



Critical Areas Memorandum

Date: August 11, 2020

Subject: Clark Public Utilities
Critical Areas Memorandum of Agreement

From: Dustin Day, PWS

To: Jeff Swanson, City Administrator

Route To: Gene Morris, Clark Public Utilities

INTRODUCTION

The purpose of this memorandum is to document the repair, maintenance and operations activities associated with the memorandum of agreement between Clark Public Utilities (CPU) and the City of La Center (City) for compliance with the La Center Municipal Code (LCMC) Section 18.300, as amended December 2019.

CPU regularly performs repairs, upgrades to existing facilities, reconductoring of electric lines, and other maintenance and operational activities of its infrastructure and facilities. Many of these activities involve routine maintenance and repair activities, such as tree pruning, vegetation management, chemical usage, mobile refueling, and pole replacement. Some of these activities are associated with emergencies, such as power outages, service interruptions, and general public safety.

The CPU infrastructure occurs in, around, and over critical areas regulated by the LCMC Section 18.300. Therefore, the intent of this technical memorandum is to identify critical area permit exemptions for the proposed activities where applicable. Best Management Practices (BMPs) are detailed for nonexempt project activities.

PROPOSED ACTIVITIES

CPU performs many repairs, upgrades to existing facilities, reconductoring of electric lines, and other maintenance and operational activities of its infrastructure and facilities on a regular basis. Typical routine maintenance and repair activities, including tree pruning and the associated mobile refueling, vegetation management with and without chemical usage, and pole replacement. All proposed activities will occur in existing utility corridors and no new development activities are addressed in this memorandum. The repair and maintenance and operations activities described herein are exempt from City review and approvals and do not trigger specific permits.

EXISTING CONDITIONS

The CPU infrastructure occurs in, around, and over critical areas regulated by the City; the sections below discuss the critical areas regulated by the City and the location of any utility corridors within the critical area.

Critical Aquifer Recharge Areas

Groundwaters underlying aquifer recharge areas are sources of public water supply. Critical aquifer recharge areas and CPU infrastructure in city limits are depicted in Figure 1. Because of their exceptional susceptibility and/or vulnerability to contamination, the intent of LCMC Chapter 18.300.090(1) is to safeguard groundwater resources by mitigating or precluding future discharges of contaminants from new land use activities. The provisions of LCMC 18.300.090(1) apply to the following prohibited activities:

- Development within 50 feet of any wellhead within the Urban Growth Area
- Landfills
- Class V injection wells
- Radioactive disposal sites
- Surface mines

The provisions of LCMC 18.300.090(1) also apply to the following regulated activities:

- Aboveground storage tanks
- Belowground storage tanks

CPU is not proposing any of the prohibited or regulated activities within critical aquifer recharge areas within the City; therefore, the provisions of the chapter do not apply to the proposed activities.

Fish and Wildlife Habitat Conservation Areas

The LCMC 18.300.090(2) identifies fish and wildlife habitat conservation areas as riparian; endangered or threatened; local habitat; priority habitat and species areas; naturally occurring ponds under 20 acres; waters of the state; waters planted with game and fish; and state natural preserves and their associated buffers. Fish and wildlife habitat conservation areas and CPU infrastructure within the city limits can be found in Figure 2. The following section describes the applicable habitats found within the City.

Riparian

Several riparian corridors within the City are associated with the East Fork Lewis River and its tributaries.

Threatened and Endangered

There are known threatened and endangered species that use the East Fork Lewis River within City limits, including threatened and endangered salmon and steelhead species.

Priority Habitats and Species

Priority habitats and species (PHS) identified by Washington Department of Fish and Wildlife within City limits include:

- Riverine habitats associated with the above-mentioned riparian areas.
- Freshwater wetland habitats associated with the La Center Bottoms area.
- Biodiversity Areas and Corridor associated with Brezee Creek, McCormick Creek, and East Fork Lewis River.
- Waterfowl concentrations associated with the East Fork Lewis River.

Frequently Flooded Areas

LCMC 18.300.090(3) uses a scientific and engineering report entitled “Flood Insurance Study, Clark County, Washington and Incorporated Areas,” revised January 19, 2018, to determine frequently flooded areas in the city. Frequently flooded areas mapped within the City include the areas associated with East Fork Lewis River and the lower section of Brezee Creek, downstream of West Fourth Avenue (Figure 3). The only CPU infrastructure associated with frequently flooded areas includes the transmission line found between the NW Pollock Road and NW La Center Road corridor and the East Fork Lewis River.

Geologically Hazardous Areas/Slopes Greater than 25 Percent

LCMC 18.300.090(4) prohibits development on lands classified as “erosion hazards,” “landslide hazards,” or “seismic hazards,” unless the development meets the requirements of the code. There are several geologically hazardous areas/slopes greater than 25 percent location throughout the City. Most of these areas are associated with the steep ravines adjacent to the above-mentioned streams. Several utility corridors are located within mapped geologically hazardous areas or in areas with slopes that exceed 25 percent (Figure 4).

Wetlands

The largest and most prominent wetland area is the area associated with East Fork Lewis River and its floodplain; however, most of the mapped wetlands are located outside city limits (Figure 5). Other wetland areas located in the city are associated with the riparian corridors of Brezee Creek, McCormick Creek, and their tributaries. Other wetlands occur within the city but are generally not associated with the CPU utility corridors (Figure 5).

REGULATORY CONSIDERATIONS

According to Section 18.300.070(1)(b),

the [planning] director shall have the authority to negotiate memoranda of agreements with utility service providers or public agencies for emergency and repair activities, and said agreements shall specify best management practices (BMPs) to be used in situations of emergency and usual and customary repair, which if rigorously adhered to, may exempt said emergency or repair activity, including routine operation and maintenance from further review under this chapter. Memoranda of agreements shall

be authorized by the La Center City Council only after notice and completion of a public hearing on the full terms and merits of the agreement.

This memorandum of agreement is being proposed in accordance with this provision. The following section lists exempt activities according to LCMC Section 18.300.070 Exemptions. The activities proposed within this memorandum fall within these categories of exemption.

Exempt Activities

Section 18.300.070(1)(c) LCMC – Emergencies.

Emergency activities are those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventative action in a time frame too short to allow for compliance with the requirements of this chapter. Emergency actions that create an impact to a critical area or its buffer shall use reasonable methods to address the emergency; in addition, they must have the least possible impact to the critical area or its buffer. The person or agency undertaking such action shall notify the city within one working day following commencement of the emergency activity. Following the emergency appropriate mitigation shall be implemented and permanent activities, installations or impacts are subject to review and compliance with the applicable standards.

Section 18.300.070(1)(e) LCMC – Repair.

Repair or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees or drainage systems, including operation and maintenance of existing facilities, that do not require construction permits, if the activity does not further alter or increase the impact to, or encroach further within, the critical area or buffer and there is no increased risk to life or property as a result of the proposed maintenance or repair.

Section 18.300.070(1)(g) LCMC – Activities within the Improved Public Right-of-Way or Recorded Easement.

Replacement, modification, installation, or construction of utility facilities, lines, pipes, mains, equipment, or appurtenances, not including substations, when such facilities are located within the improved portion of the public right-of-way or recorded easement, or a city-authorized private roadway except those private activities that alter a wetland or watercourse, such as culverts or bridges, or result in the transport of sediment or increased stormwater.

Section 18.300.070(1)(h) LCMC – Chemical Applications.

The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary; provided, that their use shall be restricted in accordance with Department of Fish and Wildlife Management recommendations, the

city of Portland's pest management program, and the regulations of the Department of Agriculture and the U.S. Environmental Protection Agency.

Section 18.300.070(1)(k) LCMC – *Construction and modifications to existing structures that do not increase the footprint of the structure.*

Section 18.300.070(1)(l) LCMC – *The removal of the following vegetation with hand labor and light equipment, and vegetation removal that is a hazard to electrical power lines with hand-held and walk-beside equipment such as mowers and weed eaters in compliance with the provisions contained in the ANSI A300 (Part 1) guidelines, including, but not limited to:*

- (i) Invasive nonnative weeds;*
- (ii) English ivy (*Hedera helix*);*
- (iii) Himalayan blackberry (*Rubus armeniacus*); and*
- (iv) Evergreen blackberry (*Rubus laciniatus*)*

Section 18.300.070(1)(m) LCMC – *Emergency or hazard tree removal conducted so that habitat impacts are minimized.*

Section 18.300.070(1)(n) LCMC – *Public improvement projects located within existing impervious surface areas.*

Section 18.300.070(1)(o) LCMC – **Public agency and utility exemption.**

If application of this chapter would prohibit development or other alteration by a public agency or public utility, the agency or utility may apply for an exemption pursuant to this section.

Section 18.300.070(3) LCMC – **Exempt Activities Shall Minimize Impacts to Critical Areas.**

All exempted activities shall use reasonable methods to avoid potential adverse impacts to critical areas. To be exempt from this chapter does not give permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

Allowed Activities

All activities identified within this memorandum shall be performed to avoid and minimize impacts to designated critical areas and their buffers in conformance with the development standards contained in Chapter 18.300.110 LCMC by first trying to avoid impacts that degrade the functions and values of critical areas; second, minimizing impacts to critical areas; third, providing compensatory mitigation for unavoidable impacts to critical areas by replacing each of the affected functions to the extent feasible, fourth, providing for no net loss to critical areas functions and values; fifth, consistency with the general purposes of this Chapter; and lastly, that the proposal does not pose a significant threat to the public health, safety, or welfare on or off the development proposal site.

The following two activities (i.e., tree pruning and mobile refueling) are allowed within areas defined in Chapter 18.300.090 LCMC as fish and wildlife habitat conservation areas, frequently flooded areas, Geologic hazard areas, critical aquifer recharge areas, and wetlands in compliance with the provisions contained within Chapter 18.300 LCMC. The activities and BMPs identified within this memorandum will be allowed within the City of La Center on all easement and right-of-way areas, including private and public property, associated with CPU utility corridors.

Tree Pruning (Scheduled and Emergency)

Routine tree pruning activities within designated wetland and riparian areas and their associated buffers are not exempt from the provisions contained within the wetland and fish and wildlife habitat sections of the ordinance. Impacts to wetland and riparian areas associated with the tree pruning activities include the thinning/removal of shading canopies that could impact water quality and temperature. Removal and disturbance of vegetation may lead to erosion and loss of large woody debris recruitment used by riparian area species. Pruning and/or removal of small, immature trees, such as cottonwoods, may be removed in cases where they may pose a future threat to utility infrastructure.

Mobile Refueling

Mobile refueling within designated wetland and riparian areas and associated buffers can cause impacts to streams and wetland areas if fuel accidentally enters these areas. Damage to water quality and vegetation may occur.

BEST MANAGEMENT PRACTICES

BMP measures for tree pruning and removal within designated critical areas and their associated buffers include:

- Compliance with the provisions contained in ANSI A300 (Part1) and the special companion publication to the ANSI A300 Part 1 titled *Best Management Practices: Utility Pruning of Trees* as outlined in the stated purpose of utility/facility pruning as found on page 2 (see attachments 1 and 2)
- Personnel will limit the use of heavy equipment within designated critical areas and their associated buffers. Any areas damaged by the use of heavy equipment that may cause soil erosion control impacts will be restored and stabilized within one month to address these impacts through measures such as reseeding using native grasses and other erosion control measures as necessary

BMP measures for mobile refueling:

- Avoid refueling within designated critical areas if at all possible.
- Refuel in a contained area that does not drain into a wetland, water body, or stormwater system.
- Assure proper training for operators to include emergency spill avoidance training.

BMP measures for tree pruning/removal and mobile refueling will also comply with LCMC 18.300.100 (best available science) which states:

Critical area reports and decisions to alter critical areas shall rely on the best available science to protect the functions and values of critical areas and must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish and their habitat. Best available science is that scientific information applicable to the critical area prepared by local, state or federal natural resource agencies, a qualified scientific professional or team of qualified scientific professionals, that is consistent with criteria established in WAC 365-195-900 through 365-195-925.

MITIGATION

The proposed routine maintenance, repair, and operation activities are to occur within existing utility corridors that have either been installed prior to the establishment of the critical areas ordinance or have been approved through the development review process and have accounted for critical area impacts and associated compensatory mitigation. Therefore, the routine maintenance, repair, and operational activities would not need to account for additional impact or mitigation measures and meet the requirements of LCMC Section 18.300.120.

CONCLUSIONS

CPU is proposing routine maintenance, repair, and operation activities through a memorandum of agreement with the City. The activities are either exempt or allowed and meet the requirements of the LCMC Section 18.300.

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Attachments: Figures 1 to 5

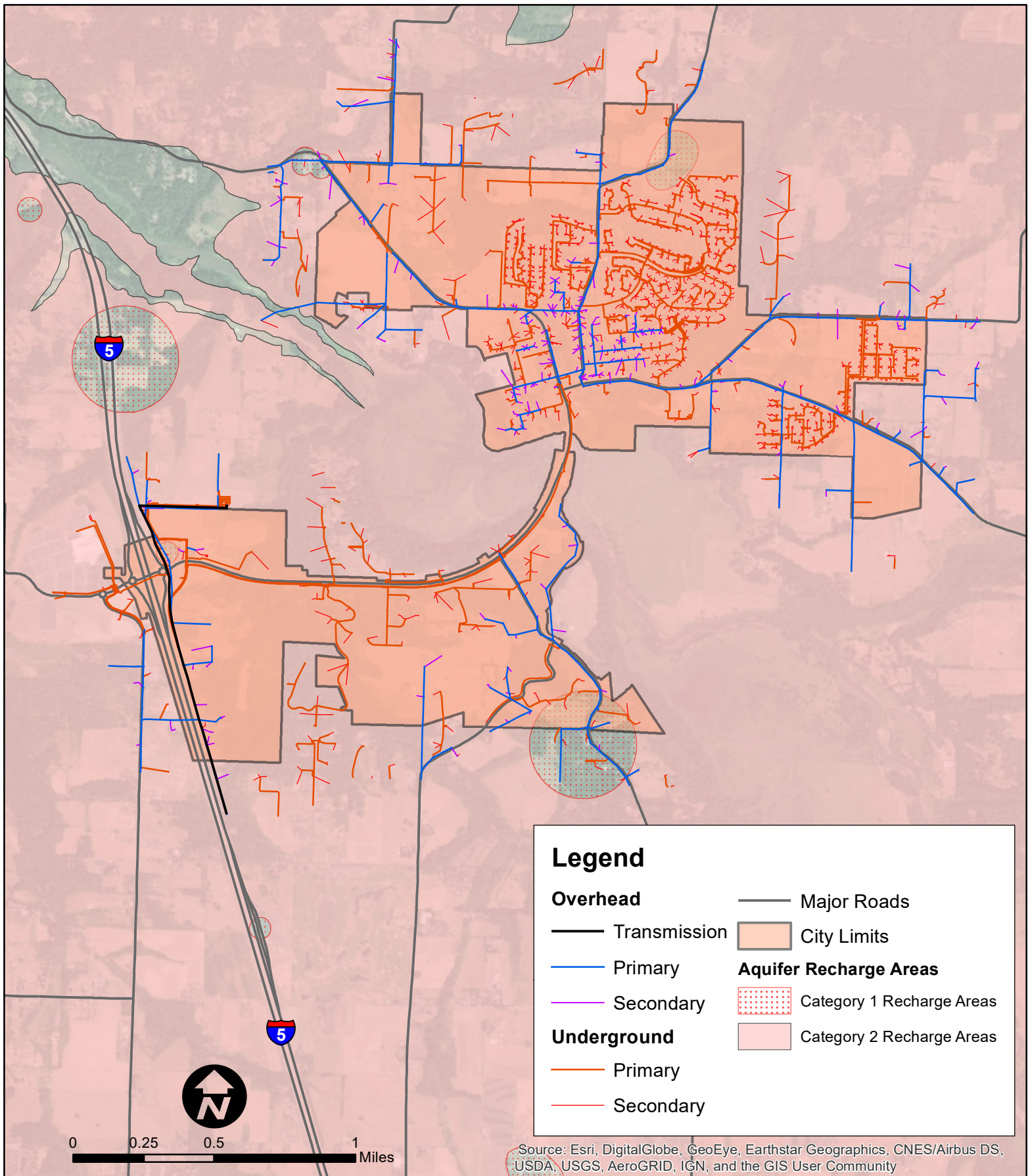
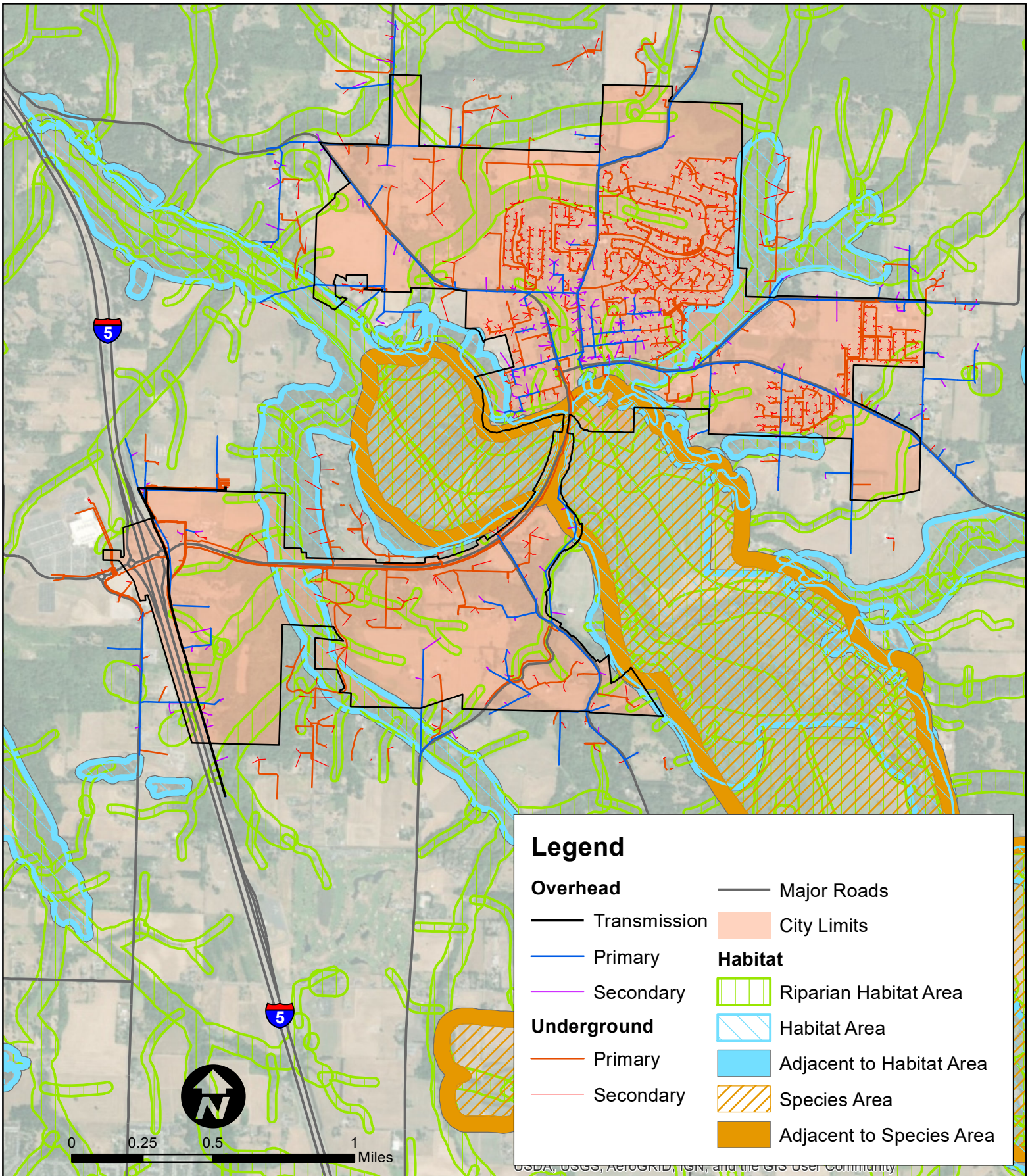


Figure 1. Critical Aquifer Recharge Areas

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USDA, USGS, AERONET, USGS, and the GIS User Community

Figure 2. Fish and Wildlife Habitat Conservation Areas

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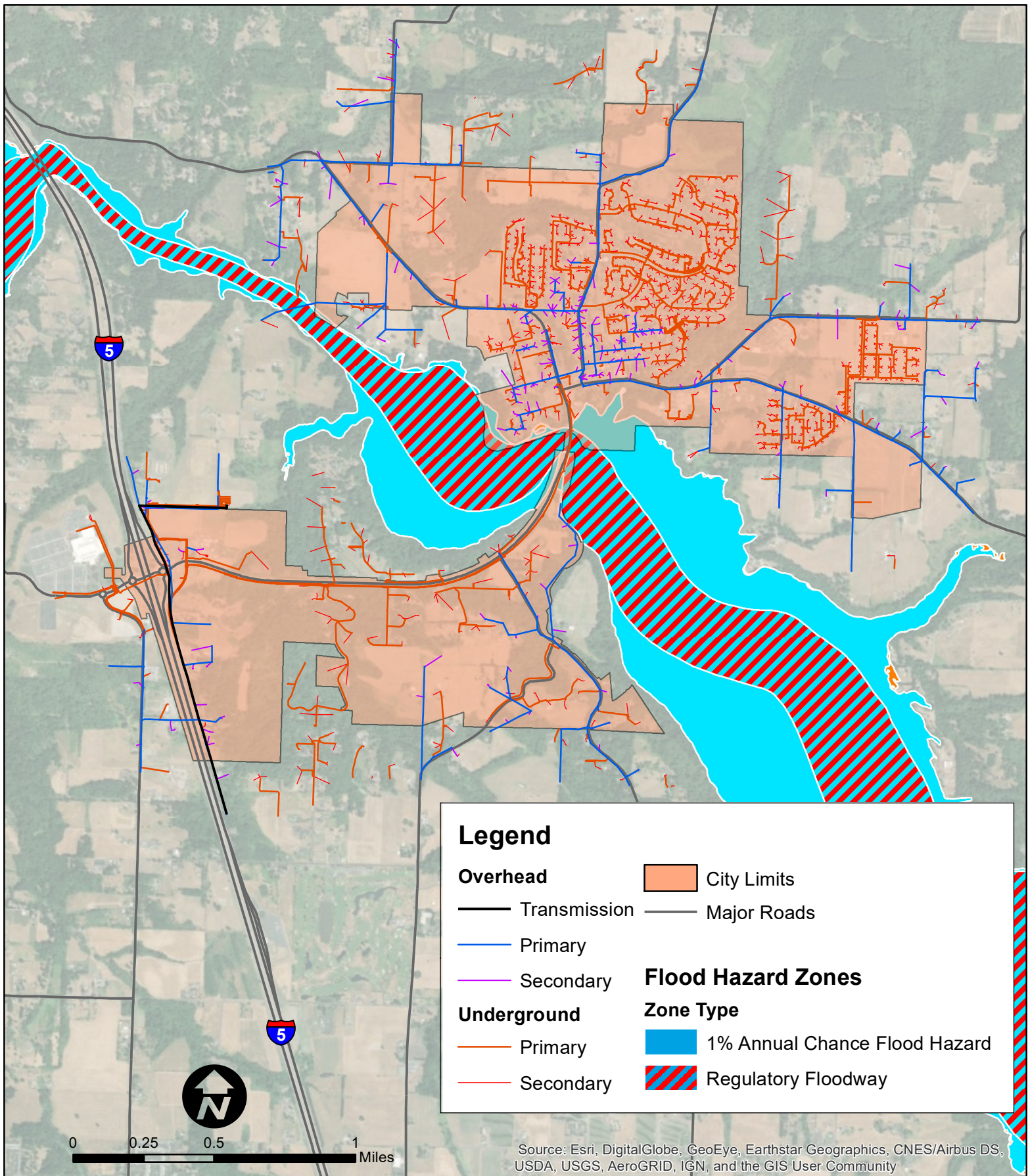


Figure 3. Frequently Flooded Areas

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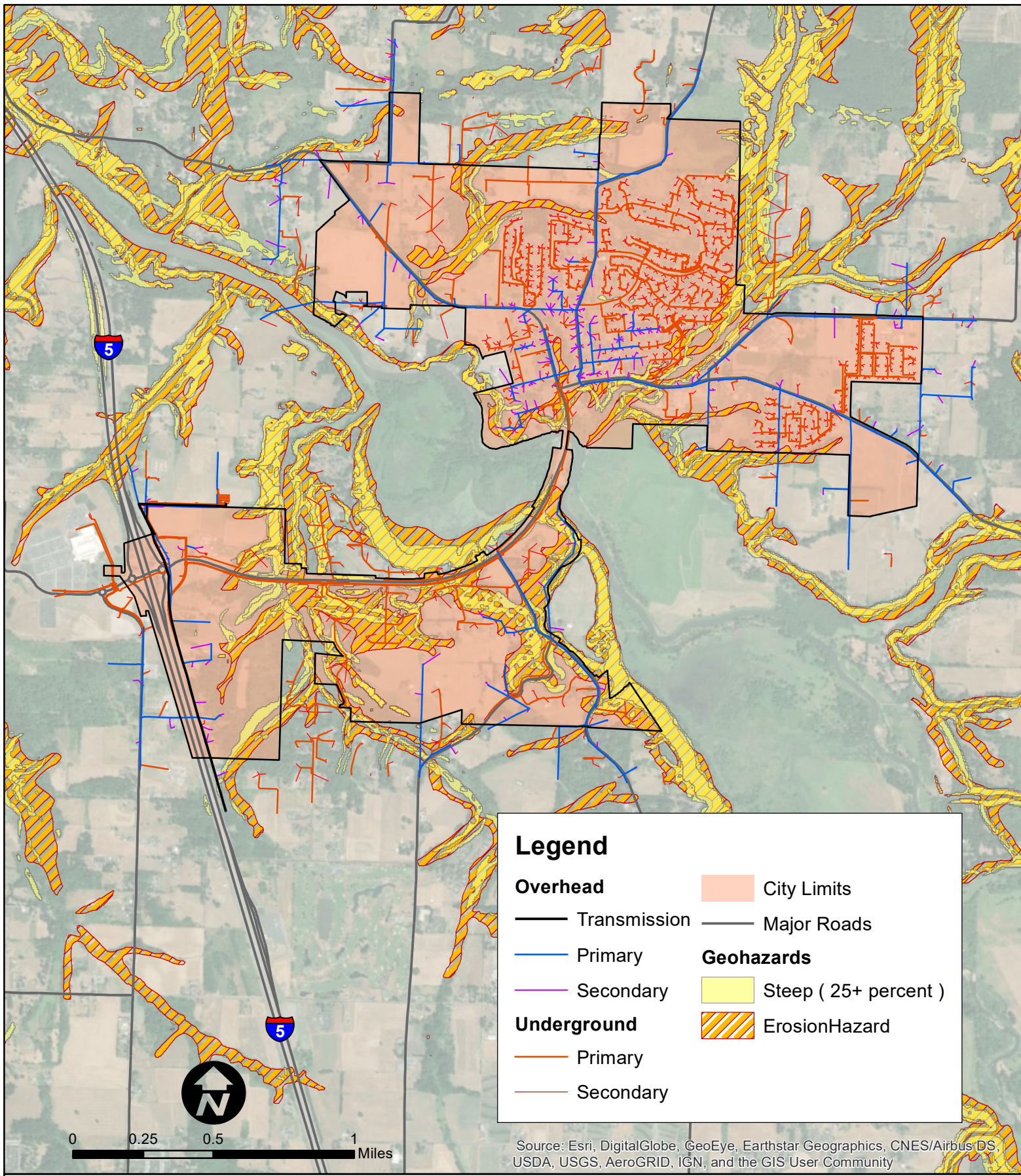


Figure 4. Geologically Hazardous Areas

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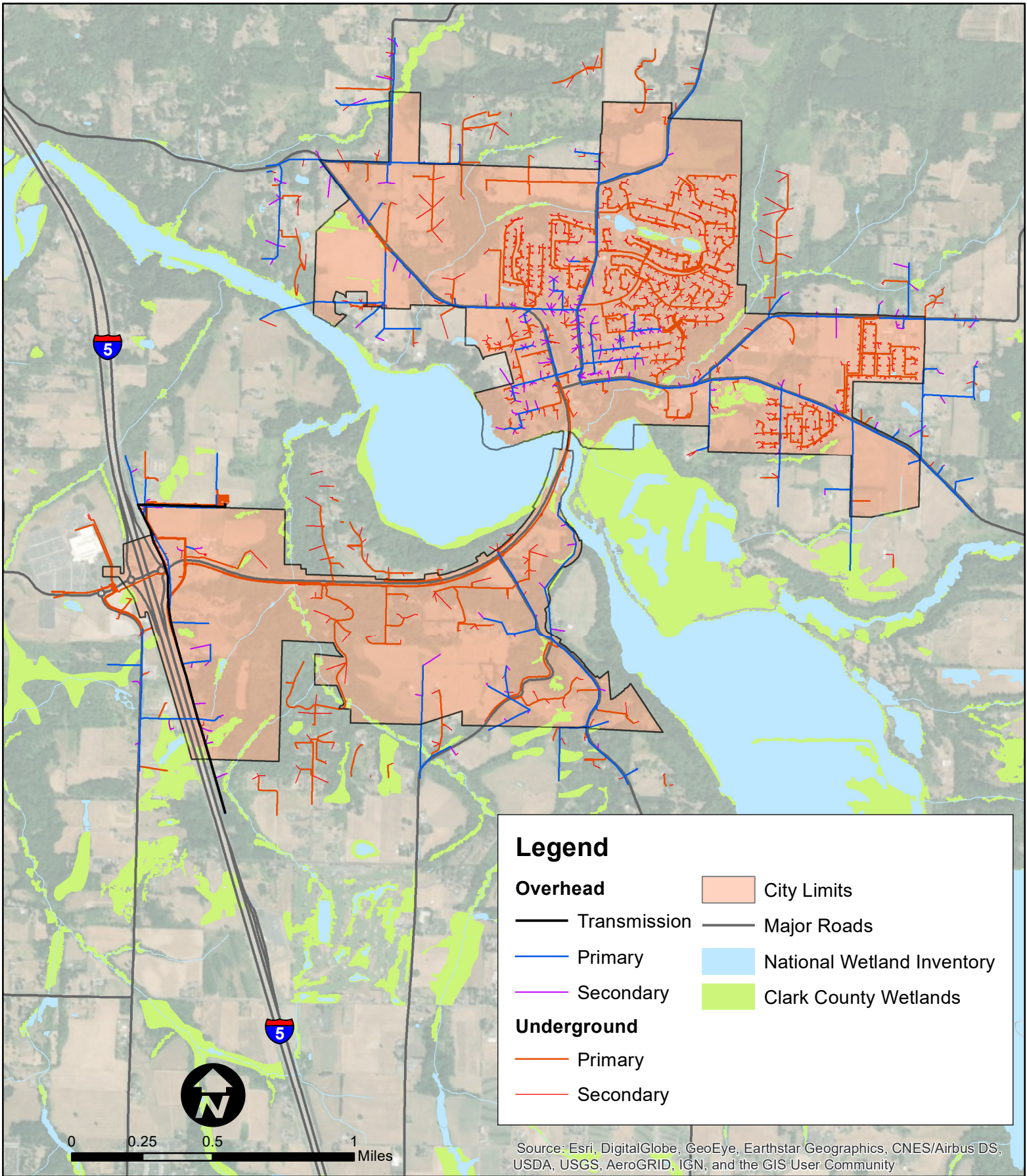


Figure 5. Wetlands
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