

WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2008 - 261 B

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	<i>DBD</i>	8/6/2008		8/5/2008	Council
Division Head:					
Dept. Head:					
Prosecutor:					
Purchasing/Budget:					
Executive:					

TITLE OF DOCUMENT:
 Res. approving DOE's approval of recommended changes of Shoreline Master Program

ATTACHMENTS:

SEPA review required? () Yes () NO SEPA review completed? () Yes () NO	Should Clerk schedule a hearing ? () Yes () NO Requested Date:
-------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: *(If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)*

Resolution approving Department of Ecology's approval, with required and recommended changes, of the Whatcom County Shoreline Master Program

COMMITTEE ACTION:	COUNCIL ACTION: 8/5/2008: Council Approved 4-3 Nelson, Brenner and Crawford opposed Res. 2008-056
--------------------------	-------------------------------------------------------------------------------------------------------------

Related County Contract #:	Related File Numbers: AB2008-261 & A	Ordinance or Resolution Number: Res. 2008-056
-----------------------------------	------------------------------------------------	------------------------------------------------------

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

PROPOSED BY: Council
SPONSORED BY: Council
INTRODUCED: 8/5/2008

RESOLUTION NO. 2008- 056

APPROVING DEPARTMENT OF ECOLOGY'S APPROVAL,
WITH REQUIRED AND RECOMMENDED CHANGES, OF THE
WHATCOM COUNTY SHORELINE MASTER PROGRAM

WHEREAS, the Washington State Legislature passed the Shoreline Management Act (SMA) in 1971 requiring counties and cities to adopt and administer local shoreline management programs to carry out the provisions of the Act; and

WHEREAS, the Whatcom County Shoreline Management Program (WCC, Title 23 [SMP]) was originally adopted on May 27, 1976 and approved by the Department of Ecology on August 27, 1976; and

WHEREAS, in 1995 the State Legislature directed the Washington State Department of Ecology to update the Shoreline Management Program Guidelines (WAC 173-26), which serve as the standards and guidance that local governments must follow in drafting local shoreline management programs; and

WHEREAS, in December 2003, the Department of Ecology adopted new, revised Shoreline Guidelines (WAC 173-26); and

WHEREAS, pursuant to RCW 90.58.080, Whatcom County is required to review and update its existing 1998 Shoreline Management Program to ensure conformance with the required elements of the 2003 Shoreline Guidelines; and

WHEREAS, the Whatcom County SEPA Official issued a Determination of Non-significance (DNS) for the proposed Whatcom County Shoreline Management Program update on August 25, 2006; and

WHEREAS, pursuant to RCW 36.70.390, legal notice was published in the Bellingham Herald on Friday, September 15, 2006; and

WHEREAS, the Planning Commission held a public hearing on the proposed amendments on Thursday, September 28, 2006 and considered all testimony; and

WHEREAS, the Planning Commission held work sessions on the proposed amendments on Thursday, September 28, 2006 and Thursday, October 26, 2006; and

WHEREAS, the Planning Commission recommended approval of the proposed amendments on Thursday, October 26, 2006; and

WHEREAS, Whatcom County passed Ordinance #2007-017 adopting the Shoreline Management Program amendment on February 27, 2007, the State Department of Ecology must approve it before it becomes effective; and

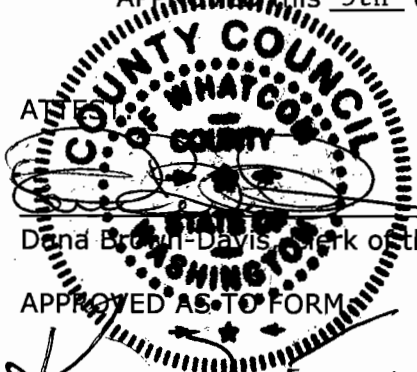

WHEREAS, the State Department of Ecology has approved the Whatcom County Shoreline Management Program amendment with changes; and

WHEREAS, the Whatcom County Council finds the amendments to be in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Whatcom County Council hereby acknowledges and agrees to the Department of Ecology's required changes detailed in Attachment B; and

BE IT FURTHER RESOLVED by the Whatcom County Council that the Whatcom County Council hereby acknowledges and agrees to the recommended changes detailed in Attachment C to the Whatcom County Shoreline Master Program approval.

APPROVED this 5th day of August, 2008.

ATTEST:

Dana Brown-Davis, Clerk of the Council
APPROVED AS TO FORM

Civil Deputy Prosecutor

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Carl Weimer, Council Chair

ATTACHMENT B – REQUIRED REVISIONS TO SUBMITTED WHATCOM
COUNTY SHORELINE MASTER PROGRAM AMENDMENT

Pg vi – Appendices – Add “F. Common Line Setback Standards”

Pg 3 - Ch 23.10.06(A) – Reference to Plans – In order to be clear and consistent, the date of the ordinance (dated Sept 30, 2005, and as amended on February 27, 2007) needs to be inserted after “Ordinance No. 2005-00068”. For clarity, the following sentence needs to be added to the end of the paragraph, “ All references to the Critical Area Ordinance WCC 16.16 (CAO) are for this specific version.”

Pg 12 – Ch 23.30.02 – Official Shoreline Map – State law requires that the official map be kept at Ecology. In the fourth line, replace “State Code Reviser” with “Washington Department of Ecology” and delete the reference to Ecology in the following line.

Pg 28 – Natural Shoreline Area, Conditional Uses –
23.30.10.5B allows essential public facilities in the natural environment. This is inconsistent with the guidelines and needs to be stricken.

Pg 37 – Ch 23.50.07(D) - Non-conforming Development – This provision is for modifying a dock to be more consistent with the SMP despite moving it a limited distance e.g. rotating float to be parallel to shore rather than stick straight out.

“...; Provided further, that as a conditional use a non-conforming dock may be modified, reoriented or altered within the same general location to be **more** consistent with the provisions of this SMP.”

The following provision would allow more flexibility in the design of remodeled existing non-conforming commercial structures -

Ch 23.50.07(E) – Non-Conforming Development – “...apply: **and provided further, that non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to Ch 23.100.05.B.1(e)**

Ch 23.50.07(I) – Non-Conforming Development – Enlargement or expansion of single-family residences by the addition of space to the **main structure** or by addition of normal appurtenances as defined in Chapter 11 that would increase the non-conformity and/or further encroach into areas where new structures or developments would not now be allowed under the Program may be approved by conditional use permit if all of the following criteria are met:

1. The structure must be located landward of the ordinary high water mark.
2. The enlargement, expansion or addition shall not extend either further waterward than the existing primary residential structure (not appurtenance), further into the

minimum side yard setback, or further into any critical area ~~and/or associated buffer~~ established by WCC 16.16 than the existing structure. Encroachments that extend waterward of the existing residential foundation walls, further into a critical area ~~or associated buffer~~, or the minimum side yard setback require a variance.

3. The area between the non-conforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of SMP 23.90.06.
4. The ~~change in use~~, remodel or expansion will not cause adverse impacts to shoreline ecological functions and/or processes. (this only applies to a SFR)

Pg 39 - Ch 23.50.07(K) – Non-Conforming Development –

1. – last line - Add “except drainfields” after “appurtenances”.
2. – Revise to read, “Non-conforming lots that do not meet the requirement of subsection K.1 above shall provide the maximum setback and buffer dimension feasible while providing for a building area of ~~at least~~ not more than 2,500 square feet on the portion of the lot farthest from the required setback or buffer; provided that consideration shall be given to view impacts and all single family residences approved under this section shall not extend waterward of the common-line setback as measured in accordance with Appendix F.”
5. – insert “except wetlands and buffers.” after “buffers”.

Pg 40 – Ch 23.60.01.B(2) – Substantial Development Permit Criteria – The last sentence needs to be deleted as it is not internal consistent with the previous regulations and only serves to create regulatory ambiguity.

Pg 41 – **23.60.02.2 Exemptions Listed**

The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit. A statement of exemption, as provided for in SMP 23.60.02.3 of this Program shall be required for those activities listed in SMP 23.60.02.3.B and C.

- A. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred eighteen dollars (\$5,718), or as amended by the state office of financial management, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

Pg 46 – Ch 23.60.03.C - This provision needs to be clarified as follows, “Proposals that would otherwise qualify as a reasonable use pursuant to WCC 16.16.270A shall require a shoreline variance and shall meet the variance criteria in this section.” In order to be consistent with WAC 173-27-170(2a), delete “a” prior to “reasonable” in item D(1).

Pg 69 – Ch 23.90.03.B2 - For internal consistency, add the following to the beginning of the paragraph, “Because of its incorporation by reference herein under Section 23.10.06.A. above, the provisions of the Whatcom County Critical Areas Ordinance, WCC 16.16, shall apply[etc.]”

Pg 71 – Ch 23.90.04.B.5 – Water Quality and Quantity – Regulations – For added clarity, the last line in should read, “...pentachlorophenol is prohibited in or above shoreline water bodies.”

Pg 82 – Public Access – Ch 23.90.08.B Regulations - item 4 – In order to be consistent with Policy 23.100.06.A.2g, the words “Flood Control and” needs to be deleted. Item “i” needs to be qualified to read, “Ecological restoration or enhancement activities not associated with development when the purpose of the project would be undermined.”

Pg 82 – Public Access – Ch 23.90.08.B Regulations - item 7 – WAC 173-26-221(4) (dii) requires that a sentence be added as follows, “Shoreline development by public entities shall include public access measures as part of each development project”

Pg 87 – Ch 23.90.10.B2 Regulations – Landfill and Excavation – Revise and re-word the last line after (e) to read, “Except for landfill for county-approved ecological restoration, fill and excavation waterward of the OHWM or in a wetland may only be authorized as a conditional use,”

Pg 89 – Ch 23.90.12B – Dredging – Regulations – To be consistent with WAC 173-26-221(3c)(v), item 1c needs to be revised as follows,
“Maintenance dredging for the purpose of restoring a lawfully established development or the previously permitted or authorized hydraulic capacity of streams.”

Pg 93 - Ch 23.90.12C.9 – Dredging - Shoreline Area Regulations – Aquatic - In order to allow for maintenance dredging without requiring a shoreline conditional use permit, the last sentence of this section needs to be revised to read, “Maintenance dredging associated with an exempt activity pursuant to SMP 23.60.02.2B and D is permitted subject to the policies and regulations of this Program without a conditional use permit provided the original constructed bottom contours have been established and documented in a prior shoreline permit or authorization.”

Pg 94 – Ch 23.90.13.B - Bulk Provisions: Regulations -

2. - The last line should be revised to read, “...the more protective ~~restrictive~~ of shoreline resources shall prevail”

7a. – Replace “water-oriented” with “private water-dependent development or public water-oriented development” to be consistent with WAC 173-26-241.3(d) and WAC 173-26-211(5C).

Pg 95 – Ch 23.90.13.B7(e) Bulk Provisions: Regulations To be consistent with Ch 23.90.05.B3 – Views and Aesthetics – Regulations - The width of beach stairs should be reduced to a minimum by revising the following “...no greater than 4 5ft in width...”

Pg 95 – Ch 23.90.13.B7(f) Bulk Provisions: Regulations - This provision needs to be deleted. If an essential public facility must be located in a buffer, a variance will be required.

Pg 95 – Ch 23.90.13.B8 - Bulk Provisions: Regulations - Additional flexibility for accessory structures in floodplains should be provided by adding the following regulation, “8. Height limits contained in this Program for accessory structures in the Rural, Resource or Conservancy shoreline environments shall not apply within shoreline jurisdiction of the Nooksack and Sumas Rivers beyond 150 ft from the OHWM.”

Pg 98 – Consistent with Ch 23.90.13.B.5, the Urban Resort height limit for commercial and multi-family residential needs a subscript as follows, “g - height limit may be increased to 75 ft via conditional use permit - see Ch 23.90.13.B.5”

Pg 99 – The footnote concerning maximum allowable development density should read at the end of the first line, “...maximum allowable density in dwelling units/acre shall not exceed...”

Pg 101- Ch 23.100.01 – Essential public facilities should not be allowed in the natural environment. Change “c” to “x” in the table.

Pg 124 – Ch 23.100.05.B.1(d) – Consistent with Ch 23.100.05.C – Commercial Use Regulations, the first line should be revised to read, “Non-water-oriented commercial uses may be permitted as a conditional use where ...”

Pg 125 – Ch 23.100.05.B.1(e5) – Commercial Use – For clarity, insert “(e)” after “section”.

Pg 132 – Ch 23.100.06.C(7) – Flood Control Works - To be consistent with WAC 173-26-211(5b)(iic) & 221(3c), insert “as a conditional use” after “permitted” and revise Table 23.100.01 accordingly.

Pg 136 – Ch 23. 100.07.B1.5f – Industrial and Port Development – Regulations - In order to be consistent with the commercial development provision regarding non-water-oriented uses, the industrial non-water-oriented clause should be revised as follows,

“The requirements of this section shall not apply to those non-water-oriented industrial or port uses located on a site physically separated from the shoreline where access to the land/water interface is precluded, provided that such conditions were lawfully established prior to the effective date of this Program.”

Pg 144 – Ch 23.100.08.B11b – Mining Overburden – The sentence should read, “Disposal of overburden or mining spoil...”

Pg 147-9 — Ch 23.100.09.B – Moorage: Docks, Piers and Mooring Buoys - Regulations

1. Revise the last sentence to read, “Shared moorage currently leased or proposed to be leased shall be reviewed as a marina”

7. Piers and docks shall be the minimum size necessary to meet the needs of the proposed water-dependent use and shall observe the following criteria:
 - a. If allowed under the provisions of this Program, only one (1) private dock with one (1) accessory float, one (1) boat lift, and one (1) covered moorage accessory to a permitted moorage, shall be permitted on a shoreline lot owned for residential or private recreational use.

 - b. Docks with or without a float shall be the minimum size required to provide for moorage for a single boat. Single family docks and floats shall not exceed 40 feet in length ~~nor 3 feet in height~~ both measured perpendicularly from the OHWM ~~nor exceed 3 feet in height~~ above the extreme high water level. Shared moorage may extend to 80 feet in length if demonstrated to be necessary to provide adequate moorage. In the case of pile docks at marine or river locations, the height shall be limited to that which may be reasonably necessary to accommodate landing and moorage of watercraft. Commercial docks shall be the minimum length necessary to serve the type of vessel served.

 - c. Private docks up to 60 feet in length or shared moorage up to 100 feet in length measured perpendicularly from the OHWM, including floats, may be permitted by the Administrator in shallow areas where a dock sized to accommodate a tender to provide access to a mooring buoy is not feasible and where existing docks on adjacent properties presently extend out as far as that which is proposed, and where such added length is necessary in order to allow a reasonable use of the dock, as determined based upon adjacent uses; and where the extension in dock length will not adversely affect ecological processes and functions, provided the required dock length is the minimum necessary to achieve such purposes. Docks that cannot reasonably meet this standard may request a review under the variance provisions of this Program.

- d. Moorage shall be designed to avoid the need for maintenance dredging. The moorage of a boat larger than provided for in the original moorage design shall not be grounds for approval of dredging.
8. In order to minimize impacts on nearshore areas and avoid reduction in ambient light level:
- a. The width of piers, docks and floats shall be the minimum necessary and shall not exceed 4 feet in width, except where specific information on use patterns justifies a greater width. Marine floats shall not exceed 8 feet in width nor 40 feet in length and freshwater floats shall not exceed 6 feet in width and 20 feet in length unless authorized by a variance. Exceptionally large vessels or vessels that require a relatively deep draft may be required to use a buoy, other alternative mooring scheme, or to moor in a marina. Materials that will allow light to pass through the deck may be required of any structure where width exceeds 4 feet.
 - b. Dock surfaces designed to allow maximum light penetration shall be used on walkways or gangplanks in nearshore areas.
 - c. Piers, docks and floats shall be located along a north/south orientation to the maximum extent feasible.

Pg 152 – Ch 23.100.09.C – Moorage: Docks, Piers and Mooring Buoys – Shoreline Area Regulations – In order to be consistent with WAC 173-26-241(3c)(viii), and Policy 23.100.09.A(10), the following sentence needs to be added to the Aquatic designation (item 9), “Unless authorized by WA DNR or its designees, extended moorage longer than 60 consecutive days in one location shall be considered an obstruction which interferes with the normal public use of the surface of the waters of the state, and is prohibited.”

Pg 157 – Ch 23.100.11.B.1(a) – Residential Regulations – Location and Design – To be consistent with the Guidelines WAC 173-26-231(a), Shoreline Stabilization, the words “Where appropriate” needs to be deleted.

Pg 157 – Ch 23.100.11.B.1(b) – Residential Regulations – Location and Design – In order to clarify the relationship between this setback requirement and the buffer/setback required under Ch 23.90.13 the following sentence needs to be added to the end of the paragraph, “ The greater setback resulting from this regulation or Ch 23.90.13 shall apply.”

Pg 157 – Ch 23.100.11.B.1(f) – Residential Regulations – Location and Design – New over-water residential structures are prohibited by WAC 173-26-241(3)(j). The remainder of the sentence following “prohibited” should be deleted.

Pg 161 – The Guidelines WAC 173-26-211(5a)(ii)(c) require a shoreline conditional use permit to locate a residence within the Natural environment designation. Insert “as a conditional use” after “permitted”.

Pg 163 – Ch 23.100.12.B – Restoration – Regulations – For clarity, insert “County Resolution 2007-011” after “shoreline restoration plan”.

Pg 167 – Ch 23.100.13.B.2(a) – Shoreline Stabilization – Regulations – In order to be internally consistent with (b) and consistent with the Guidelines WAC 173-26-231(3), this regulation needs to be revised as follows, “Bulkheads and other similar hard structures are prohibited on marine or lake accretion shoreforms, except as a conditional use where exposure to storm waves and driftwood battering seriously threaten other similar existing structures and no feasible alternatives exist. Such bulkheads shall be setback a minimum of 20 feet landward from the OHWM”. Table 23.100.01 on page 102 needs to be revised to show “Bulkheads and revetments” as a CUP except in the Natural and Aquatic designations where they are prohibited.

Pg 169 - Ch 23.100.13.B.4 – Viewpoints and Public Access – To be consistent with WAC 173-26-221(3c)(iv), item b needs to be revised as follows, “Publicly financed or subsidized shoreline stabilization shall not restrict appropriate public access to the shoreline and shall provide ~~consider provisions for~~ new public access except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to shoreline ecological functions.”

Pg 180 – Ch 23.100.16 – Utilities – For clarity and to be internally consistent with the provided definitions of “shorelines” and “shorelines of state-wide significance”, references to “shorelines” and “shoreline areas” needs to be replaced with “shoreline jurisdiction” for items 16.A.1; 16.B1.a.1, b1,c1,d1,e1, f &g.

Pg 184 - Ch 23.100.16C(9) – Utilities – Aquatic – Consistent with Ch 23.90.04 *Water Quality*, insert “and desalination” prior to “outfalls”.

Pg 186 – Ch 23.100.17.A.1.e - Cherry Point Management Area – Purpose and Intent – In order to be consistent with other portions of the SMP i.e. Ch 23.10.06.A, the last sentence needs to be revised to read, “In the event that the provisions of Section 23.100.17 conflict with other applicable referenced provisions of this Program, the policies and regulations that are most protective of shoreline resources ~~of Section 23.100.17~~ shall prevail.”

Pg 186 – Ch 23.100.17.A.2 - Cherry Point Management Area (CPMA) – The statute does not allow the type of stated preference of “long-term economic benefits” over “potential adverse effects”. The portion of the first sentence following “Area” needs to be deleted.

Pg 187 - Ch.100.17.A.5 – CPMA – Shoreline Ecological Functions and Processes – To be consistent with the statute and the previous section, the first sentence needs to be revised to read, “In recognition of the diverse and vital ecological resources in the Cherry

Point Management Area, consideration of probable effects of all development proposals on shoreline ecological functions and processes should be assessed ~~weighed~~ with the other long-term statewide ~~economic benefits~~ interests.”

Pg 187 - Ch.100.17.A.7 – CPMA – Site Development – Since other SMP provisions are generally not applicable in this designation, the first sentence needs to be revised as follows, “All development should be constructed and operated in a manner that protects shoreline resources, their ecological functions and processes, and that will incorporate the following:”

Pg 188 – Ch 23.100.17.B.1.a.2 – CPMA - Allowed Use – In order to be consistent with items A2 and A5 above on page 186-7, this regulation needs to read, “the long term statewide economic benefits of the development ~~outweigh~~ have been considered with the potential adverse impacts on ecological functions; and”

Pg 189 – Ch 23.100.17.B.3 – CPMA – Critical Areas – In order to provide equal or better critical areas protection this section needs to reference Ch 23.90.07, Ecological Protection and Critical Areas as follows, “In addition to meeting the provisions of Ch 23.90.073 Ecological Protection and Critical Areas, development and alteration ...”

Pg 189 – Ch 23.100.17.B.4.a.1 – CPMA – Location and Design – Piers – For internal consistency, the county’s policy at Ch 23.100.17.A.1.c needs to be repeated as a regulation as follows, “Due to the environmental sensitivity of the area, Whatcom County shall limit the number of piers to one (1) pier, in addition to those in operation or approved as of January 1, 1998.”

Pg 193 – Chapter 11 – Definitions – The following revisions to these definitions need to be made:

Pg 196 – In conjunction with the revision below on pg 212, this definition needs a minor modification as follows,

“Bedlands” means those submerged lands below the line of extreme low tide in marine waters and below the OHWM of ~~navigability of navigable~~ lakes and rivers.

Pg 197 – For consistency with the clauses for non-conforming structures, the following definition needs to be added,

“Building footprint” means for the purposes of this program, the ground area contained by the exterior walls of a building.

Pg 200 – The definition of development needs to be made more consistent with the statutory language as follows,

“Development” means a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of

a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any state of water level. This term may include activities related to ~~such as~~ subdivision and short subdivisions; ~~binding site plans;~~ planned unit developments; ~~variances;~~ clearing activity; fill and grade work; ~~activity conditionally allowed;~~ building or construction; ~~revocable encroachment permits; and septic approval;~~ and both ~~exempt and substantial developments~~ activities that are exempt from the substantial development permit process or that require a shoreline variance or conditional use.

The definition of dredging needs to be made more inclusive as follows,

“Dredging” means the removal, displacement, and disposal of unconsolidated earth material such as silt, sand, gravel, or other submerged material from the bottom of water bodies or from wetlands; maintenance dredging and other support activities are included in this definition.

Pg 201 – The following definition needs to be added, “Extreme High Water Level – means the highest tide level reached in a 19-year tidal cycle, or on lakes, the highest water level reached in the past 10-years.”

Pg 204 - - The definition of “Floodplain, Geomorphic” should be deleted since it is not used in the program and will only serve to confuse readers.

Pg 209 - - In conjunction with the revision below on pg 212, the definition of “line of navigability” should be deleted since it is not used in the program.

Pg 211 – The definition of marina should be revised as follows,

“Marina” means a wet moorage and/or dry storage facility for pleasure craft and/or commercial craft where goods, moorage or services related to boating may be sold commercially or provided for a fee e.g. yacht club, etc. Launching facilities and covered moorage may also be provided. Marinas may be open to the general public or restricted on the basis of property ownership or membership. Manufacturing of watercraft is considered Industrial.

Pg 212 - The proposed definition of “Navigable Waters of the United States” is overly restrictive with regard to the state’s public trust doctrine as expressed through the Shoreline Management Act and needs to be revised as follows,

“~~Navigable Waters of the United States~~” means a water body that in its ordinary condition, or by being united with other water bodies, forms a continued route or area over which commerce or recreational activities are or may be carried on ~~with other states or foreign countries~~ in the customary modes in which such commerce or recreation is conducted on by water.

Pg 212 – To be consistent with the CAO definition of marine nearshore buffer on pg 70, this definition should be revised as follows,

"Nearshore Habitat means the zone that extends waterward from the marine shoreline (OHWM) to a water depth of approximately 20 meters (66 feet). Nearshore habitat is biologically rich, providing important habitat for a diversity of plant and animal species."

Pg 213 - The following definition should be made more consistent with RCW 90.58.020 as follows,

"Nonwater-oriented Use" means uses that are not water-dependent, water-related or water-enjoyment. Nonwater-oriented uses have little or no relationship to the shoreline and are not considered priority uses under the Shoreline Management Act except single-family residences. Any use that does not meet the definition of water-dependent, water-related or water-enjoyment is classified as nonwater-oriented.

Pg 213 – The following definition needs to be added,

"Non-conforming lot" – means, for the purposes of Ch 23.50.07.K and Ch 23.90.06.B.3, a vacant lot under contiguous ownership and with less than a total of 20,000 square feet, including within shoreline jurisdiction, that was lawfully established prior to the effective date of this Program (August 27, 1976) or amendments hereto, but which does not conform to the setback or buffer standards of this Program.

Pg 214 – The following definition needs to be added,

"Permit or Approval means any form of permission required under this Program prior to undertaking activity on shorelines of the state, including substantial development permits, variance permits, conditional use permits, permit revisions, and shoreline exemptions from the substantial development permit process."

Pg 214 - To be consistent with SMP jurisdiction, the following definition needs to be revised as follows,

"Pond" means an open body of water, generally equal to or greater than 6.6 feet deep, that persists throughout the year and occurs in a depression of land or expanded part of a stream and has less than thirty percent (30%) aerial coverage by trees, shrubs, or persistent emergent vegetation. Ponds are generally smaller than lakes. Farm ponds are excluded from this definition. Beaver ponds that are two (2) years old or less are excluded from this definition. For the purposes of this program, any pond whose surface water extends into the OHWM of any Shoreline of the State, shall be considered part of that Shoreline of the State.

Pg 217 – In order to be consistent with the Commercial and Residential definitions, the following definition should be revised as follows,

“Recreational Development means the modification of the natural or existing environment to accommodate recreation. This includes clearing land, earth modifications, structures and other facilities such as parks, camps, camping clubs, launch ramps, golf courses, viewpoints, trails, public access facilities, public parks and athletic fields, hunting blinds, wildlife enhancement (wildlife ponds are considered excavation), and other low intensity use outdoor recreation areas. Recreational homes/condominiums and related subdivisions of land are considered residential; resorts, motels, hotels, recreational vehicle parks, intensive commercial outdoor or indoor recreation, and other commercial enterprises are considered commercial.”

Pg 217 – In order to be consistent with the Commercial and Recreational definitions, the following definition should be revised as follows,

“Residential Development means buildings, earth modifications, subdivision and use of land primarily for human residence; including, but not limited to: single family and multifamily dwellings, condominiums, mobile homes and mobile home parks, boarding homes, family daycare homes, adult family homes, retirement and convalescent homes, together with accessory uses common to normal residential use. Camping sites or clubs, recreational vehicle parks, motels, hotels and other transient housing are not included in this definition.”

Pg 219 – S2 - “Sensitive Area” should be deleted as it is not used in the SMP.

Pg 222 – To be consistent with the recently revised statutory cost threshold, the definition for substantial development should be revised as follows,

“Substantial Development means any development of which the total cost or fair market value exceeds five-thousand seven hundred eighteen dollars (\$5,718) or as amended by the state office of financial management, or any development which materially interferes with the normal public use of the water or shorelines of the State; except ~~that~~ the classes of development, listed in (A) through (P) under SMP 23.60.02.2.”

Pg 224 - The following definition should be made more consistent with RCW 90.58.020 as follows,

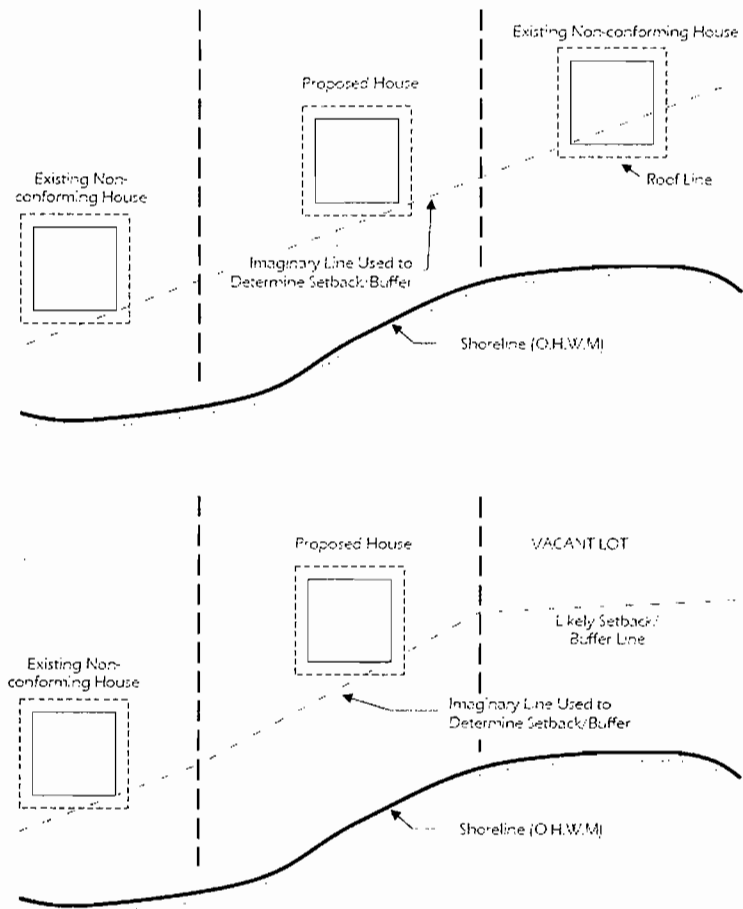
“Water-oriented Use” means any one or a combination of water-dependent, water-related or water-enjoyment uses and serves as an all-encompassing definition, together with single family residences, for priority uses under the Act.

Appendix F – Common-Line Setback Standards

1. Single-family residential development on non-conforming lots shall meet the setback standards established in Ch 23.90.13, Shoreline Bulk Provisions, except as provided in Ch 23.50.07K.2 Non-Conforming Development and subsection 2 below.
2. For the purpose of accommodating shoreline views to be adequate and similar to adjacent residences but not necessarily equivalent, setbacks and buffers for single-family residences may be reduced consistent with the following:
 - a. Where there are existing legally established non-conforming residences that encroach on the established setback/buffer within fifty (50) feet of either side of the proposed building foot print, the Administrator may reduce the required setback/buffer for the proposed structure. In such cases, the proposed residential structure may be set back from the OHWM to a common line drawn between the nearest corners of each adjacent residence.
 - b. In those instances where only one existing non-conforming single family residence is within fifty (50) feet of the proposed building footprint, the Administrator may reduce the setback/buffer of the proposed structure to a line drawn between the nearest corner of the existing adjacent residence and the nearest applicable setback for the adjacent vacant parcel.
 - c. In no case shall the reduced setbacks and buffers applied be less than fifteen (15) feet landward of the OHWM. In all cases, vegetative buffers shall be optimized.
 - d. Any further setback/buffer reduction for non-conforming lots beyond that allowed in this section shall require approval of a shoreline variance permit.

Add the following diagram of setback standards to Appendix F with the “vacant lot” annotation revised from “Likely Setback/Buffer Line” to “Standard Setback Line”.

Whatcom County SMP Common-Line Setback Standards for Residential Development



Add map corrections per updated USGS 20 cfs points for creeks within federal reserve boundaries as follows:

White Salmon, Cavanaugh, Dillard, Frost, Cultus, Galbraith, Lightning, Newhalem, Orsino, Smith (Lake Whatcom), and Tomyhoi. Also add Tomyhoi Lake.

ATTACHMENT C – ECOLOGY **RECOMMENDED** REVISIONS TO THE
SUBMITTED PROPOSED WHATCOM COUNTY SMP AMENDMENT

- 1) The following section may be placed immediately prior to the SMP Table of Contents to allow additional flexibility in local administration.

Administrative Procedures

As described in adopted Whatcom County ordinance 2008 – XXX, the general administrative sections of Title 23 (Whatcom County Shoreline Management Program) are not part of this Program. They are, however, included with the text of this document for consistency and ease of use. Department of Ecology will be notified of any changes to the administrative chapters listed below.

The use of separate local administrative and enforcement procedures is consistent with the 2003 Washington State Shoreline Master Program Guidelines (WAC 173-26-191(2)(a)(iii)(C)), Administrative provisions:

“Local governments may include administrative, enforcement, and permit review procedures in the master program or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 WAC.”

This allows Whatcom County to revise local administrative procedures (fees, application meetings, authority of Administrator, etc) without another formal state amendment process. These chapters must still be consistent and remain consistent with the related provisions in the Shoreline Management Act and state shoreline rules (WACs). In the event of a conflict, the state RCW or WAC, as amended, will prevail over the local ordinance.

The following sections are part of the Whatcom County Administrative Procedures ordinance 2008 – XXX, separate from Title 23.

- Ch 23.60.05 – Minimum Application Requirements
- Ch 23.60.06 – Pre-application Conference
- Ch 23.60.07 - Fees
- Ch 23.60.08 – Notice of Application
- Ch 23.60.09 – Permit Application Review
- Ch 23.60.10 – Consolidated Permit Review
- Ch 23.60.11 - SEPA Compliance
- Ch 23.60.13 – Public Hearings
- Ch 23.60.14 – Permit Conditions
- Ch 23.60.15 – Notice of Decision
- Ch 23.60.16 – Initiation of Development

Ch 23.60.18 - Rescission
Ch 23.60.19 – Expiration
Ch 7 – Administration
Ch 8 – Legal Provisions

Pg 94 – Ch 23.90.13.B5 Bulk Provisions: Regulations - The last sentence should be revised to read, “...sufficient information in the form of a view analysis...”

Pg 177 Ch 23.100.15.B.1 Transportation – Design and Operation – This regulation should be clarified as follows,

- a. Transportation facilities on shorelines shall be designed to generally follow natural topography, to minimize cuts and/or fills, to avoid cutting off meander bends or point bars, and to avoid adverse impacts to shoreline ecological functions and processes. Wherever such roads or railway embankments cross depressions remaining from remnant channels and oxbow bends, crossings of ample cross-section shall be provided to span the remnant feature.
- b. Raised arterial roads or railways shall be built outside the floodway except for necessary crossings. If built in the floodway fringe, such routes should be aligned generally parallel to outside stream bends so they will also act as setback dikes. Any parking areas required along such roads shall be sited at the base of the embankment and at the downstream corner of large accretion beaches, thus requiring no or minimal flood control works or shoreline stabilization. Local access roads in floodplains shall be built at valley floor grade level so that floodwaters are not abnormally obstructed nor diverted. Transportation facilities shall be designed so that no significant loss of floodway capacity or measurable increase in predictable flood levels will result. If transportation facilities are intended to secondarily provide flood control, they shall comply with policies and regulations for Flood Control Works under SMP 23.100.06.
- c. If a road is demonstrated to be necessary along an accretion shoreform, the waterward road shoulder shall be set back far enough from the primary berm so that the berm may absorb the high energy of storm tide breakers, as well as prevent road bed erosion and allow optimum recreational use of these scarce shore features.
- d. Spans on rivers shall avoid placing structures within the channel migration zone or other dynamic, shifting channel elements such as bends.
- e. ~~Any parking areas required along such roads shall be sited at the base of the embankment and at the downstream corner of large accretion beaches, thus requiring no or minimal flood control works or shoreline stabilization.~~