agreement and not included in the agreement with the Corps are: 5.77 credits for the western parcels and 0.25 credits for the eastern parcels. Ecology recognizes these additional credits based on the ratios calculated through the SEWIP process.

Although Ecology will act in good faith in establishing credit generation ratios, and will give serious consideration to applying the ratios estimated above, Ecology can make no commitment through the vehicle of this Agreement to adhere to these ratios when a Mitigation Site Use Plan is submitted for review and approval.

The City will be required to demonstrate satisfactory accomplishment of performance standards in order to generate aquatic resource compensatory mitigation credits. Exhibit A contains detailed information regarding anticipated performance standards. Although Ecology will act in good faith in establishing performance standards, and will give serious consideration to applying the performance standards reflected in Exhibit A as a basis for generation of compensatory mitigation credits, Ecology can make no commitment through the vehicle of this Agreement to adhere to these performance standards until a Mitigation Site Use Plan is submitted for review and approval. Factors that may affect the establishment and application of performance standards are described in Exhibit A in more detail.

Exhibit A also contains a projected schedule of milestones at which accomplishment of performance standards will be evaluated, and at which point release of credits may be approved. The schedule below contains the numbers of credits the City anticipates proposing for Ecology approval for utilization as compensatory mitigation at each respective milestone. Although Ecology will act in good faith in establishing a credit generation schedule, and will give serious consideration to applying the credit generation schedule below as a basis for approval of release of compensatory mitigation credits for Ecology only regulated impacts, Ecology can make no commitment through the vehicle of this Agreement to adhere to these credit generation schedules until a Mitigation Site Use Plan is submitted for review and approval.

VI.3 Availability of Credits

Credits subject to this agreement are only available for use on projects where the Corps does not have jurisdiction. Credits will become available following the method described below. For the purposes of this agreement only, this section supersedes the corresponding section in Exhibit A.

Credits are expected to be released based on the location of the City's Advance Mitigation properties and easement area within the QER Project site. Credits for City

owned properties on the west side (West 1, 2 and 3 Parcels) of the QER Project are expected to be released within 10 years if all performance standards are met. If the West parcels reach the Year 7 required condition (Performance Standard 4) by Year 5, then monitoring for that standard can be discontinued and the credit release schedule will be accelerated for that performance standard for the West parcels.

Part of the credit for the advance mitigation site has been captured under a separate agreement between the US Army Corps of Engineers (Corps), Ecology and the City.³ This agreement includes information on the credits covered under the Advance Wetland Mitigation agreement as shown in Tables 2 and 3.

It is anticipated that this agreement will generate 6.02 acre-credits in addition to the 10.36 acre-credits recognized by the Corps. The first 30% of the Ecology credit accrued for these properties will become available when the As-built submittal is approved by Ecology and the site protection mechanism has been recorded (1.72 credits). After all Year 3 performance standards, including Performance Standard 7, are met for the west side, 25% of credits are expected to be released (1.43 credits). After all Year 5 performance standards are met for the west side, 20% of credits are expected to be released (1.15 credits). After all Year 7 performance standards are met for the west side, 20% of credits are expected to be released (1.15 credits). After all Year 10 performance standards are met for the west side and a Long-Term Management and Maintenance Plan has been approved by Ecology, the remaining 5% of credits are expected to be released (0.28 credits).

TABLE 2: Mitigation Credit Accrual for Western Properties

Location within QER Project Area	Time of Credit Accrual	% Credit Released	Total Number of Credits Released	Corps/ Ecology Credits⁴	Ecology Only Credits⁵
West	After As-built approval	30%	4.13	2.40	1.73
West	End of Year 3	25% (55% cumulative)	3.44	2.00	1.44
West	End of Year 5	20% (75% cumulative)	2.75	1.60	1.15
West	End of Year 7	20%	2.75	1.60	1.15

³ See - *Advance Wetland Mitigation Agreement for the City of Marysville, Washington, between the US Army Corps of Engineers, the Washington State Department of Ecology and the City of Marysville. March 2013*

⁴ These credits are tracked under a separate agreement with the Corps, Ecology and the City of Marysville - *Advance Wetlands Mitigation Agreement for the City of Marysville, Washington, March 2013.*

⁵ This agreement only applies to and tracks the "Ecology-Only" credits.

		(95% cumulative)			
West	End of Year 10	5% (100% cumulative)	0.7	0.40	0.3
	Total	100%	13.77	8.01	5.77

The credits for the City-owned properties and easement area on the east side (East 1 and 2 Parcels) of the QER Project will be released separately. This area is expected to be subject to the ebb and flow of the tide, but inundation levels are uncertain. Therefore, the type of wetland that will develop on these properties is less certain. The first 33% of credit accrued for these properties are expected to become available when the As-built submittal is approved by Ecology and the site protection mechanism has been recorded (0.08 credits). After all East parcel Year 3 performance standards, including performance standard 7, are met 22% of credits are expected to be released (0.06 credits). After all East parcel Year 5 performance standards are met 20% of credits are expected to be released (0.05 credits). After all East parcel Year 7 performance standards are met 20% of the credits are expected to be released (0.05 credits). After all East parcel Year 10 performance standards are met and a Long-Term Management and Maintenance Plan has been approved by Ecology, the remaining 5% of credits are expected to be released (0.01 credits). Credits are expected to be released only if monitoring shows that performance standards applicable to both East parcels are being met. The expected release schedule and/or the expected number of credits available for City use may be adjusted based on the actual conditions that develop.

TABLE 3: Mitigation Credit Accrual for Eastern Properties

Location within QER Project Area	Time of Credit Accrual	% Credit Released	Total Number of Credits Released	Corps/ Ecology Credits ⁶	Ecology only Credits ⁷
East	After As-built approval	33%	0.86	0.78	0.08
East	End of Year 3	22% (55% cumulative)	0.57	.52	0.06
East	End of Year 5	20% (75% cumulative)	0.52	0.47	0.05
East	End of Year 7	20% (95%)	0.52	0.47	0.05

⁶ These credits are tracked under a separate agreement with the Corps, Ecology and the City of Marysville - *Advance Wetlands Mitigation Agreement for the City of Marysville, Washington, March 2013.*

⁷ This document only applies to and tracks "Ecology-Only" credits.

		cumulative)			
East	End of Year 10	5% (100% cumulative)	0.13	.12	0.01
	Total	100%	2.6	2.35	0.25

VI.4 Site Protection Instrument

As a prerequisite to the approval of use of any advance compensatory mitigation credits generated pursuant to this Agreement, the City must demonstrate that it has instituted, and presently has in force and effect, a real estate site protection mechanism approved by Ecology. The site protection mechanism must extend to the City-owned property and easement area, irrespective of the footprint on which the performance standards proposed as a basis for credit release have been accomplished.

City-owned parcels subject to this Agreement are proposed to be protected by execution of a restrictive covenant that prohibits future development and outlines consistent and allowable uses, as well as restricted and inconsistent uses on the City-owned parcels. The location and limitations associated with the wetland areas shall be included in the site protection instrument that is to be recorded with the Snohomish County Auditor’s Office.

The City will work with the property owner of East 1 (Parcel #00918500098300) to execute a site protection instrument for that property. The site protection instrument will prohibit future development and outline consistent and allowable uses, as well as restricted and inconsistent uses on the City easement parcel. The location and limitations associated with the critical areas shall be included in the site protection instrument that is to be recorded with the Snohomish County Auditor’s Office. If a site protection instrument cannot be recorded then the City will amend Exhibit A accordingly.

VI.5 Credit Generation Contingencies

Prior to any use of credits, if the City finds during routine maintenance and monitoring, described in Exhibit A, that site conditions do not warrant credit accrual the City may relinquish claims for credit prior to any use of mitigation credits under this Agreement. In such a circumstance, the City will reduce or eliminate the maintenance and monitoring described in Exhibit A for areas that are not eligible for credit accrual. The City also has the option, prior to any use of credits, to develop a contingency plan if site conditions warrant a modification to the performance standards delineated in Exhibit A.

Following first use of any credits reflecting accomplishment of any performance standards on any portion of the advance mitigation site covered by this Agreement, the City may submit a request to discontinue accomplishment of subsequent performance standards, and to forgo generation of the corresponding compensatory mitigation credits. Such a request will be considered a request for amendment of the Advance Wetland Mitigation Plan and this Agreement, which may be accomplished only with the express

written approval of Ecology. Ecology will act in good faith in reviewing any request for contingency amendment to Exhibit A following first use of credits generated under this Agreement, and approval thereof shall not be unreasonably denied. Alteration to maintenance and monitoring plans described in Exhibit A must similarly be submitted to the Ecology through a requested amendment to the Advance Wetland Mitigation Plan, and must be approved by Ecology prior to implementation.

VI.6 Impact Project Geographic Use Area

The overall QER Project is expected to benefit Chinook and bull trout, as well as steelhead trout, other salmonids, other fish and wildlife by increasing the areal extent and connectivity of tidally-influenced wetlands in the Snohomish River system. The entire Water Resource Inventory Area (WRIA) 07 will benefit from the ecological lift in functions expected from implementing the QER Project. The additional work the City intends to perform on the City owned parcels and easement area, subject of this Agreement, would incrementally add to the functional lift in WRIA 07 associated with the QER Project. The overall QER Project in combination with the potential credit generating activities the City is proposing on their Parcels and easement area will provide a synergistic functional lift for the watershed. For the purposes of this Agreement, the impact project geographic use area will include any parcel within the Marysville City limits. All parcels in the impact project geographic use area must be below an elevation of 500 feet. A map of the impact project geographic use area is identified in Figure 2. The Snohomish County Assessor maintains detailed shapefiles of the Marysville City limits and parcel information. If the impact project geographic use area is questionable, these shapefiles will be used to make a determination.

The geographic use area, as described above and as depicted in Figure 2, is hereby approved by Ecology.

VI.7 Utilization of Credits

The City will have the right to request use of credits generated by the Advance Wetland Mitigation Project to compensate for unavoidable project impacts, subject only to Ecology and City regulation, associated with City projects. Credits generated by the advance mitigation site, once approved by Ecology for use as compensatory mitigation in connection with an identified impacting project pursuant to this Agreement, cannot be sold. This advance mitigation Agreement is considered permittee-responsible mitigation as defined in 33 CFR 332.2.

Example unavoidable project impacts associated with City projects are identified in Table 4 below and described in Exhibit B. Ecology must approve the use of any compensatory mitigation credits generated pursuant to this Agreement, at the time of review of the Mitigation Site Use Plan. Use of credits for any specific compensatory mitigation purpose cannot be pre-approved through this Agreement. Consideration of debit of the advanced mitigation credits is not limited to the potential projects identified in Table 4. Impacts from additional City projects not listed in Table 4 may be eligible to utilize

credits in the future but must fall within the impact project geographic use area as defined above. Debiting against wetland mitigation credit may begin upon approval by Ecology of the Mitigation Site Use Plan, provided that the regulatory agencies with jurisdiction over the impacting City project(s) also approve the utilization of credits generated pursuant to this Agreement as adequate and appropriate compensatory mitigation.

The 24 projects listed in Table 4 and described in Exhibit B are located within the City of Marysville (see Figure 2) and fall otherwise within the established impact project geographic use area. From a watershed perspective, the advance mitigation project may provide ecologically preferable mitigation for impacts related to the listed projects, for reasons including the following: the advanced mitigation project creates habitat that is a limited resource in the watershed; the majority of the potential debit projects have low (e.g. Category III or IV) quality freshwater wetland impacts, which are not a limited resource in WRIA 07; many of the wetlands in the debit project footprints are disconnected from other wetlands or stream corridors; and, furthermore, a majority of the proposed debit projects will result from the expansion of existing infrastructure, which may contribute to the degraded functions at these locations.

TABLE 4: Potential City of Marysville Debit Projects

Improvement Project	Estimated Affected Wetlands	
	(s.f.)	Acres
SR 92 Break in Access	30,000	0.69
40th Street Extension	24,000	0.55
Sunnyside Blvd Expansion	44,300	1.02
Soper Hill Rd Expansion	26,600	0.61
1st Street Bypass	90,000	2.07
83rd Ave NE Expansion	73,500	1.69
Deering Park Frontage	4,000	0.09
Bayview Trail Corridor	50,700	1.16
Harborview Trail Corridor	5,600	0.13
67th Ave NE Expansion	71,700	1.65
88th Expansion (Allen Creek Crossing)	15,000	0.34
State Ave. Expansion (Quilceda Creek Crossing)	15,000	0.34
51st Ave NE Expansion	99,300	2.28
67th/108th Intersection Improvements	2,500	0.06
132nd Street Retaining Wall Repairs	2,500	0.06
New Sewer Alignment (156th St NE to 172nd St NE)	24,000	0.55
Frontier Fields Wetlands	1,800	0.04
Smokey Point Master Plan Area	170,000	3.90
Strawberry Fields	252,700	5.80

156th Street (West of Smokey Point Master Plan)	18,000	0.41
Geddes Marina Redevelopment	74,052	1.70
Regional Pond #2	69,696	1.60
Jennings Park expansion/improvements	21,780	0.50
27th Avenue Extension	15,000	0.34
Total	1,201,728	27.58

The City will be allowed to propose use of the available wetland mitigation credits until all credits generated and approved for use by Ecology have been completely debited. At the time credit generated pursuant to this Agreement is proposed to be used as compensatory mitigation for a specific project, the City shall provide to Ecology the following:

- Reference to the terms of this Agreement and to the Advance Wetland Mitigation Plan incorporated into this Agreement as Exhibit A, and verification that the project is in the impact project geographic use area.
- Copies of any monitoring reports that have been produced for the advance mitigation site
- A Mitigation Site Use Plan; and
- Verification that the impact project wetlands are not subject to Corps jurisdiction.

At a minimum, the **Mitigation Site Use Plan** shall contain sufficient documentation to demonstrate to the satisfaction of Ecology the following:

1. Demonstrate the advance mitigation site's ecological lift by meeting stated performance standards, through documentation in monitoring reports, site visits, and other supporting information as required by Ecology.
2. Propose and substantiate the number of compensatory mitigation credits to be generated as a result of accomplishment of the identified performance standards.
3. Demonstrate through the ledger required pursuant to this Agreement that sufficient credits are available for the proposed compensatory mitigation purpose.
4. Propose and substantiate further monitoring and documentation methods and requirements, applicable to the credits generated and to be used.
5. Propose and substantiate maintenance requirements to sustain the credits generated and to be used; such maintenance requirements may need to include the accomplishment of subsequent performance standards that are integral to the generated credits, the accomplishment of which: will be obligatory once initial credits are approved for use; and will generate, in turn, their own opportunity for advance compensatory mitigation credit.
6. Propose and substantiate an adaptive management plan applicable to the advance compensatory mitigation credits generated and to be used.
7. Propose and substantiate a long-term management and maintenance plan applicable to the advance compensatory mitigation credits generated and to be used.

8. Demonstrate that the City has instituted, and continues to maintain in force and effect, the site protection instrument required by Section VI.4 of this Agreement, applicable to the City owned property and easement area.
9. Describe the debit project's impacts to aquatic resources that require mitigation. Include type of aquatic impact, acreage, functions lost, and how impacts have been avoided and minimized.
10. Describe how the advance mitigation adequately compensates for the unavoidable impacts to waters of the State.
11. From a watershed perspective, demonstrate the advance mitigation is ecologically preferable to on-site mitigation options. For critical functions/resources it may be necessary to perform part of the mitigation on-site and use the advance mitigation site to compensate for the remainder of the functions (decouple the compensation).
12. Identify the amount of mitigation credit, generated from the advance site, that the City proposes is necessary to offset lost functions from the proposed impacts.

Ecology notes that impacts to wetlands must be avoided to the greatest extent practicable and that this Agreement does not provide any pre-approval of potential impacts to wetlands. The final decisions on impact project approval and the amount and type of compensatory mitigation required for that project are made by the applicable regulatory agencies with jurisdiction over the impacting proposal. The final decision on approval of availability of credits for use in providing advance compensatory mitigation pursuant to this Agreement lies with Ecology.

The potential to use the advance mitigation site as compensation for wetland impacts associated with these projects is predicated upon acquiring all required permits, and is subject to mitigation sequencing as required by the agencies with jurisdiction over the proposed impacting project.

The City of Marysville will maintain ownership or easement rights, as applicable, of the properties comprising the site of this advance mitigation Agreement and will retain full responsibility for all mitigation success, monitoring, maintenance, adaptive management, long-term management and maintenance, reporting, and tracking of all compensatory mitigation credits generated and utilized pursuant to this Agreement.

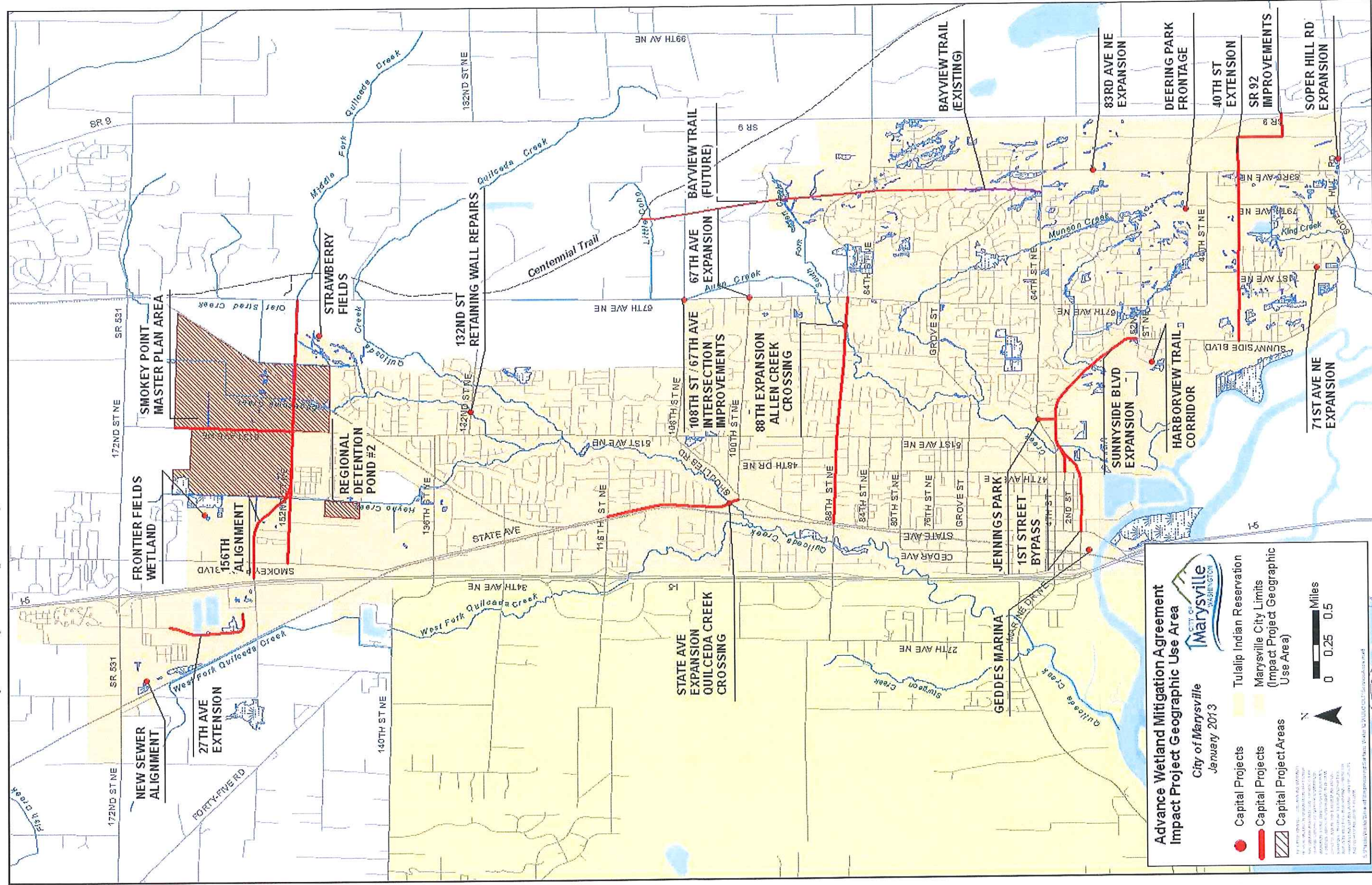
VI.8 Wetland Mitigation Ratios

The mitigation ratios for the impact projects will be determined on a case-by-case basis, based on the joint State-Federal wetland mitigation guidance (Ecology et al., 2006) or other applicable document approved by Ecology.

For project impacts solely regulated by the City of Marysville and not subject to State or Federal permitting, the City's Critical Areas Ordinance will be used.

The City must demonstrate that impacts cannot be avoided or further minimized before discussing compensatory mitigation with the Ecology.

FIGURE 2: Potential City of Marysville Impact Projects



VI.9 Duration of Agreement

Once credits generated pursuant to this Agreement are first used, this Agreement shall remain in effect until all available wetland mitigation credits that may be generated by the advance mitigation site are debited, or the City has notified Ecology that it relinquishes the opportunity to generate any further credits on the advance mitigation site, whichever occurs first; provided that this Agreement will continue to remain in force until all obligations arising out of Mitigation Site Use Plans approved pursuant to this Agreement have been fulfilled, and until a Long Term Management and Maintenance Plan as called for in Exhibit A has been approved by Ecology. The advanced mitigation site protection instrument, monitoring requirements, long-term maintenance, and adaptive maintenance plan described in Exhibit A will remain in effect for the term described in the Mitigation Site Use Plan(s) approved pursuant to this Agreement.

This site is being used as “permittee-responsible mitigation.” Therefore, the City will not be allowed to sell or transfer any advance mitigation credits generated by the advance mitigation site once the City has first used any credit(s) generated pursuant to this Agreement as compensatory mitigation for an impact project. If it is determined the advance mitigation site and credits which could be generated as a result of accomplishment of additional performance standards are not needed by the City, the City will need to coordinate possible options with Ecology. The functions of monitoring, maintenance, and long-term management prescribed in this mitigation Agreement may be assigned with prior approval from Ecology; however, the City will remain legally responsible for the overall success of the advance mitigation site.

VI.10 Recording Credit Transactions

When a credit is generated through the accomplishment of performance standards, approved by Ecology, and then used as compensatory mitigation for an aquatic resource impact, the City shall document each use in a credit ledger. This ledger will be separate from the ledger submitted under the Advance Wetland Mitigation Agreement with the City of Marysville, Ecology and the Corps⁸, and shall only portray the release and use of Ecology only credits. The credit ledger shall include the following:

- a) The year, and number of credits, that have been generated through the accomplishment of performance standards and have been approved by Ecology under a Mitigation Site Use Plan;
- b) Date and number of credits used as compensatory mitigation for an impacting project;
- c) The number of residual mitigation credits available for use that have been previously approved under a Mitigation Site Use Plan but not yet used;
- d) Location of the debit project that is proposed to use as compensatory mitigation credits from the advance mitigation project site;

⁸ See - *Advance Wetlands Mitigation Agreement for the City of Marysville, Washington, between the US Army Corps of Engineers, the Washington State Department of Ecology and the City of Marysville. March 2013*

- e) Debit project permit numbers and types;
- f) Debit project impact to wetland acreage and wetland types affected; and
- g) The number of credits available for impacts to wetlands that are only under Ecology jurisdiction.

The City will submit to Ecology a credit ledger after each use of advance credits as compensatory mitigation for an impacting project. If no transactions happen within a year then the ledger can be submitted by January 31st of each year. The submittal of an annual credit ledger will include the items a through g above. The City is encouraged to post this Agreement and a copy of the current ledger on its website.

VII. Notices

All correspondence related to this Agreement must contain the applicable Ecology reference number (e.g. projects utilizing the advance mitigation site). Pursuant to this advance mitigation Agreement the City will be responsible for sending a copy of the “As-built” report(s), Mitigation Site Use Plan(s), and all other required documentation to Ecology at the following address:

WA State Department of Ecology
Shorelands and Environmental Assistance Program
3190 160th Avenue SE
Bellevue, WA 98008

VIII. Amendments

Amendments to this Agreement, including approved changes to the Advance Wetland Mitigation Plan incorporated as Exhibit A, may be accomplished through the express written agreement of all parties to this Agreement.

IX. Signatures

CITY OF MARYSVILLE

WASHINGTON STATE DEPARTMENT OF
ECOLOGY

BY: Jon Nehring, Mayor
City of Marysville

BY: Gordon White, Program Manager
Shorelands & Environmental Assistance Program

Date

Date

Attest:

City Clerk

Approved as to form:

City Attorney

VIII. References

- Salmon Overlay to the Snohomish Estuary Wetland Integration Plan. 2001. Available at http://www.everettwa.org/cityhall/upload_directory/SEWIP%20Salmon%20Overlay.pdf
- Seattle District, Corps of Engineers. December 2010. Environmental Assessment, Qwuloolt Section 544 Ecosystem Restoration Project, Marysville Washington.
- Seattle District, Corps of Engineers. January 2002. Qwuloolt/Poortinga Technical Report, Prepared for Tulalip Tribes of Washington.
- Snohomish County Assessor's Office. Assessor Data Web Page. 2011. Available at <http://assessor.snoco.org/services/data.aspx>
- Snohomish Estuary Wetland Integration Plan (SEWIP). 1997. Available at http://www.everettwa.org/cityhall/upload_directory/SEWIP%201997.pdf#97.
- Washington State Department of Ecology, US Army Corps of Engineers Seattle District, and US Environmental Protection Agency Region 10. Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 1), Washington State Department of Ecology Publication #06-06-011a. Olympia, WA. Available at <https://fortress.wa.gov/ecy/publications/summarypages/0606011a.html>
- Washington State Department of Ecology, US Army Corps of Engineers and the City of Marysville. March 2013. *Advance Wetland Mitigation Agreement for the City of Marysville, Washington.*