

**WHATCOM COUNTY  
SHORELINE MANAGEMENT PROGRAM**

**TITLE 23**

**DRAFT**

**Whatcom County Planning and  
Development Services**

**5280 Northwest Road  
Bellingham, WA 98226**

\* Council Natural Resource Committee recommended text amendments to the October 26, 2006 Planning Commission Recommended Draft Shoreline Management Program are identified by double underline and ~~double strikethrough~~ text.

\*\*Whatcom County Planning Commission recommended amendments are identified by single underline and ~~single strikethrough~~ text.

The original Shoreline Management Program was adopted by Whatcom County May 27, 1976.

This revised Program was adopted XXXXXXXX XX, 2007 to comply with the Shoreline Master Program Guidelines, Washington Administrative Code (WAC) 173-26.

*Approved by the Department of Ecology XXXXXXXX, XX, 2007.*



## **Acknowledgements**

### **Citizens' Advisory Committee Members**

Roger Almskaar	Margaret (Peg) Larson
Kathy Berg	Rebecca O'Brine Willson
Elizabeth Daly	Skip Richards
Richard Gilda	Aubrey Stargell
David Haggith	Wendy Steffensen

### **Technical Advisory Committee Members**

Lummi Nation – Jeremy Freimund, Alan Chapman, Stacy Fawell

Nooksack Tribe – Llyn Doremus, Treva Coe, Ned Currence

Small Cities Caucus – Rollin Harper

Port of Bellingham – Sylvia Goodman, Alan Birdsall

Washington State Department of Fish and Wildlife – Pam Erstad, Dan Penttila, Steve Seymour

Washington State Department of Natural Resources – David Roberts, Nancy Joseph

Washington State Department of Ecology – Barry Wenger, Stephen Stanley, Susan Meyer

Whatcom Conservation District/NRCS – George Boggs

Puget Sound Action Team – Hillary Culverwell

Whatcom County Watershed Improvement Districts – Henry Bierlink

Whatcom County River and Flood Division – Paula Cooper, Paul Pittman

Whatcom County Water Resources Division – John Thompson, Erika Stroebel

Whatcom County Public Works – Steve Fox

Drayton Harbor Shellfish Protection District – Peter Downey

## Table of Contents

<b>Chapter 1</b>	<b>Purpose and Intent</b> .....	<b>1</b>
23.10.01	Authority .....	1
23.10.02	Purpose and Intent .....	1
23.10.03	Governing Principles .....	2
23.10.04	Title .....	3
23.10.05	Short Title .....	4
23.10.06	References to Plans, Regulations or Information Sources .....	4
23.10.07	Liberal Construction .....	4
23.10.08	Severability .....	4
23.10.09	Effective Date .....	4
<b>Chapter 2</b>	<b>Goals and Objectives</b> .....	<b>5</b>
23.20.01	Adoption .....	5
23.20.02	Economic Development .....	5
23.20.03	Public Access .....	6
23.20.04	Recreation .....	6
23.20.05	Transportation and Essential Public Facilities .....	7
23.20.06	Shoreline Use .....	8
23.20.07	Conservation .....	9
23.20.08	Archaeological, Historical and Cultural Resources .....	10
23.20.09	Views and Aesthetics .....	10
23.20.10	Restoration and Enhancement .....	11
<b>Chapter 3</b>	<b>Shoreline Jurisdiction and Area Designations</b> .....	<b>12</b>
23.30.01	Shoreline Jurisdiction .....	12
23.30.02	Official Shoreline Map .....	12
23.30.03	Urban Shoreline Area .....	14
23.30.04	Urban Resort Shoreline Area .....	15
23.30.05	Urban Conservancy Shoreline Area .....	17
23.30.06	Shoreline Residential Area .....	19
23.30.07	Rural Shoreline Area .....	20
23.30.08	Resource Shoreline Area .....	23
23.30.09	Conservancy Shoreline Area .....	24
23.30.10	Natural Shoreline Area .....	27
23.30.11	Aquatic Shoreline Area .....	29
23.30.12	Cherry Point Management Area .....	30
<b>Chapter 4</b>	<b>Shorelines of Statewide Significance</b> .....	<b>31</b>
23.40.01	Adoption of Policy .....	31
23.40.02	Designation of Shorelines of Statewide Significance .....	31
23.40.03	Policies for Shorelines of Statewide Significance .....	32
<b>Chapter 5</b>	<b>Applicability and Non-conforming Uses</b> .....	<b>34</b>
23.50.01	Application to Persons and Development .....	34
23.50.02	Relationship to Other Local Regulations .....	34
23.50.03	Relationship to Other State and Federal Laws .....	35

23.50.04	Application within Federal Reserves .....	36
23.50.05	Program Effects on Property Values .....	36
23.50.06	Hazardous Substance Remedial Actions .....	36
23.50.07	Non-conforming Development.....	36
23.50.08	Property Rights.....	39
<b>Chapter 6</b>	<b>Shoreline Permits and Exemptions .....</b>	<b>41</b>
23.60.01	Substantial Development Permit Criteria.....	41
23.60.02	Exemptions from Shoreline Substantial Development Permit Process .....	41
23.60.03	Variance Permit Criteria .....	47
23.60.04	Conditional Use Permit Criteria .....	49
23.60.05	Minimum Application Requirements .....	50
23.60.06	Pre-application Conference.....	52
23.60.07	Fees .....	53
23.60.08	Notice of Application.....	54
23.60.09	Permit Application Review.....	54
23.60.10	Consolidated Permit Review .....	55
23.60.11	State Environmental Policy Act (SEPA) Compliance .....	55
23.60.12	Burden of Proof .....	56
23.60.13	Public Hearings .....	56
23.60.14	Permit Conditions .....	57
23.60.15	Notice of Decision, Reconsideration and Appeal .....	57
23.60.16	Initiation of Development.....	59
23.60.17	Permit Revisions .....	60
23.60.18	Rescission and Modification.....	61
23.60.19	Expiration .....	61
<b>Chapter 7</b>	<b>Administration .....</b>	<b>64</b>
23.70.01	Administrator .....	64
23.70.02	SEPA Official.....	65
23.70.03	Hearing Examiner.....	65
23.70.04	Planning Commission.....	66
23.70.05	County Council .....	66
<b>Chapter 8</b>	<b>Legal Provisions.....</b>	<b>67</b>
23.80.01	Amendments .....	67
23.80.02	Violations and Penalties .....	67
23.80.03	Remedies .....	69
23.80.04	Abatement .....	69
<b>Chapter 9</b>	<b>General Policies and Regulations.....</b>	<b>70</b>
23.90.01	Applicability .....	70
23.90.02	Land Use .....	70
23.90.02.A	Policies .....	70
23.90.02.B	Regulations.....	70
23.90.03	Ecological Protection and Critical Areas .....	71
23.90.03.A	Policies .....	71
23.90.03.B	Regulations.....	72
23.90.04	Water Quality and Quantity .....	73
23.90.04.A	Policies .....	73
23.90.04.B	Regulations.....	73

23.90.05	Views and Aesthetics .....	74
23.90.05.A	Policies .....	74
23.90.05.B	Regulations.....	74
23.90.06	Vegetation Conservation .....	75
23.90.06.A	Policies .....	75
23.90.06.B	Regulations.....	76
23.90.07	Archaeological, Historic and Cultural Resources .....	78
23.90.07.A	Policies .....	78
23.90.07.B	Regulations.....	78
23.90.08	Public Access .....	83
23.90.08.A	Policies .....	83
23.90.08.B	Regulations.....	84
23.90.09	Site Planning .....	87
23.90.09.A	Policies .....	87
23.90.09.B	Regulations.....	88
23.90.10	Landfill and Excavation .....	89
23.90.10.A	Policies .....	89
23.90.10.B	Regulations.....	90
23.90.11	Forest Practices .....	91
23.90.11.A	Policies .....	91
23.90.11.B	Regulations.....	91
23.90.11.C	Shoreline Area Regulations.....	92
23.90.12	Dredging.....	92
23.90.12.A	Policies .....	92
23.90.12.B	Regulations.....	93
23.90.12.C	Shoreline Area Regulations.....	96
23.90.13	Shoreline Bulk Provisions: Buffers, Setbacks, Height and Open Space .....	97
23.90.13.A	Policies .....	97
23.90.13.B	Regulations.....	97
<b>Chapter 10</b>	<b>Shoreline Use Policies and Regulations .....</b>	<b>104</b>
23.100.01	Shoreline Use and Development.....	104
23.100.02	Agriculture .....	108
23.100.02.A	Policies .....	108
23.100.02.B	Regulations.....	108
23.100.02.C	Shoreline Area Regulations.....	108
23.100.03	Aquaculture .....	110
23.100.03.A	Policies .....	110
23.100.03.B	Regulations.....	111
23.100.03.C	Shoreline Area Regulations.....	118
23.100.04	Boating Facilities: Marinas and Launch Ramps .....	119
23.100.04.A	Policies .....	119
23.100.04.B	Regulations.....	120
23.100.04.C	Shoreline Area Regulations.....	126
23.100.05	Commercial Use .....	128
23.100.05.A	Policies .....	128
23.100.05.B	Regulations.....	128
23.100.05.C	Shoreline Area Regulations.....	131
23.100.06	Flood Control Works and Instream Structures .....	133
23.100.06.A	Policies .....	133
23.100.06.B	Regulations.....	134

23.100.06.C	Shoreline Area Regulations.....	136
23.100.07	Industrial and Port Development.....	138
23.100.07.A	Policies.....	138
23.100.07.B	Regulations.....	139
23.100.07.C	Shoreline Area Regulations.....	143
23.100.08	Mining.....	146
23.100.08.A	Policies.....	146
23.100.08.B	Regulations.....	147
23.100.08.C	Shoreline Area Regulations.....	149
23.100.09	Moorage: Docks, Piers and Mooring Buoys.....	151
23.100.09.A	Policies.....	151
23.100.09.B	Regulations.....	152
23.100.09.C	Shoreline Area Regulations.....	156
23.100.10	Recreation.....	158
23.100.10.A	Policies.....	158
23.100.10.B	Regulations.....	159
23.100.10.C	Shoreline Area Regulations.....	159
23.100.11	Residential.....	162
23.100.11.A	Policies.....	162
23.100.11.B	Regulations.....	163
23.100.11.C	Shoreline Area Regulations.....	166
23.100.12	Restoration and Enhancement.....	168
23.100.12.A	Policies.....	168
23.100.12.B	Regulations.....	169
23.100.12.C	Shoreline Area Regulations.....	169
23.100.13	Shoreline Stabilization.....	170
23.100.13.A	Policies.....	170
23.100.13.B	Regulations.....	171
23.100.13.C	Shoreline Area Regulations.....	176
23.100.14	Signs.....	178
23.100.14.A	Policies.....	178
23.100.14.B	Regulations.....	179
23.100.14.C	Shoreline Area Regulations.....	182
23.100.15	Transportation.....	183
23.100.15.A	Policies.....	183
23.100.15.B	Regulations.....	184
23.100.15.C	Shoreline Area Regulations.....	186
23.100.16	Utilities.....	188
23.100.16.A	Policies.....	188
23.100.16.B	Regulations.....	188
23.100.16.C	Shoreline Area Regulations.....	191
23.100.17	Cherry Point Management Area.....	194
23.100.17.A	Policies.....	194
23.100.17.B	Regulations.....	196
<b>Chapter 11</b>	<b>Definitions.....</b>	<b>201</b>

**Appendices**

- A. [Permit Data Sheet and Transmittal Letter](#) ~~Official Shoreline Map~~
- B. List of Acronyms
- C. Cherry Point Management Area – Wetland Map
- D. ~~Official Shoreline Map~~ [Whatcom County Shoreline Management Program: Shorelines of the State](#)
- E. [Official Shoreline Map: Whatcom County Shoreline Area Designations Map](#)

## Amendments

The Whatcom County Shoreline Management Program was originally adopted on May 27, 1976, with subsequent Department of Ecology approval on August 27, 1976. The Program was first amended on June 26, 1978. Subsequent amendments and their County Council adoption dates are as follows:

1. January 21, 1982, File No. SPA 1-81: Text amendments in response to proposed Chicago Bridge and Iron development at Cherry Point, Sections 6.5.4.B(2)(a), 6.9.3.B(2), 6.9.5.B(5)(b), and 8.6.2.D.
2. February 5, 1982, File No. SPA 2-81: Text amendments relating to agriculture development, Sections 6.2.3.B.1(d), 6.2.3.B.1(e), 6.2.3.C(1), 6.2.3.C(2), and 6.2.3.C(3).
3. April 3, 1982, File No. SPA 3-81: Text amendments relating to aquaculture developments, Sections 6.3.1.B, 6.3.1.D, 6.3.3.E, and 6.3.4.A(6)(a).
4. January 22, 1983, File No. SPA 1-82: Text amendments relating to stream control works and hydropower development, Sections 6.6 (the entire section), 6.13.2.J, 6.13.5.C(1) and Appendix C definitions of Industrial Development and Stream Control Works.
5. March 2, 1985, File No. SPA 1-84: Map amendment for 660 feet of shoreline in Lummi Bay from "Conservancy" to "Rural."
6. June 9, 1987, File No. SPA 1-86: "Cherry Point Management Unit," map and text amendments, Section 23.100.210.
7. November 16, 1989, File No. 89-100 SMP: Text amendment to allow the land application of waste waters used in processing fruits and vegetables as a Conditional Use.
8. April 27, 1993, File No. 01-89 SMP: Program update.
9. July 1, 1997, File No. 05-97 ZT: Text amendments to comply with requirements of the Growth Management Act, Chapter 173-27 WAC, and related changes in terminology.
10. September 23, 1997, File No. 11-97 SMP: Text amendments to allow use of civil penalties.
11. Cherry Point amendments for Gateway Industrial Pier Settlement Agreement.
12. ~~February~~ ~~June~~ XX, 200~~7~~~~6~~: Comprehensive text amendments to comply with revised Shoreline Management Guidelines, Chapter 173-26 WAC.



## **Chapter 1 Purpose and Intent**

### **23.10.01 Authority**

Authority for enactment and administration of this Program is the Shoreline Management Act of 1971, Chapter 90.58, Revised Code of Washington (RCW), also referred to herein as "the Act."

### **23.10.02 Purpose and Intent**

The purposes of this Program are:

- A. To promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of Whatcom County shorelines; and
- B. To manage shorelines in a positive, effective, and equitable manner; and
- C. To further assume and carry out the responsibilities established by the Act for Whatcom County, and to adopt and foster the following policy contained in RCW 90.58.020 for shorelines of the State:

"It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the State's shoreline. Alterations of the natural condition of the shorelines of the State, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the State, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the State and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the State...

Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water."

### 23.10.03 Governing Principles

The following principles along with the policy statements of RCW 90.58.020 establish basic concepts that underpin the goals, policies and regulations of this Program.

- A. Any inconsistencies between this Program and the Act must be resolved in accordance with the Act.
- B. The policies of this Program may be achieved by diverse means, one of which is regulation. Other means, authorized by the Act, include but are not limited to: acquisition of lands and/or easements by purchase or gift, [incentive programs](#), and implementation of capital facility and/or non-structural programs.
- C. [Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. Permitted and/or exempt development; actions taken prior to the Act's adoption; and/or unregulated activities can impair shoreline ecological processes and functions. This Program protects shoreline ecology from such impairments in the following ways:](#)
  - 1. [By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines.](#)
  - 2. [By including policies and regulations that require mitigation of significant adverse impacts in a manner that ensures no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of impacts in accordance with the policies and regulations for mitigation sequencing in SMP 23.90.03 and the Whatcom County Critical Areas Ordinance \(WCC 16.16\). This Program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the date of adoption of this Program, XXXXXXXX XX, 2007.](#)
  - 3. [By including policies and regulations to address cumulative impacts, including ensuring that the cumulative effect of exempt development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities.](#)
  - 4. [By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such opportunities have been identified, consistent with the Shoreline Management Program Restoration Plan developed by Whatcom County.](#)
- D. Regulation of private property to implement Program goals such as public access and protection of ecological functions and processes must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to civil rights guaranteed by the U.S. and State constitutions, recent federal and state case law, and state statutes, such as RCW 34.05.328, 43.21C.060 and 82.02.

- ~~DE.~~ Regulatory or administrative actions contained herein must be implemented consistent with the Public Trust Doctrine and other applicable legal principles as appropriate and must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.
- ~~EF.~~ The regulatory provisions of this Program are limited to shorelines of the state, whereas the planning functions of this Program may extend beyond the designated shoreline boundaries.
- ~~FG.~~ The policies and regulations established by the Program must be integrated and coordinated with those policies and rules of the Whatcom County Comprehensive Plan and development regulations adopted under the Growth Management Act (GMA) and RCW 34.05.328.
- ~~G.~~ Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. Permitted and/or exempt development, actions taken prior to the Act's adoption, and/or unregulated activities can impair shoreline ecological processes and functions. This Program protects shoreline ecology from such impairments in the following ways:
- ~~1.~~ By using a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by shorelines.
  - ~~2.~~ By including policies and regulations that require mitigation of significant adverse impacts in a manner that ensures no net loss of shoreline ecological functions. The required mitigation shall include avoidance, minimization, and compensation of impacts in accordance with the policies and regulations for mitigation sequencing in SMP 23.90.03.B and WCC 16.16.
  - ~~3.~~ By including policies and regulations to address cumulative impacts, including ensuring that the cumulative effect of exempt development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities.
  - ~~4.~~ By including regulations and regulatory incentives designed to protect shoreline ecological functions, and restore impaired ecological functions where such opportunities have been identified, consistent with the Shoreline Management Program Restoration Plan developed by Whatcom County.
- ~~H.~~ Consistent with the policy and use preferences of RCW 90.58.020, Whatcom County should balance the various policy goals of this Program giving consideration to in light of other relevant local, state, and federal regulatory and non-regulatory programs, Whatcom County should balance the policy goals of this Program to the extent consistent with the policy of the Act, per RCW 90.58.020, and these Governing Principles.

**23.10.04 Title**

This document shall be known and may be cited as "The Whatcom County Shoreline Management Program."

**23.10.05 Short Title**

This document may be referred to herein as the "SMP," or the "Program."

**23.10.06 References to Plans, Regulations or Information Sources**

- A. The Whatcom County Critical Areas Ordinance, WCC 16.16 (Ordinance No. 2005-00068) is hereby adopted in whole as a part of this Program, except that the permit, [non-conforming use](#), appeal and enforcement provisions of the Critical Areas Ordinance (WCC 16.16.270-285) shall not apply within shoreline jurisdiction.
- B. Where this Program makes reference to any RCW, WAC, or other state, or federal law or regulation, the most recent amendment or current edition shall apply.
- C. [Stipulated Judgment No. 93-2-02447-6 between Governor's Point Development Company and Whatcom County, the State of Washington, and the Department of Ecology is incorporated by reference into Whatcom County's Shoreline Management Program. A copy of the Judgment is on file with the Whatcom County Planning and Development Services Department.](#)

**23.10.07 Liberal Construction**

As provided for in RCW 90.58.900, the Act is exempted from the rule of strict construction; the Act and this Program shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the Act and this Program were enacted and adopted, respectively.

**23.10.08 Severability**

The Act and this Program adopted pursuant thereto comprise the basic state and County law regulating use of shorelines in the county. In the event provisions of this Program conflict with other applicable county policies or regulations, the more restrictive shall prevail. [Should any section or provision of this Program be declared invalid, such decision shall not affect the validity of this Program as a whole.](#)

**23.10.09 Effective Date**

This Program and all amendments thereto shall become effective immediately upon final approval and adoption by the Department of Ecology.

## Chapter 2 Goals and Objectives

This Chapter describes overall Program goals and objectives. The general policies and regulations in Chapter 9 and the specific use policies and regulations in Chapter 10 are the means by which these goals and objectives are implemented.

### 23.20.01 Adoption

In addition to the policy adopted in SMP 23.10.02(C), the following goals and objectives relating to the Program elements specified in RCW 90.58.100(2) are hereby adopted. They provide the comprehensive foundation and framework upon which the Shoreline Area Designations, policies, regulations, and administrative procedures are based.

### 23.20.02 Economic Development

The economic development element provides for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent upon a shoreline location and/or use of the shorelines of the state.

#### 23.20.02.A Economic Development Goal

To create and maintain an economic environment that can coexist harmoniously with the natural and human environment.

#### 23.20.02.B Economic Development Objectives

1. Encourage ~~E~~conomic development that has minimal adverse effects and mitigates unavoidable impacts upon shoreline ecological functions and processes and the built environment ~~should be encouraged~~.
2. Encourage ~~S~~shoreline development that has a positive effect upon economic and social activities of value to the region ~~should be encouraged~~.
3. Encourage ~~N~~ew water-dependent, ~~or~~ water-related, and water-enjoyment economic development ~~in priority order should be encouraged~~.
4. Encourage economic development that is consistent with the adopted Comprehensive Economic Development Strategy (CEDS) for Whatcom County.
45. Implement ~~E~~conomic development policies contained in the Whatcom County Comprehensive Plan ~~should be implemented~~ in shoreline areas consistent with this Program and the Act.
56. Encourage ~~N~~ew economic development ~~should be encouraged~~ to locate in areas that are already developed with similar uses.

67. ~~Discourage E~~ expansion of existing development that is incompatible with this Program, the character of the local area, or the Whatcom County Comprehensive Plan ~~should be discouraged.~~
7. ~~Economic development that is consistent with the adopted Comprehensive Economic Development Strategy (CEDS) for Whatcom County should be encouraged.~~

### **23.20.03 Public Access**

The public access element provides for public access to publicly owned or privately owned shoreline areas where the public is granted a right of use or access.

#### **23.20.03.A Public Access Goal**

To increase the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and/or to view the water and the shoreline from adjacent locations, provided that private rights, the public safety, and shoreline ecological functions and processes are protected consistent with the U.S. and State constitutions, state case law, and state statutes.

#### **23.20.03.B Public Access Objectives**

1. Locate, design, manage and maintain Ppublic access ~~should be located, designed, managed and maintained~~ in a manner that protects shoreline ecological functions and processes and the public health and safety.
2. Design and management of public access in a manner that ensures ~~should consider the public health and safety and~~ compatibility with water-dependent uses.
3. Where appropriate, acquire access to publicly owned tidelands and shorelands ~~should be acquired.~~ Encourage cooperation among Tthe County, landowners, developers, other agencies and organizations ~~should cooperate~~ to enhance and increase public access to shorelines as specific opportunities arise.
4. Provide and protect Vvisual access to shorelines and tidelands ~~should be provided and protected.~~
5. Require Pphysical or visual access to shorelines ~~should be required~~ as a condition of approval for shoreline development activities commensurate with the impacts of such development and the corresponding benefit to the public, and consistent with constitutional limitations.
6. Development and management of public access to should prevent adverse impacts to adjacent private shoreline properties and developments.

#### **23.20.04 Recreation**

The recreation element provides for the preservation and expansion of water-oriented recreational opportunities that facilitate the public's ability to enjoy the physical and aesthetic qualities of the shoreline through parks, public access to tidelands and beaches, bicycle and pedestrian paths, viewpoints and other recreational amenities.

**23.20.04.A Recreation Goal**

To provide opportunities and space for diverse forms of water-oriented recreation.

**23.20.04.B Recreation Objectives**

1. ~~Recreational areas should be l~~located, developed, managed, and maintained recreation areas in a manner that protects shoreline ecological functions and processes.
2. Provide A balanced choice of water-oriented public recreational opportunities ~~should be provided~~ regionally. Ensure that Sshoreline recreation facilities ~~should~~ serve projected County growth in accordance with the level of service standards established in the Whatcom County Comprehensive Plan and related goals and policies; the Comprehensive Park and Recreation Open Space Plan; the Whatcom County Bicycle Plan; and the Natural Heritage Plan.<sup>4</sup>
3. Acquire a additional recreation areas and public access areas with a high recreation value ~~should be acquired~~ prior to demand to assure that sufficient shoreline recreation opportunities are available to serve future recreational needs.
4. Encourage cooperation among Ppublic agencies, non-profit groups, and private landowners and developers ~~should cooperate~~ to increase and diversify recreational opportunities through a variety of means including incorporating water-oriented recreational opportunities into mixed use developments and other innovative techniques.
5. ~~The County should r~~Recognize and protect the interest of all people of the state by providing increased recreational opportunities within shorelines of statewide significance and associated shorelands.<sup>2</sup>
6. Encourage Pprivate and public investment in recreation facilities ~~should be encouraged~~.
7. ~~Recreational development should be l~~located, designed, and operated ~~to recreational development in a manner that~~ minimizes adverse effects on adjacent properties as well as other social, recreational, or economic activities.

**23.20.05 Transportation and Essential Public Facilities**

The transportation and essential public facilities element provides for the general location and extent of existing and proposed public thoroughfares, transportation routes, terminals, and other public utilities and facilities.

**23.20.05.A Transportation and Essential Public Facilities Goal**

---

~~<sup>4</sup> WAC 173-26-241(3)(i) For all jurisdictions planning under the Growth Management Act, Program recreation policies shall be consistent with growth projections and level of service standards established by the applicable comprehensive plan~~

~~<sup>2</sup> RCW 90.58.020~~

To provide transportation systems and essential public facilities in shoreline areas without adverse effects on existing shoreline use and development or shoreline ecological functions and/or processes.

### **23.20.05.B Transportation and Essential Public Facilities Objectives**

1. ~~Transportation systems and essential public facilities should be l~~located, developed, managed, and maintained transportation systems and essential public facilities in a manner that protects shoreline ecological functions and processes. Minimize and mitigate ~~U~~unavoidable impacts ~~should be minimized and mitigated~~.
2. ~~Transportation systems and essential public facilities should be l~~located and designed transportation systems and essential public facilities to be harmonious with the existing and future economic and social needs of the community.
3. Discourage the development of nonwater-dependent ~~T~~transportation systems and essential public facilities ~~that are not water dependent should not be located within shorelines~~ unless no feasible alternatives exist. Devote Rroads within the shoreline jurisdiction ~~should be devoted~~ to low volume local access routes and shoreline public access where feasible.
4. When appropriate, require adequate compensation where ~~T~~transportation systems and essential public facilities ~~should not~~ reduce the benefits people derive from their property without adequate compensation.
5. ~~Shoreline transportation development should p~~provide for alternate modes of travel, encourage freedom of choice among travel modes, and provide multiple use transportation corridors where compatible in association with shoreline transportation development.
6. Require ~~T~~transportation system and essential public facility development in shoreline areas to should protect and enhance physical and visual shoreline public access.

### **23.20.06 Shoreline Use**

The shoreline use element considers the use and development of shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, forestry, natural resources, recreation, education, public institutions buildings and grounds, utilities and other categories of public and private land use with respect to the general distribution, location and extent of such uses and developments.

#### **23.20.06.A Shoreline Use Goal**

To preserve and develop shorelines in a manner that allows for an orderly balance of uses.

#### **23.20.06.B Shoreline Use Objectives**

1. ~~Shoreline use~~ Give preference ~~should be given~~ to water-dependent and single family residential uses that are consistent with preservation of shoreline ecological functions

and processes. ~~Give S~~secondary preference ~~should be given~~ to water-related and water-enjoyment uses. ~~Allow N~~nonwater-oriented uses ~~should be allowed~~ only when substantial public benefit is provided with respect to the goals of the Act for public access and ecological restoration.<sup>3</sup>

2. ~~Designate and maintain A~~appropriate areas for protecting and restoring shoreline ecological functions and processes to control pollution and prevent damage to the shoreline environment and/or public health ~~should be designated and maintained~~.
3. ~~Ensure S~~shoreline uses ~~are~~ ~~should be~~ consistent with the Whatcom County Comprehensive Plan.
4. ~~Balance T~~he location, design, and management of shoreline uses throughout the county ~~should be balanced~~ to prevent a net loss of shoreline ecological functions and processes over time.
5. ~~Encourage M~~ixed use developments that include and support water-oriented uses and provide a substantial public benefit consistent with the public access and ecological restoration goals and policies of the Act ~~should be encouraged~~.
6. ~~Encourage S~~shoreline uses and development that enhance shoreline ecological functions and/or processes or employ innovative features that further the purposes of this Program ~~should be encouraged~~.
7. ~~Encourage S~~shoreline uses and development that enhance and/or increase public access to the shoreline ~~should be encouraged~~.

**23.20.07 Conservation**

The shoreline conservation element provides for the protection of natural resources, and shoreline ecological functions and processes. Resources to be conserved and protected include, but are not limited to, wetlands; riparian, nearshore, and aquatic habitats; ~~other~~ priority fish and wildlife habitats and species; floodplains; feeder bluffs and other geological features; cultural and historic resources; as well as scenic vistas and aesthetics.

**23.20.07.A Conservation Goal**

To conserve shoreline resources and important shoreline natural features, and protect shoreline ecological functions and the processes that sustain them to the maximum extent practicable.

**23.20.07.B Conservation Objectives**

1. ~~Develop R~~egulations and mitigation standards ~~should that~~ ensure ~~that~~ new shoreline developments ~~s~~ prevent ~~no a~~ net loss of shoreline ecological functions and processes.<sup>4</sup>  
~~Implement S~~such regulations and standards ~~should be implemented~~ in a manner

<sup>3</sup> ~~WAC 173-26-201(2)(d) Preferred Uses~~

<sup>4</sup> ~~WAC 173-26-186(8)(b)~~

consistent with all relevant constitutional and other legal limitations on the regulation of private property.

2. Protect critical areas in accordance with the policies and regulations in WCC 16.16.
3. Manage renewable natural resources on a sustained yield basis. ~~Extract~~ ~~Non-renewable natural resources should be extracted~~ in a manner that maintains the quality of other resources and shoreline ecological functions and processes.
4. Prioritize protection and/or conservation of shoreline areas that are ecologically intact and minimally developed or degraded.

### **23.20.08 Archaeological, Historical and Cultural Resources**

The archaeological-historical-cultural element provides for protection, preservation and/or restoration of buildings, sites, and areas having archaeological, historical, cultural, or scientific value or significance.

#### **23.20.08.A Archaeological, Historical and Cultural Resources Goal**

~~Protect~~ ~~Shoreline features of historic, cultural, archeological, or scientific value or significance should be protected~~ to prevent damage or destruction through coordination and consultation with the appropriate local, state and federal authorities, including affected Indian tribes.<sup>5</sup>

#### **23.20.08.B Archaeological, Historical and Cultural Resources Objectives**

1. ~~Sites should be p~~~~Protected sites~~ in collaboration with appropriate tribal, state, federal and local governments. ~~Encourage~~ ~~P~~~~ublic agencies and private parties should be encouraged~~ to cooperate in the identification, protection and management of cultural resources.
2. Where appropriate, ~~make~~ access to such sites ~~should be made~~ available to parties of interest, provided that access to such sites must be designed and managed in a manner that gives maximum protection to the resource.
3. ~~Provide~~ ~~O~~~~pportunities for education related to archaeological, historical and cultural features should be provided~~ where appropriate and incorporated into public and private programs and development.

### **23.20.09 Views and Aesthetics**

This element provides for preservation and/or protection of scenic vistas, views of the water, and other aesthetic qualities of shorelines for public enjoyment.<sup>6</sup>

#### **23.20.09.A Views and Aesthetics Goal**

---

<sup>5</sup> ~~WAC 173-26-221(1)~~

<sup>6</sup> ~~RCW 90.58.020~~

To assure that the public's ability and opportunity to enjoy shoreline views and aesthetics is protected.

**23.20.09.B Views and Aesthetics Objectives**

1. Identify and protect Areas with scenic vistas and areas where the shoreline has high aesthetic value ~~should be identified and protected~~.
2. Design development ~~should be designed~~ to minimize adverse impacts on views from public property or views enjoyed by a substantial number of residences.

**23.20.10 Restoration and Enhancement**

This element provides for the timely restoration and enhancement of ecologically impaired areas in a manner that achieves a net gain in shoreline ecological functions and processes above baseline conditions as of the adoption of this Program.

**23.20.10.A Restoration and Enhancement Goal**

To re-establish, rehabilitate and/or otherwise improve impaired shoreline ecological functions and/or processes through voluntary and incentive-based public and private programs and actions that are consistent with the Shoreline Management Program Restoration Plan and other approved restoration plans.

**23.20.10.B Restoration and Enhancement Objectives**

1. Encourage and facilitate cooperative restoration and enhancement programs between local, state, and federal public agencies, tribes, non-profit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.
2. Restoration ~~of~~ and enhance shoreline ecological functions and processes as well as shoreline features through voluntary and incentive-based public and private programs.
3. Target Restoration and enhancement ~~should be targeted~~ towards improving habitat requirements of sensitive priority and/or locally important wildlife species.
4. Ensure Restoration and enhancement is ~~should be~~ consistent with and, where practicable, prioritized based on the biological recovery goals for early Chinook, bull trout populations and other species and/or populations for which a recovery plan is available.
5. Integrate Restoration and enhancement ~~should be integrated~~ with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan, Drayton Harbor and Portage Bay Shellfish Protection District plans, WRIA 1 Watershed Management Plan, ~~and the~~ Whatcom County Comprehensive Plan and the Puget Sound Salmon Recovery Draft Plan.

## Chapter 3 Shoreline Jurisdiction and Area Designations

### 23.30.01 Shoreline Jurisdiction

The provisions of this Program shall apply to all shorelines of the state in unincorporated Whatcom County including all shorelines of statewide significance ([Appendix D](#)) and all shorelands as defined in Chapter 11 and [collectively herein](#) referred to [herein](#) as “shorelines”. For the purposes of this Program, jurisdictional shorelines are divided into segments or reaches. Each segment is assigned one or more Shoreline Area Designations pursuant to this Chapter in order to provide for the management of use and development within shorelines.

### 23.30.02 Official Shoreline Map

- A. **Shoreline Area Designations.** Shoreline Area Designations are delineated on a map, hereby incorporated as a part of this Program ([Appendix EDA](#)) that shall be known as the Official Shoreline Map. There shall be only one official copy of this map that shall reside in the custody of the State Code Reviser. Additional copies have been provided to the Whatcom County Auditor, the Washington Department of Ecology and the Whatcom County Planning and Development Services Department where they are available for public use.
- B. **Shoreline Jurisdictional Limits.** The purpose of the Official Shoreline Map is to identify Shoreline Area Designations. The map does not necessarily identify or depict the lateral extent of shoreline jurisdiction [nor does it identify](#) ~~an~~ associated wetlands. The lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the location of the ordinary high water mark (OHWM), floodway and presence of associated wetlands; provided that, exclusive of associated wetlands, the map identifies the lateral extent of shoreline jurisdiction on the Sumas River and the Mainstem, North Fork, Middle Fork and South Fork of the Nooksack River.

#### 23.30.02.1 Interpretation of Shoreline Area Designation Boundaries

- A. If disagreement develops as to the exact location of a Shoreline Area Designation boundary line, the Official Shoreline Map shall prevail.
- B. If disagreement develops as to the exact location of a Shoreline Area Designation boundary line, the following rules shall apply:
1. Boundaries indicated as approximately following lot, tract, or section lines shall be so construed.
  2. Boundaries indicated as approximately following roads or railways shall be respectively construed to follow their centerlines.
  3. Boundaries indicated as approximately parallel to or extensions of features indicated in (1) or (2) above shall be so construed.

- C. Whenever existing physical features are inconsistent with boundaries on the Official Shoreline Map, the Administrator shall interpret the boundaries. Appeals of such interpretations may be filed pursuant to SMP 23.60.15.H.
- D. All shoreline areas waterward of the OHWM shall be designated Aquatic.
- E. Upland shoreline area designations shall apply to shorelands.
- F. Only one shoreline area designation shall apply to a given shoreland area. In the case of parallel designations, designations shall be divided along an identified linear feature. Such linear features shall be clearly noted in the metadata associated with the Official Shoreline Map.
- G. All shorelines east of the Mount Baker National Forest western boundary are designated Conservancy unless there are Federal projects on Federal lands.
- H. All areas within shorelines that are not mapped and/or designated are automatically assigned a Conservancy designation. Within urban growth areas, such shorelines shall be automatically assigned an Urban Conservancy designation until such time that the shoreline area can be re-designated through a formal amendment.

**23.30.02.2 Shoreline Area Designations**

- A. A set of ten (10) Shoreline Area Designations has been developed as a part of this Program. The purpose of the Shoreline Area Designations is to provide a systematic, rational, and equitable basis upon which to guide and regulate development within specific shoreline reaches. ~~These designations apply to areas of the shoreline that have similar ecological conditions and similar land uses and that differ from adjacent shoreline reaches in terms of natural features and/or existing or potential development patterns.~~
- B. Shoreline Area Designations have been determined after consideration of:
  - 1. The ecological functions and processes that characterize the shoreline, together with the degree of human alteration; and
  - 2. Existing development patterns together with WCC Title 20 Zoning designations, the County Comprehensive Plan designations and other officially adopted plans; and
  - 3. Federal and Tribal ownership status; and
  - 43. The goals of Whatcom County citizens for their shorelines; and
  - 54. Pursuant to RCW 90.58.100(4), in designating State-owned shorelines, consideration has been given to public demand for wilderness beaches, ecological study areas, and other recreational activities; and
  - 65. Other state policies in the Act and the Shoreline Master Program Guidelines (RCW 90.58.020 and WAC 173-26, respectively).

- C. Development and use within each designated shoreline area shall occur consistent with this Program, including but not limited to the purpose, criteria and policies described below, ~~and shall be consistent with~~ the general polices and regulations contained in Chapter 9, and the use policies and regulations provided in Chapter 10, ~~and~~ subject to the provisions of the Whatcom County Zoning Code, WCC Title 20, and other applicable land use regulations where more restrictive.

**23.30.03 Urban Shoreline Area**

**23.30.03.1 Urban Shoreline Area, Purpose:**

The purpose of the Urban shoreline area is to provide for intensive development of water-oriented commercial, transportation, and industrial uses and accommodate<sup>7</sup> mixed use developments such as those consisting of urban density residential, commercial and industrial uses, while protecting existing shoreline ecological functions and processes and restoring shoreline ecological functions and/or processes in areas that have been previously degraded.

**23.30.03.2 Urban Shoreline Area, Designation Criteria:**

The Urban shoreline area is applied to shoreline areas zoned commercial, industrial and urban density residential within urban growth areas and limited industrial or commercial areas of more intense rural development, if they:

- A. Are currently characterized by high intensity development and/or uses; are designated by the Comprehensive Plan for high intensity uses or intensive uses related to commerce, transportation or navigation; or are suitable and planned for high intensity mixed use; and
- B. Do not contain limitations to urban use such as geologic hazards, and have adequate utilities and access; and
- C. Do not provide important ecological functions that would be significantly compromised by high intensity residential, commercial, or industrial use.

**23.30.03.3 Urban Shoreline Area, Policies:**

Development within Urban shoreline areas shall be consistent with the following policies:

- A. New urban character development should be directed toward already developed or developing areas where compatible.
- B. First priority should be given to water-dependent uses. Second priority should be given to water-related and then water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline, or where the needs of existing and future water-dependent uses are met.<sup>8</sup>

---

<sup>7</sup> ~~WAC 173-26-211(5)(d)~~

<sup>8</sup> ~~RCW 90-58-100(2)(a)~~

**23.30.03.4 Urban Shoreline Area, Permitted Uses:**

The following uses may be permitted subject to the applicable policies and regulations of this Program:

- A. Residential.
- B. Water-oriented commercial, industrial and/or port development.
- C. Water-oriented recreation.
- D. Agricultural.

**23.30.03.5 Urban Shoreline Area, Conditional Uses:**

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this Program:

- A. Nonwater-oriented commercial, industrial and/or port ~~uses and~~ development, subject to the criteria in SMP 23.100.05.B.1.d and 23.100.07.B.1.c(4), respectively.
- [B. Dams, diversions and tailrace structures for hydroelectric power generation.](#)
- C. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.
- D. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.
- E. [Regional Utility](#) development ~~consisting of transmission facilities~~ not serving adjacent uses such as sewage trunk lines, [desalinization facilities](#), solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.

**23.30.03.6 Urban Shoreline Area, Prohibited Uses:**

The following uses are prohibited:

- A. Forest practices.
- B. Surface mining.

**23.30.04 Urban Resort Shoreline Area**

**23.30.04.1 Urban Resort Shoreline Area, Purpose:**

The purpose of the Urban Resort shoreline area is to provide for intensive residential and commercial uses geared to the needs of tourists and day visitors while protecting existing shoreline ecological functions and processes ~~and restoring ecological functions and/or~~

~~processes in areas that have been previously degraded.~~ Emphasis is on hotels, motels, shops, restaurants, commercial rental campgrounds, rental cabins, and shoreline related indoor recreation facilities.

**23.30.04.2 Urban Resort Shoreline Area, Designation Criteria:**

The Urban Resort shoreline area is applied to shoreline areas identified in the Comprehensive Plan as suitable for resort commercial development with substantial features that might reasonably attract resort development compatible with other development in the area, and which have existing and/or planned infrastructure sufficient to support such development.

**23.30.04.3 Urban Resort Shoreline Area, Policies:**

Development within Urban Resort shoreline areas shall be consistent with the following policies:

- A. Scale and design of resort development should assure compatibility with allowed existing developments in the vicinity, uses of adjacent shoreline areas and shoreline ecological functions and processes resources.
- B. Buildings over 35 feet in height may be permitted if additional open space, view areas, public access and/or other amenities are provided.

**23.30.04.4 Urban Resort Shoreline Area, Permitted Uses:**

The following uses may be permitted subject to the applicable policies and regulations of this Program:

- A. Residential.
- B. Water-oriented commercial.
- C. Port development, limited to passenger terminals.
- D. Water-oriented recreation.

**23.30.04.5 Urban Resort Shoreline Area, Conditional Uses:**

The following may be permitted as conditional uses subject to the applicable policies and regulations of this Program:

- A. Nonwater-oriented commercial, subject to the criteria in SMP 23.100.05.B.1.d.
- B. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.
- ~~C. Dams, diversions and tailrace structures for hydroelectric power generation.~~
- CD. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.

~~DE~~. Regional Utility development ~~consisting of transmission facilities~~ not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.

**23.30.04.6 Urban Resort Shoreline Area, Prohibited Uses:**

The following uses are prohibited:

- A. Agricultural.
- B. Forest practices.
- C. Surface mining.
- D. All other industrial and port development.

**23.30.05 Urban Conservancy Shoreline Area**

**23.30.05.1 Urban Conservancy Shoreline Area, Purpose:**

The purpose of the Urban Conservancy shoreline area is to protect shoreline ecological functions and processes in urban growth areas and limited areas of more intense rural development that are not designated for high intensity residential use and are not generally suitable for water-dependent uses.

**23.30.05.2 Urban Conservancy Shoreline Area, Designation Criteria:**

The Urban Conservancy shoreline area is applied to shoreline areas inside urban growth areas where any of the following characteristics apply:

- A. They support or retain important shoreline ecological functions and/or processes, even though partially developed.
- B. They have the potential for development at an intensity and character that is compatible with preserving and restoring ecological functions. They are generally not designated for high intensity residential use, commercial use, or industrial use.
- C. They are characterized by critical areas or indicate the presence of other valuable or sensitive ecological resources.

**23.30.05.3 Urban Conservancy Shoreline Area, Policies:**

Development within Urban Conservancy shoreline areas shall ~~be~~ be consistent with the following policies:

- A. Primary permitted uses should consist of low intensity residential uses or other low intensity uses that preserve the natural character of the area or promote preservation of open space and critical areas.

- B. Moderate to high intensity residential use may be permitted if the proposed uses and design result in substantial open space, public access and/or restoration of shoreline ecological functions and/or processes, and if compatible with surrounding uses [and the Comprehensive Plan](#).
- C. Public access and public recreation facilities are a preferred use if they will not cause substantial ecological impacts and when restoration of ecological functions is incorporated.
- D. Low intensity commercial uses may be permitted if the specific uses and design result in substantial open space, public access and/or restoration of ecological functions and if compatible with surrounding uses [and the Comprehensive Plan](#).

**23.30.05.4 Urban Conservancy Shoreline Area, Permitted Uses:**

The following uses may be permitted subject to the applicable policies and regulations of this Program:

- A. Single family and duplex residential.
- B. Agricultural.
- C. Low intensity recreation, provided that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than thirty (30) vehicles, and buildings for interpretive facilities not exceeding [24,000](#) square feet, subject to the criteria in SMP 23.100.104.

**23.30.05.5 Urban Conservancy Shoreline Area, Conditional Uses:**

The following may be permitted as conditional uses subject to the applicable policies and regulations of this Program:

- A. All other residential development.
- ~~B. [Water-oriented recreation not meeting the criteria for low intensity recreation uses.](#)~~
- ~~CB. Low intensity water-oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities subject to the criteria in SMP 23.100.05. [Low intensity Nonwater-oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities.](#) uses may be conditionally permitted subject to the criteria in SMP 23.100.05.B.1.d.~~
- ~~DC. Dams, diversions and tailrace structures for hydroelectric power generation.~~
- ~~ED. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~
- ~~FE. [Transportation facilities not serving a specific approved use, including roads and railways, and parking areas, provided there is no feasible location outside the shoreline.](#)~~

GE. Regional Utility development consisting of transmission facilities not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.

F. Sewage outfalls and treatment plants, over-water communication or power lines, and fuel pipelines, or other types of hazardous materials pipelines, provided there is no feasible location outside of the shoreline.

**23.30.05.6 Urban Conservancy Shoreline Area, Prohibited Uses:**

The following uses are prohibited:

- A. Forest practices.
- B. Surface mining.
- C. All other industrial and port development.

D. Transportation facilities not serving a specific approved use.

**23.30.06 Shoreline Residential Area**

**23.30.06.1 Shoreline Residential Area, Purpose:**

The Shoreline Residential shoreline area accommodates residential development and accessory structures that are consistent with this chapter.

**23.30.06.2 Shoreline Residential Area, Designation Criteria:**

The Shoreline Residential shoreline area is applied to shorelines if they have been predominantly developed with single family or multifamily residential uses or are planned and platted for residential development. The designation is generally applied to residential densities of greater than one (1) unit per acre.

**23.30.06.3 Shoreline Residential Area, Policies:**

Development within Shoreline Residential shoreline areas shall be consistent with the following policies:

- A. The scale and density of new uses and development should be compatible with, and protect or enhance, the existing residential character of the area while sustaining shoreline ecological functions and processes.
- B. Public or private outdoor recreation facilities should be encouraged if compatible with the character of the area. Preferred uses include water-dependent and water-enjoyment recreation facilities that provide opportunities for substantial numbers of people to access and enjoy the shoreline.
- C. Commercial development should be limited to water-oriented uses. Nonwater-oriented commercial uses may be permitted as part of mixed use developments where the

primary use is residential; provided that, such uses should provide a substantial benefit with respect to the goals and policies of this Program such as providing public access or restoring degraded shorelines.

**23.30.06.4 Shoreline Residential Area, Permitted Uses:**

The following uses may be permitted subject to the applicable policies and regulations of this Program:

- A. Residential.
- B. Water-oriented commercial.
- C. Water-oriented recreation.
- D. Agricultural.

**23.30.06.5 Shoreline Residential Area, Conditional Uses:**

The following may be permitted as conditional uses subject to the applicable policies and regulations of this Program:

- A. Nonwater-oriented commercial, subject to the criteria in SMP 23.100.05.B.1.d.
- B. Dams, diversions and tailrace structures for hydroelectric power generation.
- C. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.
- D. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.
- E. [Regional Utility](#) development ~~consisting of transmission facilities~~ not serving adjacent uses such as sewage trunk lines, [desalinization facilities](#), solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.

**23.30.06.6 Shoreline Residential Area, Prohibited Uses:**

The following uses are prohibited:

- A. Forest practices.
- B. Surface mining.
- C. All other industrial and port development.

**23.30.07 Rural Shoreline Area**

**23.30.07.1 Rural Shoreline Area, Purpose:**

The purpose of the Rural shoreline area is to protect shoreline ecological functions in areas having a rural character characterized by open space and low density development including, but not limited to: residences, agriculture, forestry and outdoor recreation. Uses should be compatible with the physical capabilities and limitations, natural resources and shoreline ecological functions and processes of the area.

**23.30.07.2 Rural Shoreline Area, Designation Criteria:**

The Rural shoreline area is applied to shoreline areas outside urban growth areas, particularly areas designated as “Rural” in the Whatcom County Comprehensive Plan, and includes areas:

- A. Where the shoreline currently accommodates residential uses outside urban growth areas and is characterized by low density development, pasture, agriculture, woodlots, home occupations, and cottage industries. The distribution of rural land use is adjacent to agricultural, forestry, and urban land uses and often provides a transition between urban areas and commercial agriculture and forestry uses. Natural vegetative cover and topography have been altered in many rural areas, but substantial ecological functions, and/or the potential for restoration of ecological functions are present.
- B. That are now used or potentially usable for a mix of agriculture, forestry, and residential use.
- C. Where residential development is or should be of low density, because of limitations by physical features, the presence of critical areas, and/or lack of utilities or access.
- D. That have high recreational value or unique historic or cultural resources.
- E. Where low intensity outdoor recreation use or development would be appropriate and compatible with other uses and the physical environment.
- F. Where the shoreline has been developed with low intensity water-dependent uses.

**23.30.07.3 Rural Shoreline Area, Policies:**

Development within Rural shoreline areas shall be consistent with the following policies:

- A. Uses in Rural areas should protect or enhance the rural character of the shoreline, ~~and sustain the shoreline ecological functions and processes and promote visual harmony~~ by limiting building density and height, and providing effective setbacks, buffers and open space.
- B. Residential development consistent with the rural character of the area is permitted, provided it includes measures to protect ecological functions and processes. Related uses consistent with the rural character of the area are permitted.
- C. Public or private outdoor recreation facilities should be encouraged if compatible with the rural character ~~of the area~~ and developed in a manner that maintains shoreline ecological functions and processes. Preferred uses include water-oriented recreation facilities that do not deplete ~~shoreline the~~ resources ~~s~~ over time, such as boating facilities, angling, wildlife viewing trails, and swimming beaches.

- D. Industrial or commercial development should be ~~prohibited except low intensity~~ limited to, water-oriented commercial and industrial uses in the limited locations where such uses have been established or at sites in rural communities that possess appropriate shoreline conditions and services sufficient to support such ~~the~~ developments. Nonwater-dependent uses should provide a substantial benefit with respect to the goals and policies of this Program such as providing public access and/or restoring degraded shorelines.
- E. Agriculture and forestry consistent with rural character and the maintenance of shoreline ecological functions and processes should be encouraged.

**23.30.07.4 Rural Shoreline Area, Permitted Uses:**

The following uses may be permitted subject to the applicable policies and regulations of this Program:

- A. Residential.
- B. Water-oriented commercial.
- C. Water-oriented industrial and/or port development.
- ~~D.~~ Water-oriented port development.
- ~~D~~E. Water-oriented recreation.
- ~~E~~F. Agricultural and forest practices.

**23.30.07.5 Rural Shoreline Area, Conditional Uses:**

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this Program:

- A. Nonwater-oriented commercial, industrial and/or port development, subject to the criteria in SMP 23.100.05.B.1.d and 23.100.07.B.1.c(4), respectively.
- B. Dams, diversions and tailrace structures for hydroelectric power generation.
- C. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.
- D. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.
- E. Regional ~~U~~tility development ~~consisting of transmission facilities~~ not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.
- F. Surface mining.

**23.30.08 Resource Shoreline Area****23.30.08.1 Resource Shoreline Area, Purpose:**

The purpose of the Resource shoreline area is to protect shoreline ecological functions and processes in areas designated in the Whatcom County Comprehensive Plan as Agriculture Resource Lands, Rural Forestry, Commercial Forestry and Mineral Resource Lands and to protect the economic base of those lands and limit incompatible uses.

**23.30.08.2 Resource Shoreline Area, Designation Criteria:**

The Resource shoreline area is applied to shoreline areas designated as Agriculture, Rural Forestry, Commercial Forestry and Mineral Resource Lands in the Whatcom County Comprehensive Plan and includes areas where the shoreline currently accommodates ongoing resource management, where natural vegetation cover has been altered but substantial ecological functions, or the potential for restoring ecological functions are present.

**23.30.08.3 Resource Shoreline Area, Policies:**

Development within Resource shoreline areas shall be consistent with the following policies:

- A. Uses in Resource areas should protect the economic base of those lands, limit incompatible uses, and sustain the shoreline area ecological processes and functions by limiting uses and intensity. Residential use is generally limited to one (1) dwelling ~~on per existing parcels~~ ~~per contiguous ownership~~ ~~and~~ The dwelling may be located within the shoreline jurisdiction, only where no other building site is feasible on the parcel.
- B. Public or private outdoor recreation facilities should be permitted if they do not displace prime agricultural designated resource lands and if they are developed in a manner that maintains shoreline ecological functions. Preferred uses include water-dependent and water-enjoyment recreation facilities.
- C. Industrial or commercial use and development should be limited to prohibited except low intensity uses that serve resource uses. Such uses may be located within the shoreline only if they are water-dependent, water-related or if no other feasible location exists within the contiguous property.

**23.30.08.4 Resource Shoreline Area, Permitted Uses:**

The following uses may be permitted subject to the applicable policies and regulations of this Program:

- A. Residential development limited to farm related residences or one (1) residence and one (1) accessory dwelling unit ~~on per~~ existing parcels, where there is no feasible location outside of the shoreline.
- B. Water-oriented commercial related to natural resource products predominantly produced on site.

- C. Water-oriented [industrial](#) facilities for processing, manufacturing, and storage of [natural resource agricultural or forestry](#) products.
- D. Low intensity water-oriented recreation, including public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than thirty (30) vehicles, subject to the criteria in SMP 23.100.10.
- E. Agricultural and forest practices.

**23.30.08.5 Resource Shoreline Area, Conditional Uses:**

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this Program:

- A. Nonwater-oriented commercial and industrial development related to [natural resource](#) products [predominantly](#) produced on site, subject to the criteria in SMP 23.100.05.B.1.d. and SMP 23.100.07.B.1.c(4), respectively.
- B. Water-oriented industrial and port development other than those uses related to products predominantly produced on site.
- C. [Dams, diversions and tailrace structures for hydroelectric power generation.](#)
- D. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.
- E. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.
- F. [Regional Utility](#) development ~~consisting of transmission facilities~~ not serving adjacent uses such as sewage trunk lines, [desalinization facilities](#), solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.
- G. Surface mining.

**23.30.08.6 Resource Shoreline Area, Prohibited Uses:**

The following uses are prohibited:

- A. ~~All Other nonwater-oriented commercial, industrial and port~~ development.
- B. [Other nonwater-oriented industrial and port development.](#)

**23.30.09 Conservancy Shoreline Area**

**23.30.09.1 Conservancy Shoreline Area, Purpose:**

The purpose of the Conservancy shoreline area is to retain shoreline ecological functions in areas where important ecological processes have not been substantially degraded by human

activities. Conservancy areas are designated outside of urban growth areas. The primary management goal is to preserve shoreline ecological functions and processes by avoiding forms of development that would be incompatible with existing functions and processes, as well as identify and focus restoration efforts in areas where benefits to overall functions and processes can be realized. This policy should be furthered by keeping overall intensity of development or use low, and by maintaining most of the area's natural character.

**23.30.09.2 Conservancy Shoreline Area, Designation Criteria:**

The Conservancy shoreline area is applied to shoreline areas outside urban growth areas that include areas:

- A. Where development activities and uses are buffered from and do not substantially degrade ecological processes and functions.
- B. Where ecological functions are more intact than in areas designated Rural or Resource.
- C. Of outstanding scenic quality or other aesthetic qualities of high value to the region, which would likely be diminished unless development is strictly controlled.
- D. Containing critical areas or other sensitive natural or cultural features that require more than normal restrictions on development and use.
- E. Having the potential to influence ecological processes in a manner that will produce ecosystem-wide benefits upon restoration.
- F. That contain valuable or sensitive natural or cultural features that preclude more than a low overall density of residents, recreation use, structures, or livestock, as well as extensive alterations to topography or other features.
- G. Have recreational value to the region that would likely be diminished unless development is strictly controlled.

**23.30.09.3 Conservancy Shoreline Area, Policies:**

Development within Conservancy shoreline areas shall be consistent with the following policies:

- A. Natural ecological processes should be protected, and renewable resources managed so that ecological functions and the resource base are maintained. Non-renewable resources should only be consumed in a manner compatible with conservation of other resources and other appropriate uses.
- B. Permitted uses should be limited to those compatible with each other and with conservation of shoreline ecological processes and resources.
- C. Shorelines should be protected from harmful concentrations of people, livestock, buildings, or structures.
- D. Opportunities for ecological restoration should be pursued, prioritizing those areas with the greatest potential to restore ecosystem-wide processes and functions.

- E. Outstanding recreational or scenic values should be protected from incompatible development.

**23.30.09.4 Conservancy Shoreline Area, Permitted Uses:**

The following uses may be permitted subject to the applicable policies and regulations of this Program:

- A. Single family and duplex residential development.
- ~~B. Cluster subdivisions, provided that Ssubdivision of property should not be permitted in a configuration that will require significant vegetation removal or shoreline modification or otherwise adversely affect ecological processes or functions at the time of development of the subdivision or at the time of development and use of each new parcel.~~
- CB. Low intensity water-oriented recreation, provided that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than thirty (30) vehicles, and buildings for interpretive facilities not exceeding 2,000 square feet, subject to the criteria in SMP 23.100.10.
- DC. Agricultural and forest practices.

**23.30.09.5 Conservancy Shoreline Area, Conditional Uses:**

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this Program:

- A. All other residential development.
- ~~B. Water-oriented recreation not meeting criteria for low intensity recreation uses.~~
- CB. Low intensity water-oriented ~~and nonwater-oriented~~ commercial limited to resort, bed and breakfast, campgrounds and similar facilities. Low intensity nonwater-oriented commercial uses limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use, subject to the criteria in SMP 23.100.05.B.1.d.
- DC. Dams, diversions and tailrace structures for hydroelectric power generation.
- ED. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.
- ~~FE. Transportation facilities not serving a specific approved use, including roads and railways, and parking areas, provided there is no feasible location outside the shoreline.~~
- GE. Regional Utility development ~~consisting of transmission facilities~~ not serving adjacent uses such as sewage trunk lines, desalinization facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local distribution, provided there is no feasible location outside the shoreline.

~~F. Sewage outfalls and treatment plants, over-water communication or power lines, and fuel pipelines, or other types of hazardous materials pipelines, provided there is no feasible location outside of the shoreline.~~

~~HFG.~~ Surface mining.

**23.30.09.6 Conservancy Shoreline Area, Prohibited Uses:**

The following uses are prohibited:

A. All other industrial and port development.

~~B. Transportation facilities not serving a specific approved use.~~

**23.30.10 Natural Shoreline Area**

**23.30.10.1 Natural Shoreline Area, Purpose:**

The purpose of the Natural shoreline area is to ensure long term preservation of shorelines inside or outside urban growth areas that are ecologically intact.

**23.30.10.2 Natural Shoreline Area, Designation Criteria:**

The Natural shoreline area is applied to shoreline areas where any of the following characteristics apply:

- A. ~~Retains t~~The majority of natural ecological shoreline functions and/or processes are retained, often evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, they include ecologically intact shorelines that are free of structural shoreline modifications, structures, and intensive human uses.
- B. Forested areas that generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies.
- C. ~~Provides v~~Valuable functions are provided for the larger aquatic and terrestrial environments, which could be lost or significantly reduced by human development.
- D. ~~Represents e~~Ecosystems or geologic types that are of particular scientific and educational interest are represented.
- E. ~~Contains l~~Largely undisturbed areas of wetlands, estuaries, unstable bluffs, coastal dunes, and spits are present.
- F. ~~Unable to support n~~New development, extractive uses, or physical modifications cannot be supported without significant adverse impacts to ecological functions and/or processes or risk to human safety.

**23.30.10.3 Natural Shoreline Area, Policies:**

Development within Natural shoreline areas shall be consistent with the following policies:

- A. Preservation of the area's ecological functions, natural features and overall character must receive priority over any other potential uses. Uses should not degrade shoreline ecological functions or processes or the natural character of the shoreline area. New development or significant vegetation removal that would reduce the capability of the shoreline to perform a full range of ecological functions or processes should not be permitted.
- B. Private and/or public enjoyment of Natural shoreline areas should be encouraged and facilitated through low intensity recreational al use, scientific, historical, cultural, and educational research uses, provided that no significant ecological impact on the area will result.
- C. Agricultural and forestry uses of a very low intensity nature may be consistent with the Natural shoreline area when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.
- D. The following new uses should not be permitted in the Natural shoreline area:
  - 1. Commercial uses.
  - 2. Industrial uses.
  - 3. Nonwater-oriented recreation.
  - 4. Roads, utility corridors, and parking areas that can be located outside of Natural shoreline areas.

#### **23.30.10.4 Natural Shoreline Area, Permitted Uses:**

The following uses may be permitted subject to the applicable policies and regulations of this Program:

- ~~A. Single family residential use and development is only permitted only on existing lots of record and where there is no feasible location outside the shoreline. Further subdivision is not permitted.~~
- AB. Low intensity water-oriented recreation, provided that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than ten (10) vehicles, and buildings for interpretive facilities not exceeding 500 square feet, subject to the criteria in SMP 23.100.10.
- BC. Low intensity agricultural.

#### **23.30.10.5 Natural Shoreline Area, Conditional Uses:**

The following uses may be permitted as conditional uses subject to the applicable policies and regulations of this Program:

- A. Single family residential use and development is only permitted on existing lots of record and where there is no feasible location outside the shoreline. Further subdivision is not permitted.
- B. Essential public facility development where there is no feasible location outside the shoreline.
- ~~CB.~~ Forest practices; provided that, it meets the conditions of the State Forest Practices Act and it's implementing rules and is conducted in a manner consistent with the purpose of this environment designation.
- ~~C.~~ Water-oriented recreation not meeting criteria for low intensity recreation uses.

**23.30.10.6 Natural Shoreline Area, Prohibited Uses:**

The following uses are prohibited:

- A. All other residential.
- B. Commercial.
- C. Industrial and port development.
- ~~D.D.~~ Nonwater-oriented recreation.
- ~~EED.~~ Institutional.
- ~~FEE.~~ Transportation facilities not serving a specific approved recreational development use.
- ~~GGE.~~ Regional Utility development consisting of transmission facilities not serving a specific approved adjacent uses.
- ~~HHC.~~ Surface mining.

**23.30.11 Aquatic Shoreline Area**

**23.30.11.1 Aquatic Shoreline Area, Purpose:**

The purpose of the Aquatic shoreline area is to protect, restore, and manage the characteristics and resources of the areas waterward of the ordinary high water mark.

**23.30.11.2 Aquatic Shoreline Area, Designation Criteria:**

The Aquatic shoreline area is defined as the area waterward of the ordinary high water mark of all streams, rivers, marine water bodies, and lakes, constituting shorelines of the state together with their underlying lands and their water column.

**23.30.11.3 Aquatic Shoreline Area, Policies:**

Development within Aquatic shoreline areas shall be consistent with the following policies:

- A. New over-water structures should only be permitted for water-dependent uses, public access, or ecological restoration. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.
- B. All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
- C. Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be permitted except where necessary to achieve the objectives of RCW 90.58.020, and then only when all potential impacts are mitigated as necessary to assure maintenance of shoreline ecological functions and processes.
- D. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural conditions.

**23.30.11.4 Aquatic Shoreline Area, Permitted Uses:**

Permitted uses consist of the water-dependent uses permitted in abutting upland shoreline area designations, subject to the exceptions listed in SMP 23.30.11.6.

**23.30.11.5 Aquatic Shoreline Area, Conditional Uses:**

Conditional uses consist of those water-dependent conditional uses designated in abutting upland shoreline area designations.

**23.30.11.6 Aquatic Shoreline Area, Prohibited Uses:**

The following uses are prohibited:

- A. Residential.
- B. Nonwater-~~dependent~~~~oriented~~ commercial, industrial and port development.
- C. Institutional.
- D. Agricultural.

**23.30.12 Cherry Point Management Area**

The policies, regulations and standards, etc. applicable to the Cherry Point Management Area are found in SMP 23.100.17, except as otherwise specified therein.

## Chapter 4 Shorelines of Statewide Significance

### 23.40.01 Adoption of Policy

In accordance with RCW 90.58.020, the following management and administrative policies are hereby adopted for all shorelines of statewide significance in unincorporated Whatcom County, as defined in RCW 90.58.030(2)(e) and identified in SMP 23.40.02. ~~The Act requires that the Program give preference to uses that are consistent with the statewide interest in such shorelines.~~ Consistent with the policy contained in RCW 90.58.020, preference shall be given to the uses that are consistent with the statewide interest in such shorelines. These are uses that:

- A. Recognize and protect the statewide interest over local interest.
- B. Preserve the natural character of the shoreline.
- C. Result in long term over short term benefit.
- D. Protect the resources and ecology of the shoreline.
- E. Increase public access to publicly owned areas of the shoreline.
- F. Increase recreational opportunities for the public in the shoreline.
- G. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

Uses that are not consistent with these policies should not be permitted on shorelines of statewide significance.

### 23.40.02 Designation of Shorelines of Statewide Significance

In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated the following shorelines of unincorporated Whatcom County, including the shorelands and associated wetlands as therein defined, as having statewide significance:

- A. Lakes:
  - 1. Lake Whatcom,
  - 2. Ross Lake, and
  - 3. Baker Lake
  
- B. [Rivers Streams](#):

1. Nooksack River: its mainstem downstream to Bellingham Bay, its North Fork to the mouth of Glacier Creek and its South Fork to the mouth of Hutchinson Creek.
  2. Skagit River: upstream of the Whatcom-Skagit County line to the point where the mean annual flow is measured at one thousand feet per second or more, approximately, at the confluence of Newhalem Creek.
- C. Marine:
1. Birch Bay from Birch Point to Point Whitehorn.
  2. All other marine waters, water columns, and bedlands waterward of extreme low tide.

### **23.40.03 Policies for Shorelines of Statewide Significance**

The statewide interest should be recognized and protected over the local interest in shorelines of statewide significance. To ensure that statewide interests are protected over local interests, the County shall review all development proposals within shorelines of statewide significance for consistency with RCW 90.58.030 and the following policies:

- A. Redevelopment of shorelines should be encouraged where it restores or enhances shoreline ecological functions and processes impaired by prior development activities.
- B. The Washington Departments of Fish and Wildlife and Ecology, the Lummi Nation, the Nooksack Tribe, and other resources agencies should be consulted for development proposals that could affect anadromous fisheries.
- C. Where commercial timber cutting takes place pursuant to SMP 23.90.11 and RCW 90.58.150, reforestation should take place as soon as possible.
- D. Activities that use shoreline resources on a sustained yield or non-consuming basis and that are compatible with other appropriate uses should be given priority over uses not meeting these criteria.
- E. The range of options for shoreline use should be preserved to the maximum possible extent for succeeding generations. Development that consumes valuable, scarce or irreplaceable natural resources should not be permitted if alternative sites are available.
- F. Potential short term economic gains or convenience should be measured against potential long term and/or costly impairment of natural features.
- G. Protection or enhancement of aesthetic values should be actively promoted in design review of new or expanding development, ~~protection or enhancement of aesthetic values should be actively promoted.~~
- H. Resources and ecological systems of shorelines of statewide significance should be protected. Shorelands and submerged lands should be protected to accommodate current and projected demand for economic resources of statewide importance such as commercial shellfish beds.

- I. Those limited shorelines containing unique, scarce and/or sensitive resources should be protected to the maximum extent feasible.
- J. Erosion and sedimentation from development sites should be controlled to minimize adverse impacts on ecosystem processes. If site conditions preclude effective erosion and sediment control, excavations, land clearing, or other activities likely to result in significant erosion should be severely limited.
- K. Public access development in extremely sensitive areas should be restricted or prohibited. All forms of recreation or access development should be designed to protect the resource base upon which such uses in general depend.
- L. Public and private developments should be encouraged to provide trails, viewpoints, water access points and shoreline related recreation opportunities whenever possible. Such development is recognized as a high priority use.
- M. Development not requiring a waterside or shoreline location should be located inland so that lawful public enjoyment of shorelines is enhanced.
- N. Lodging and related facilities should be located inland and provide for appropriate means of access to the shoreline.

## Chapter 5      **Applicability and Non-conforming Uses**

### **23.50.01              Application to Persons and Development**

- A.      This Program shall apply to any person as defined in Chapter 11.
- B.      This Program shall apply to any use or development as defined in Chapter 11. All development and use of shorelines of the state shall be carried out in a manner that is consistent with this Program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required for such development pursuant to Chapter 6 of this Program.
- C.      No substantial development as defined in Chapter 11 shall be undertaken within shorelines by any person on shorelines without first obtaining a substantial development permit from Whatcom County; provided that, such a permit shall not be required for the exempt activities listed in SMP 23.60.02.2.

### **23.50.02              Relationship to Other Local Regulations**

- A.      In the case of development subject to the shoreline permit requirement of this Program, the County Building Official shall not issue a building permit for such development until a shoreline permit has been granted; provided that, any permit issued by the Building Official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.
- B.      In the case of development subject to regulations of this Program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided that, for single family residences, a building permit reviewed and signed off by the Administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this Program shall be included in the permit review.<sup>9</sup> The Building Official shall attach and enforce conditions to the building permit as required by applicable regulations of this Program pursuant to RCW 90.58.140(1).
- C.      In the case of zoning conditional use permits and/or variances required by WCC Title 20 for development that is also within shorelines, the County decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this Program<sup>10</sup> in consideration of recommendations from the Administrator. The decision maker shall attach conditions to such permits and variances as required to make such development consistent with this Program.
- D.      In the case of land divisions, such as short subdivisions, long plats and planned unit developments that require county approval, the decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of

---

<sup>9</sup> ~~WAC 173-26-101(2)(a)(iii)(D)~~

<sup>10</sup> ~~WAC 173-26-101(2)(a)(iii)(D)~~

this Program<sup>44</sup> and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this Program.

- E. Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:
1. Building, Plumbing, Mechanical, and Fire Codes
  2. Boating and Swimming, WCC Title 11
  3. On-Site Sewage System Regulations, WCC 24.05
  4. Solid Waste Rules and Regulations, WCC 24.06
  5. Zoning, WCC Title 20
  6. [Land SubD](#)ivision Regulations, WCC Title 21
  7. Development Standards

**23.50.03 Relationship to Other State and Federal Laws**

- A. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, State, regional or Federal statutes or regulations applicable to such development or use.
- B. At the time of application or initial inquiry, the Administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the Administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.
- C. Washington State statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:
1. Flood Control Zone Act, RCW 86.16
  2. Forest Practices Act, RCW 76.09
  3. ~~Food~~ Fish and [Wildlife Shellfish Act](#), RCW ~~775~~
  4. Water Pollution Control Act, RCW 90.48
  5. Land Subdivision Act, RCW 58.17
  6. Surface Mining Act, RCW 78.44
  7. Washington Clean Air Act, RCW 70.94
  8. State Environmental Policy Act (SEPA), RCW 43.21C
  9. Camping ~~Resorts Club~~ Act, RCW 19.105
  - ~~10. Environmental Coordination Procedures Act, RCW 90.62~~
  - ~~11~~10. Water Resources Act of 1971, RCW 90.54
  - ~~12~~11. Growth Management Act, RCW 36.70A
  - ~~13~~12. State Hydraulic Code, RCW 77.55
- D. Regional authority regulations authorized by state law that may be applicable to shoreline development or use include, but are not limited to:

---

<sup>44</sup>~~WAC 173-26-191(2)(a)(iii)(D)~~

1. Northwest Clean Air Agency regulations
  2. Puget Sound Water Quality [Management](#) Plan
- E. Federal statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:
1. Rivers and Harbors Act of 1899
  2. Fish and Wildlife Coordination Act of 1958
  3. National Environmental Policy Act of 1969, (NEPA)
  4. Coastal Zone Management Act of 1972, as amended
  5. Federal Water Pollution Control Act, as amended
  6. Flood Insurance Act of 1968, as amended
  7. Clean Air Act, as amended
  8. Endangered Species Act (ESA)

#### **23.50.04 Application within Federal Reserves**

- A. The shoreline permit procedures, policies and regulations established in this Program shall apply to development or use of shorelines of the state within National Forests, National Parks and National Recreation Areas by persons other than federal agencies.
- B. As recognized by RCW 90.58.350, the provisions of this Program shall not apply to lands held in trust by the United States for Indian Nations, tribes or individuals.

#### **23.50.05 Program Effects on Property Values**

- A. As provided for in RCW 90.58.290, the restrictions imposed upon use of real property through implementation of policies and regulations of the Act and this Program shall be duly considered by the County Assessor and the County Board of Equalization in establishing the fair market value of such properties.
- B. Designation of private property as a Natural or Conservancy shoreline area pursuant to Chapter 3 [shall qualify the property as meeting the definition of ~~may be considered in evaluating whether an application fulfills the criteria for~~ "open space land" under the Open Space Taxation Act of 1970, as amended \(RCW 84.34.020\(1\)\) and shall qualify such land for application for Open Space Taxation in accordance with RCW 84.34.37 and WCC 3.28.](#)

#### **23.50.06 Hazardous Substance Remedial Actions**

The procedural requirements of RCW 90.58 shall not apply to a project for which a consent decree, order, or agreed order has been issued pursuant to RCW 70.105D or to the Department of Ecology when it conducts a remedial action under RCW 70.105D. The Department of Ecology shall, in consultation with the Administrator, assure that such projects comply with the substantive requirements of RCW 90.58, WAC 173-26 and this Program.

#### **23.50.07 Non-conforming Development**

The following provisions shall apply to lawfully established uses, buildings and/or structures that do not meet the specific standards of this Program.

- A. The lawfully established use of any building, structure, land or premises existing on the effective date of initial adoption of the Program (August 27, 1976), or any subsequent amendment thereto or authorized under a permit or approval issued, or otherwise vested, prior to the effective date of initial adoption of the Program August 27, 1976 or any subsequent amendment thereafter shall be considered nonconforming and may be continued, subject to the provisions of this section; provided that, agricultural activities shall conform to WCC 16.16.290; provided further that, bulkheads shall conform to SMP 23.100.13.
- B. An existing use designated as a conditional use that lawfully existed prior to the adoption of this Program or the adoption of an applicable amendment hereto and which has not obtained a conditional use permit shall be considered a legal non-conforming use and may be continued subject to the provisions of this section without obtaining a conditional use permit.
- C. A structure for which a variance has been issued but which does not comply with applicable requirements of this Program as amended shall be considered a legal non-conforming structure and the requirements of this section shall apply.
- D. Non-conforming structures may be maintained, repaired, renovated, or remodeled to the extent that non-conformance with the standards and regulations of this Program is not increased, provided that a non-conforming development that is moved any distance must be brought into conformance with this Program and the Act.
- E. Non-conforming structures that are expanded or enlarged must obtain a variance or be brought into conformance with this Program and the Act; provided that, non-conforming single family residences may be expanded without a variance where the provisions of SMP 23.50.07.A4 apply.
- F. Non-conforming structures that are destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind if there is no feasible alternative that allows for compliance with the provisions standards of this Program chapter; provided that, the following are met:
  - 1. The reconstruction process is commenced within eighteen (18) months of the date of such damage; and
  - 2. The reconstruction does not expand, enlarge, or otherwise increase the non-conformity, except as provided for in subsection (E) above or (H) and (I) below.
- G. If a non-agricultural non-conforming use is intentionally abandoned for a period of twelve (12) months or more, then any future use of the non-conforming building, land or premises shall be consistent with the provisions of this Program chapter.
- H. Replacement of any non-conforming structures or buildings or portions thereof within the Aquatic shoreline area shall comply with Program requirements for materials that come in contact with the water pursuant to SMP 23.90.04.B.5; provided that, replacement of existing wood pilings with chemically treated wood is allowed for maintenance purposes where use of a different material such as steel or concrete would result in unreasonable or unsafe structural complications; further provided that, where such replacement

~~exceeds fifty percent (50%) of the existing pilings over a ten (10) year period, such pilings shall conform to the standard provisions of this section.~~

- I. Enlargement or expansion of single family residences by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 11 that would increase the non-conformity and/or encroach further 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 structure, 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 or further into a critical area or associated buffer, or the minimum required side yard setback require a variance.<sup>42</sup>
  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.
  
- J. A structure that is being or has been used for a non-conforming use may be used for a different non-conforming use only upon the approval of a conditional use permit. In addition to the conditional use criteria of SMP 23.60.04, before approving a conditional use for a change in non-conforming use, the Hearing Examiner shall also find that:
  1. No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;
  2. The proposed use will be at least as consistent with the policies and provisions of the Act and this Program and as compatible with the uses in the area as the preexisting use;
  3. The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
  4. The structure(s) associated with the non-conforming use shall not be expanded in a manner that increases the extent of the non-conformity including encroachment into areas, such as setbacks, and any critical areas and/or associated buffers established by WCC 16.16, where new structures, development or use would not be allowed;
  5. The vegetation conservation standards of SMP 23.90.06.B.3 are met;

---

~~<sup>42</sup> This is the previous wording of this section in regulation .91, with the addition of critical areas and associated buffers, and criteria 3.~~

6. The change in use, remodel or expansion will not create adverse impacts to shoreline ecological functions and/or processes; and
  7. Uses which are specifically prohibited or which would thwart the intent of the Act or this Program shall not be authorized.
- K. New single family development on non-conforming lots consisting of property under contiguous ownership less than 20,000 square feet in size and not subject to landslide hazard areas, alluvial fan hazard areas, or riverine and coastal erosion hazard areas or associated buffers as provided in WCC 16.16.310 may be allowed without a variance in accordance with the following criteria:
1. Non-conforming lots with a building area of 2,500 square feet or more available for a single family residence and normal appurtenances and unrestricted by setbacks or buffers from shorelines or critical areas shall comply with the [provisions standards](#) of this Program. The building area means the entire area that will be disturbed to construct the home, normal appurtenances, and landscaping.
  2. 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 2,500 square feet on the portion of the lot farthest from the required setback or buffer.
  3. The area between the structure and the shoreline and/or critical area shall comply with the vegetation conservation standards of SMP 23.90.06.B.3.
  4. Development may not take place waterward of the ordinary high water mark.
  5. Facilities such as a conventional drainfield system may be allowed within critical areas or their buffers outside of the building area specified above, subject to specific criteria in WCC 16.16.
- L. [Redevelopment of non-conforming right-of-ways and associated transportation structures, such as railroad trestles, may be permitted for purposes of facilitating the development of public trails and/or public shoreline access; provided that, such redevelopment shall be otherwise consistent with the provisions of this Program, including but not limited to the provisions for public access and no net loss of shoreline ecological functions and processes, except as provided for in subsections \(E\) and \(H\) above.](#)

**23.50.08 Property Rights**

- A. Decisions on shoreline permits and/or approvals shall recognize all relevant constitutional and other legal limitations on the regulation of private property. Findings shall assure that conditions imposed relate to the governmental authority and responsibility to protect the public health, safety, and welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected impact.

- B. This Program does not alter existing law on access to or trespass on private property and does not give the general public any right to enter private property without the owner's permission.
- C. Consistent with Whatcom County's high standard of staff conduct, County staff observe all applicable Federal and State laws regarding entry onto privately owned property.

## Chapter 6 Shoreline Permits and Exemptions

To be authorized, all uses and developments shall be planned and carried out in a manner that is consistent with this Program and the policy of the Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.

### 23.60.01 Substantial Development Permit Criteria

- A. A substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt pursuant to SMP 23.60.02.2.
- B. In order to be approved, the decision maker must find that the proposal is consistent with the following criteria:
  - 1. All regulations of this Program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under SMP 23.60.03.
  - 2. All policies of this Program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated. A reasonable proposal that cannot fully conform to these policies may be permitted, provided it is demonstrated that the proposal is clearly consistent with the overall goals, objectives and intent of this Program.
  - 3. For projects located on shorelines of statewide significance, the policies of Chapter 4 shall be also be adhered to.
- C. In the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

### 23.60.02 Exemptions from Shoreline Substantial Development Permit Process

#### 23.60.02.1 Application and Interpretation

- A. An exemption from the substantial development permit process is not an exemption from compliance with the Act or this Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and [regulatory](#) provisions of this Program and the Act. [A statement of exemption shall be obtained for exempt activities consistent with the provisions of SMP 23.60.02.](#)

- B. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit process.
- C. The burden of proof that a development or use is exempt is on the applicant/proponent ~~or proponent~~ of the exempt development action.
- D. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.
- E. A development or use that is listed as a conditional use pursuant to this Program or is an unlisted use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.
- F. When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of the Program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.
- G. All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Administrator, including compliance with bulk and dimensional standards and policies and regulations of this Program. The Administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the Program.<sup>43</sup>

### 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.~~2-3~~ of this Program shall be required for those activities listed in SMP 23.60.02.~~32~~.B and C.

- A. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars (\$5,000), 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.
- B. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. Normal maintenance includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal repair means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement

---

<sup>43</sup> ~~WAC 173-26-191(2)(a)(iii)(D)~~

structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or the environment.

- C. Construction of the normal protective bulkhead common to single family residences. A normal protective bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one (1) cubic yard of fill per one (1) foot of wall may be used for backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife.
- D. Emergency construction necessary to protect property from damage by the elements. An emergency is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this Program. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit that would have been required, absent an emergency, pursuant to RCW 90.58, WAC 173-27 or this Program, shall be obtained. All emergency construction shall be consistent with the policies of RCW 90.58 and this Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.
- E. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including, but not limited to, head gates, pumping facilities, and irrigation channels; provided, that this exemption shall not apply to agricultural activities proposed on land not in agricultural use on December 17, 2003, and further provided that a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

- F. Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys.
- G. Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for their own use or for the use of their family, which residence does not exceed a height of 35 feet above average grade level and that meets all requirements of the State agency or local government having jurisdiction thereof. Single family residence means a detached dwelling designed for and occupied by one (1) family including those structures and developments within a contiguous ownership which are a normal appurtenance as defined in SMP 23.110.A.
- H. Construction of a dock, including a shared moorage, designed for pleasure craft only, for the private non-commercial use of the owners, lessee, or contract purchaser of a single family or multifamily residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. The private dock exemption applies if either:
  - 1. In saltwater, the fair market value of the dock does not exceed two thousand-five hundred dollars (\$2,500);
  - 2. In fresh waters the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction having a fair market value exceeding two thousand-five hundred dollars (\$2,500) occurs within five (5) years of the completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Program. For the purpose of this section saltwater shall include the tidally influenced marine and estuarine water areas of the state including the Strait of Georgia, local marine waters and all associated bays, inlets and estuaries.
- I. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters including return flow and artificially stored ground water for the irrigation of lands, provided that this exemption shall not apply to construction of new irrigation facilities proposed after December 17, 2003.
- J. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.
- K. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on June 4, 1975 that were created, developed or utilized, primarily as a part of an agricultural drainage or diking system.
- L. Any project with a certification from the governor pursuant to RCW 80.50.
- M. Site exploration and investigation activities that are prerequisite to preparation of a development application for authorization under this Program, if:
  - 1. The activity does not interfere with the normal public use of surface waters;

2. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values;
  3. The activity does not involve the installation of any structure and, upon completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity;
  4. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the Administrator to ensure that the site is restored to preexisting conditions; and
  5. The activity is not subject to the permit requirements of RCW 90.58.550.
- N. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that is recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under RCW 43.21C.
- O. Watershed restoration projects as defined [herein in Chapter 11](#) and by RCW 89.08.460. The Administrator shall review the projects for consistency with the Program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving a complete application form from the applicant/proponent. No fee may be charged for accepting and processing applications for watershed restoration projects as defined in [this section Chapter 11](#).
1. ~~“Watershed restoration project” means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or part of the plan and consists of one or more of the following activities:~~
    - a. ~~A project that involves less than 10 miles of stream reach, in which less than 25 cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;~~
    - b. ~~A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control erosive forces of flowing water; or~~
    - c. ~~A project primarily designated to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structures, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than 200 square feet in floor area and is located above the ordinary high water mark.~~
  2. ~~“Watershed Restoration Plan” means a plan, developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of~~

~~Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, recreation, or enhancement of the natural resource character and ecology of a stream, stream segment, drainage area or watershed for which agency and public review has been conducted pursuant to RCW 43.21C, the State Environmental Policy Act.~~

- P. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:
1. The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;
  2. The project received hydraulic project approval by the Department of Fish and Wildlife pursuant to RCW 77.55; and
  3. The Administrator has determined that the project is consistent with this Program. The Administrator shall make such determination in a timely manner and provide it by letter to the project proponent.

### **23.60.02.3 Statements of Exemption**

- A. The Administrator is hereby authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in SMP 23.60.02.2. Such statements shall be applied for on forms provided by the Administrator. The statement shall be in writing and shall indicate the specific exemption of this Program that is being applied to the development, and shall provide a summary of the Administrator's analysis of the consistency of the project with this Program and the Act. As appropriate, such statements of exemption shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the Program and Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The Administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to SMP 23.60.15.
- B. Exempt activities related to any of the following shall not be conducted until a statement of exemption has been obtained from the Administrator: dredging, flood control works and instream structures, development within an archaeological or historic site, clearing and ground disturbing activities such as landfill or excavation, dock, shore stabilization, free-standing signs, or any development within an Aquatic or Natural shoreline designation; provided that no separate written statement of exemption is required for the construction of a single family residence when a County building permit application has been reviewed and approved by the Administrator; provided further, that no statement of exemption is required for emergency development pursuant to WAC 173-27-040(2)(d).
- C. No statement of exemption shall be required for other uses or developments exempt pursuant to SMP 23.60.02.2 unless the Administrator has cause to believe a substantial question exists as to qualifications of the specific use or development for the exemption

or the Administrator determines there is a likelihood of adverse impacts to shoreline ecological functions.

- D. Whether or not a written statement of exemption is issued, all permits issued within the area of shorelines shall include a record of review actions prepared by the Administrator, including compliance with bulk and dimensional standards and policies and regulations of this Program. The Administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and this Program.<sup>44</sup>
- E. A notice of decision for shoreline statements of exemption shall be provided to the applicant/proponent and any party of record. Such notices shall also be filed with the Department of Ecology, pursuant to the requirements of WAC 173-27-050 when the project is subject to one or more of the following Federal Permitting requirements:
  - 1. A U.S. Army Corps of Engineers section 10 permit under the Rivers and Harbors Act of 1899; (The provisions of section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters. Specific applicability information should be obtained from the Corps of Engineers.); or
  - 2. A section 404 permit under the Federal Water Pollution Control Act of 1972. (The provisions of section 404 of the Federal Water Pollution Control Act generally apply to any project that may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the Corps of Engineers.)
- F. Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water Pollution Control Act of 1972, a copy of the written statement of exemption shall be sent to the applicant/proponent and Ecology pursuant to WAC 173-27-050.

**23.60.03 Variance Permit Criteria**

- A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this Program and any associated standards appended to this Program such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this Program would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020. Use restrictions may not be varied.
- B. Variances will be granted in any circumstance where denial would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.
- C. Proposals that qualify as a reasonable use pursuant to WCC 16.16.270.A shall require a shoreline variance.

---

<sup>44</sup> ~~WAC 173-26-191(2)(a)(iii)(D)~~

- D. Variances may be authorized, provided the applicant/proponent can demonstrate all of the following:
1. That the strict application of the bulk or dimensional criteria set forth in this Program precludes or significantly interferes with a reasonable permitted use of the property;
  2. That the hardship described in SMP 23.60.03.A above is specifically related to the property, and is the result of conditions such as irregular lot shape, size, or natural features and the application of this Program, and not, for example, from deed restrictions or the applicant's/proponent's own actions;
  3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects on adjacent properties or the shoreline environment;
  4. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;
  5. That the public interest will suffer no substantial detrimental effect;
  6. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance; and
  7. Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.

E. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined herein, or within any wetland as defined herein, may be authorized provided the applicant can demonstrate all of the following:

1. That the strict application of the bulk, dimensional or performance standards set forth in this Program precludes all reasonable use of the property; and
2. That the proposal is consistent with the criteria established under SMP 23.60.03.D.1 through 7 of this section; and
3. That the public rights of navigation and use of the shorelines will not be adversely affected.

E. Other factors that may be considered in the review of variance requests include the conservation of valuable natural resources and the protection of views from nearby roads, surrounding properties and public areas; provided, the criteria of SMP 23.60.03.D are first met. In addition, variance requests based on the applicant's/proponent's desire to enhance the view from the subject development may be granted where there are no likely detrimental effects to existing or future users, other features or shoreline ecological functions and/or processes, and where reasonable alternatives of equal or greater consistency with this Program are not available. In platted residential areas, variances shall not be granted that allow a greater height or lesser shore setback than what is typical for the immediate block or area.

- GF. In the granting of all variances, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.
- HG. Permits and/or variances applied for or approved under other county codes such as WCC Title 20 or WCC Title 21 shall not be construed as shoreline permits under this Program.

**23.60.04 Conditional Use Permit Criteria**

- A. The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of this Program in a manner consistent with the policy of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the County or the Department of Ecology to control any undesirable effects of the proposed use.
- B. Uses specifically classified or set forth in this Program as conditional uses and unlisted uses may be authorized provided the applicant/proponent can demonstrate all of the following:
1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this Program.
  2. That the proposed use will not interfere with normal public use of public shorelines.
  3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.
  4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.
  5. That the public interest suffers no substantial detrimental effect.
- C. Other uses not specifically classified or set forth in this Program, including the expansion or resumption of a non-conforming use pursuant to SMP 23.50.07, may be authorized as conditional uses provided the applicant/proponent can demonstrate that the proposal will satisfy the criteria set forth in SMP 23.60.04.B above, and that the use clearly requires a specific site location on the shoreline not provided for under the Program, and extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of this Program. Uses that are prohibited cannot be authorized by a conditional use permit.
- D. In the granting of all conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts

should also remain consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.

- E. Permits and/or variances applied for or approved under County zoning or subdivision code requirements shall not be construed as shoreline variances under this Program.

### **23.60.05 Minimum Application Requirements**

- A. Where other approvals or permits are required for a use or development that does not require an open record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is granted. All shoreline approvals and permits shall include written findings prepared by the Administrator documenting compliance with bulk and dimensional standards and other policies and regulations of this Program.
- B. A complete application for a substantial development, conditional use, or variance permit shall contain, at a minimum, the following information; provided that the Administrator may vary or waive these requirements according to administrative application requirements and may vary or waive these requirements on a case-by-case basis. The Administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements.
  - 1. Applicant/Proponent Information
    - (a) The name, address and phone number of the applicant/proponent, applicant's representative, and/or property owner if different from the applicant/proponent.
    - (b) The applicant/proponent should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
  - 2. Property Information
    - (a) The property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
    - (b) Identification of the name of the shoreline (water body) that the site of the proposal is associated with.
    - (c) A general description of the property as it now exists including its use, physical and ecological characteristics, improvements and structures.
    - (d) A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.

- (e) A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
3. A site plan identifying existing conditions consisting of photographs, text, maps and elevation drawings, drawn to an appropriate scale to clearly depict all required information, that shall include:
- (a) The boundary of the parcel(s) of land upon which the development is proposed. A survey may be required where substantial questions exist regarding the location of property lines or other important features.
  - (b) The ordinary high water mark of all water bodies within, located on or adjacent to the project boundary. For any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark, the applicant/proponent shall provide a survey and describe the biological and hydrological basis for the location as indicated on the plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.
  - (c) Existing land contours at intervals sufficient to accurately determine the existing character of the property. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
  - (d) Existing critical areas as designated in WCC 16.16 together with any supporting information consistent with the reporting requirements of WCC 16.16.
  - (e) A description of the character of vegetation found on the site, including dominant plant species, vegetation structure, presence of invasive species and related information. A vegetation survey of plant communities may be required.
  - (f) A description of the existing conditions including the ecological functions and processes affecting, maintaining, or influencing the shoreline.
  - (g) The dimensions and locations of all existing structures and improvements including, but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, and stormwater management facilities.
4. A site plan and supporting information describing the features of the proposed development:
- (a) The dimensions and locations of all proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

- (b) Proposed land contours overlain on existing contours. The contours shall be at intervals sufficient to accurately determine the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
  - (c) Where applicable, a landscaping plan for the project.
  - (d) Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.
  - (e) Quantity, composition and destination of any excavated or dredged material.
  - (f) A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
  - (g) Where applicable, a depiction of the impacts to views from existing residential uses and public areas.
  - (h) A summary characterization of the effects of the project on existing ecological functions and processes in the vicinity of the project. If the project is likely to have adverse effects on shoreline ecological functions or processes, a mitigation plan shall be provided demonstrating measures that will be taken to offset impacts in accordance with the policies in SMP 23.90.03.
  - (i) Where applicable, critical area mitigation plans in accordance with WCC 16.16.260.
  - (j) On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.
5. Shoreline permits shall be applied for on forms provided by the county.

[6. Operation and maintenance plan\(s\) as required pursuant to other applicable sections of this Program.](#)

**23.60.06 Pre-application Conference**

- A. Prior to filing a permit application for a shoreline substantial development permit, variance or conditional use permit decision, the applicant shall contact the county to schedule a pre-application conference which shall be held prior to filing the application, [provided that such meetings shall not be required for development activities associated with shoreline restoration projects, agriculture, commercial forestry, or the construction of a single family residence.](#)

- B. The purpose of the pre-application conference is to review and discuss the application requirements with the prospective applicant and provide initial comments on the development proposal. The pre-application conference shall be scheduled by the county, at the request of an applicant, and shall be held in a timely manner, within thirty (30) days from the date of the applicant's request. A project coordinator shall be assigned by the county following the pre-application conference.
- C. The Administrator may waive the requirement for a pre-application conference if it is determined to be unnecessary for review of an application. Nothing in this section shall be interpreted to require more than one pre-application conference or to prohibit the applicant from filing an application if the county is unable to schedule a pre-application conference within thirty (30) days following the applicant's request.
- D. Information presented at or required as a result of the pre-application conference shall be valid for a period of one-hundred-eighty (180) days following the pre-application conference. An applicant wishing to submit a permit application more than one-hundred-eighty (180) days following a pre-application for the same permit application shall be required to schedule another pre-application conference.
- E. At or subsequent to a pre-application conference, the county may issue a preliminary determination that a proposed development is not permissible under applicable county policies or regulatory enactments. In that event, the applicant shall have the option to appeal the preliminary determination to the hearing examiner as provided for in SMP 23.60.15 as an alternative to proceeding with a complete application.

**23.60.07 Fees**

- A. Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, pre-application conferences and other required reviews and/or approvals shall be paid to the County at the time of application in accordance with the Whatcom County Unified Fee Schedule in effect at that time.
- B. When any given project requires more than one of the following permits or applications, the total amount of shoreline fees shall be reduced by twenty-five percent (25%):
  - 1. Preliminary plat application
  - 2. Rezone application
  - 3. Major development permit
  - 4. Planned unit development
  - 5. Binding site plan
- C. When any project requires a shoreline conditional use permit or shoreline variance in addition to a shoreline substantial development permit, the fees for the conditional use or variance shall be reduced by half.
- CD. In the event that actions of an applicant result in the repetition of the review, inspections and other steps in the approval process, those items or steps repeated shall be charged to and paid by the applicant prior to any further processing of the application by the County. The cost shall be in accordance with the adopted fee schedule.

- ~~DE~~. If an application is withdrawn within thirty (30) days of submittal, and no work has commenced at the site of the proposal for which the application was made, a refund of not more than fifty percent (50%) of the shoreline fees paid may be granted by the Administrator. This amount may be reduced where staff time, public notice and other costs exceed fifty percent (50%) of the fees paid.
- ~~EE~~. No fees shall be collected from an agency of Whatcom County government.

**23.60.08 Notice of Application**

- A. Upon receipt of a completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application, the County shall issue a Notice of Application for a Proposed Land Use Action in the manner set forth in WCC 2.33.060 (Permit Review Procedures) notwithstanding the requirement for an open record public hearing, and to notify the applicant/proponent of his/her notice responsibility under that section.
- B. The public comment period for a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be thirty (30) days following the date of notice of application. Public comments may be submitted at any time prior to the closing of the record of an open record predecision hearing or, if no open record public hearing is required, prior to the decision on the project permit.
- C. The public hearing shall not be closed to the receipt of written comments prior to thirty (30) days following the date of the notice.
- D. Application for any approval or permit not requiring a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be governed by the applicable notice requirement for that permit and shall not be subject to additional notice by this section. Any public comments submitted pursuant to applications for other approvals or permits shall be considered in review of compliance with standards, policies and regulations of this Program.<sup>45</sup>
- E. The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged.

**23.60.09 Permit Application Review**

- A. All shoreline permit applications, exemptions, or other approvals shall be subject to the provisions of this Program that are in effect at the time of application.
- B. To facilitate review of an application the decision maker shall consider any or all of the following:
1. The application and attached information;

---

~~<sup>45</sup> The same notice requirements are provided in WAC 173-27-110 whether or not a permit is required, these are the same as RCW 36.70B and are therefore the same as WCC 2.33.~~

2. The SEPA checklist, threshold determination, Environmental Impact Statement, or other environmental studies and/or documentation;
  3. Written comments from interested persons;
  4. Information and recommendations from any public agency and from the Administrator in cases where the Administrator is not the decision maker;
  5. Information or comment presented at a public hearing, if held, on the application; and
  6. The policy and provisions of the Act and this Program including the criteria enumerated in SMP 23.60.01, .03 and .04, as applicable.
- C. In compliance with the provisions of WCC 2.33 the decision maker shall be responsible to process permit applications for shoreline substantial development permits, shoreline variance and shoreline conditional use permits, in a timely manner.
- D. Shoreline statements of exemption shall be processed in accordance with the provisions of SMP 23.60.02.3.A.
- E. Any application for a shoreline permit or approval that remains inactive for a period of one-hundred-eighty (180) days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided that, the Administrator may grant a single ninety (90) day extension for good cause. Delays such as those caused by public notice requirements, State Environmental Policy Act review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.
- F. If a shoreline permit is denied, no reapplication for the same or essentially similar development may be made until one (1) year from the date of denial.

**23.60.10 Consolidated Permit Review**

- A. Whenever an application for a permit under the Program requires a permit or approval under another county permit authority, such as zoning or subdivision, the shoreline permit application, time requirements and notice provisions for processing the shoreline permit shall apply, in addition to those of other regulatory programs.
- B. The provisions of WCC 2.33 shall apply to the consolidated application, review and approval of applications that require an open record hearing. Any shoreline use or development that is subject to other approvals or permits that requires an open record hearing under another permit authority, such as zoning or subdivision, shall be subject to consolidated review and the decision maker designated for the open record hearing shall be the decision maker for the consolidated review.

**23.60.11 State Environmental Policy Act (SEPA) Compliance**

- A. Whenever an application for shoreline substantial development permit, shoreline variance, shoreline conditional use permit, or statement of exemption is subject to the

rules and regulations of SEPA (RCW 43.21C), the review requirements of SEPA, including time limitations, shall apply, where applicable.

- B. Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA shall be subject to environmental review by the responsible official of Whatcom County pursuant to the State Environmental Policy Act (WAC 197-11).
- C. As part of SEPA review, the responsible official may require additional information regarding the proposed development in accordance with WAC 197-11.
- D. Failure of the applicant/proponent to submit sufficient information for a threshold determination to be made shall be grounds for the responsible official to determine the application incomplete.

### **23.60.12 Burden of Proof**

Permit applicants/proponents have the burden of proving that the proposed development is consistent with the criteria set forth in the Act and this Program.

### **23.60.13 Public Hearings**

- A. The Administrator shall determine whether an application requires a public hearing pursuant to the criteria below no later than fifteen (15) days after the minimum public comment period provided by SMP 23.60.08. An open record public hearing shall be required for all of the following:
  - 1. The proposal has a cost or market value in excess of one-hundred-thousand dollars (\$100,000) except for single family residences, agriculture, commercial forestry and ecological restoration projects; or
  - 2. The proposal would result in development of an area larger than 5 acres; or
  - 3. The proposal is a new or expanded marina, pier, aquaculture structure, any building over 35 feet high, mine, dam, stream diversion, landfill; or
  - 4. The Administrator has reason ~~probable cause~~ to believe the proposal would be controversial based on public response to the Notice of Receipt of Application and other information; or
  - 5. The proposal is determined to have a significant adverse impact on the environment and an Environmental Impact Statement is required in accordance with the State Environmental Policy Act; or
  - 6. The proposal requires a variance and/or conditional use approval pursuant to this Program; or
  - 7. The use or development requires an open record public hearing for other Whatcom County approvals or permits.
- B. An open record public hearing on shoreline permit applications shall be held in accordance with the provisions of WCC 2.33, unless a continuance is granted pursuant

to the rules and procedures of the Hearing Examiner or other hearing body and subject to time requirements for compliance with the State Environmental Policy Act.

- C. Decisions and recommended decisions of the Hearing Examiner shall be rendered within ten (10) working days of the date the public hearing record is closed unless the applicant/proponent agrees to an extension of time.
- D. Where the County Council is the permit decision maker they shall meet to consider the Hearing Examiner's recommendation within twenty-one (21) days of receipt thereof, at a closed record proceeding, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner with instructions.
- E. Public hearing requirements for permit appeals shall be processed according to SMP 23.60.15.

**23.60.14 Permit Conditions**

In granting, revising, or extending a shoreline permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of the Act and this Program as well as the supplemental authority provided in RCW 43.21C as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or re-evaluation to assure conformance with the Act and this Program. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be rescinded in accordance with SMP 23.60.18.

**23.60.15 Notice of Decision, Reconsideration and Appeal**

- A. A notice of decision for action on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be provided to the applicant/proponent and any party of record in accordance with the review procedures of WCC 2.33 and at least ten (10) days prior to filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed with the Department of Ecology shall contain the following information:
  - 1. A copy of the complete application;
  - 2. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation(s), applicable Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);
  - 3. The final decision of the local government;
  - 4. A completed permit data sheet (see Appendix A); and
  - 5. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under RCW 43.21C.

6. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.
- B. Notice of decision for shoreline statements of exemption shall comply with SMP 23.60.02.3.E.
- C. This Program shall only establish standing for parties of record for shoreline substantial development permits, shoreline variances, or shoreline conditional use permits. Standing as a party of record is not established by this Program for exempt actions pursuant to SMP 23.60.02.2; provided that, in such cases standing may be established through an associated permit process that provides for public notice and provisions for parties of record.
- D. The applicant/proponent or any party of record may request reconsideration of any final action by the decision maker within ten (10) days of notice of the decision. Such requests shall be filed on forms supplied by the county. Grounds for reconsideration must be based upon the content of the written decision. The decision maker is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate. The procedure of reconsideration shall not pre-empt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period in writing within ten (10) days of a final action.
- E. Appeals to the Shoreline Hearings Board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within twenty-one (21) days of filing the final decision by Whatcom County with the Department of Ecology.
- F. Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the Shoreline Hearings Board.<sup>46</sup> Such waivers shall be filed with the county in writing concurrent with a notice of appeal within ten (10) days of a final action. When an applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of SMP 23.60.15.H and shall be an open record hearing before the Hearing Examiner.
- G. Any order, requirement or administrative permit decision, or determination by the Administrator based on a provision of this Program, except a shoreline substantial development permit, may be the subject of an appeal to the office of the Hearing Examiner by any aggrieved person. Such appeals shall be processed in accordance with

---

~~<sup>46</sup> RCW 36.70B.060(3) provides that a review process shall provide for no more than one consolidated open record hearing and one closed record appeal. If an open record predecision hearing is provided prior to the decision on a project permit, the process shall not allow a subsequent open record appeal hearing. The County Council can't have an additional open record hearing, but at their closed record hearing they could change condition of approval, based on the existing record. An applicant can't be required to undergo two open record appeals. Since the review by the Shoreline Hearings Board is an open record appeal, the applicant must waive his/her right to a single open record appeal.~~

the appeal procedures of SMP 23.60.15.H and shall be an open record hearing before the Hearing Examiner.

H. Appeal procedures:

1. Appeals shall be filed on forms supplied by the county within ten (10) calendar days of the issuance of a substantial development permit, shoreline variance or shoreline conditional use permit and within twenty (20) calendar days of any other action of the Administrator being appealed.
2. A public hearing on the appeal shall be held within forty-five (45) working days following receipt of the application for appeal.
3. Legal notice of the public hearing shall be made by mailing notice of time, date, and location of the hearing to the appellant, any parties of record, the Washington Department of Ecology, and the Administrator at least fifteen (15) days prior to the hearing.
4. A decision by the Hearing Examiner shall be mailed within ten (10) working days of the public hearing to all parties of record unless otherwise mutually agreed to by all parties to the appeal.
5. Any party of record may request a closed record review of the Hearing Examiner's decision issued under SMP 23.60.15.H.4 by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the county within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.
6. The time period for appeal to the Shoreline Hearings Board shall begin after the decision maker has filed the final County decision with the Department of Ecology.

**23.60.16 Initiation of Development**

- A. Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use permit shall not begin and shall not be authorized until twenty-one (21) days after the "date of filing" or until all review proceedings before the Shoreline Hearings Board have terminated.
- B. Date of filing:
  1. "Date of filing" of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.

2. The "date of filing" for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the County and the applicant/proponent.

### 23.60.17 **Permit Revisions**

- A. A [permit](#) revision is required whenever the applicant/proponent proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit [and/or statement of exemption](#). Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this Program or the Act. Changes that are not substantive in effect do not require a [permit](#) revision.
- B. An application for a revision to a shoreline permit shall be submitted to the Administrator. The application shall include detailed plans and text describing the proposed changes. The County decision maker that approved the original permit may approve the request upon a finding that the proposed changes are within the scope and intent of the original [approval permit](#), and are consistent with this Program and the Act.
- C. "Within the scope and intent of the original [approval permit](#)" means all of the following:
  1. No additional over-water construction is involved except that a pier, dock or floating structure may be increased by ten percent (10%) over that approved under the original [approval permit](#);
  2. Ground area coverage and/or height may be increased a maximum of ten percent (10%) over that approved under the original [approval permit](#); provided that, the revised [approval permit](#) does not authorize development to exceed the height, [impervious surface lot coverage](#), setback or any other requirements of this Program except as authorized under a variance granted for the original development;
  3. Additional or revised landscaping is consistent with any conditions attached to the original [approval permit](#) and with this Program;
  4. The use authorized pursuant to the original [approval permit](#) is not changed; and
  5. The revision will not cause adverse environmental impacts beyond those originally authorized in the [approval permit](#).
- D. Revisions to shoreline permits [and statements of exemption](#) may be authorized after the original [permit](#) authorization has expired. Revisions made after the expiration of the original [approval permit](#) shall be limited to changes that are consistent with this Program and that would not require a permit under this Program. If the proposed change is a substantial development as defined by this Program, then a new permit is required. The provisions of this paragraph shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original [approval permit](#).

- E. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original [approval permit](#) as set forth in SMP 23.60.17.C.
- F. Upon approval of a [permit](#) revision, the decision maker, shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.
- G. If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this paragraph. Under the requirements of WAC 173-27-110(6), the department shall render and transmit to the decision maker and the applicant/proponent its final decision within fifteen (15) days of the date of the Department's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department's final decision. Appeals of a decision of the Department shall be filed in accordance with the provisions of WAC 461-08C.

**23.60.18 Rescission and Modification**

- A. Any shoreline permit granted pursuant to this Program may be rescinded or modified upon a finding by the Hearing Examiner that the permittee or his/her successors in interest have not complied with conditions attached thereto. ~~If the~~ results of a monitoring plan ~~may~~ show a development to be out of compliance with specific performance standards, ~~which such results~~ may be the basis for findings of non-compliance.
- B. The Administrator shall initiate rescission or modification proceedings by [issuing serving](#) written notice of non-compliance to the permittee or his/her successors and notifying parties of record at the original address provided in application review files.
- C. The Hearing Examiner shall hold a public hearing no sooner than fifteen (15) days following such [issuance service](#) of notice, unless the applicant/proponent files notice of intent to comply and the Administrator grants a specific schedule for compliance. If compliance is not achieved, the Administrator shall schedule a public hearing before the Hearing Examiner. Upon considering written and oral testimony taken at the hearing, the Hearing Examiner shall make a decision in accordance with the above procedure for shoreline permits.
- D. These provisions do not limit the Administrator, the Prosecuting Attorney, the Department of Ecology or the Attorney General from administrative, civil, injunctive, declaratory or other remedies provided by law, or from abatement or other remedies.

**23.60.19 Expiration**

- A. The following time requirements shall apply to all substantial development permits and to any development authorized pursuant to a variance, conditional use permit, or statement of exemption:

1. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two (2) years of the effective date of a shoreline permit or exemption or the permit shall expire; provided that, the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause if a request for extension has been filed with the Hearing Examiner or Administrator as appropriate before the expiration date of the shoreline permit or exemption, and notice of the proposed extension is given to parties of record and the Department of Ecology.
  2. Authorization to conduct development activities shall terminate five (5) years after the effective date of a shoreline permit or exemption, provided that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one (1) year based on a showing of good cause, if a request for extension has been filed with the Hearing Examiner or Administrator, as appropriate, before the expiration date of the shoreline permit or exemption and notice of the proposed extension is given to parties of record and the Department of Ecology.
  3. The effective date of a shoreline permit or exemption shall be the date of last action required on the shoreline permit or exemption and all other government permits and approvals that authorize the development to proceed, including administrative and legal actions on any such permit or approval. The applicant/proponent shall be responsible for informing the County of the pendency of other permit applications filed with agencies other than the County and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the County prior to the date of the last action by the County to grant county permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the County, and actions under other county development regulations, the date of the last action by the County shall be the effective date.
- B. Notwithstanding the time limits established in SMP 23.60.19.A(1) and (2), upon a finding of good cause based on the requirements and circumstances of the proposed project and consistent with the policies and provisions of this Program and the Act, the Hearing Examiner or Administrator as appropriate may set different time limits for a particular substantial development permit or exemption as part of the action to approve the permit or exemption. The Hearing Examiner may also set different time limits on specific conditional use permits or variances with the approval of the Department of Ecology. The different time limits may be longer or shorter than those established in SMP 23.60.19.A(1) and (2) but shall be appropriate to the shoreline development or use under review. “Good cause based on the requirements and circumstances of the proposed project” shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.
- C. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to the commencement of a nonstructural activity,

provided that different time limits for compliance may be specified in the conditions of approval as appropriate.

- D. The Hearing Examiner or Administrator as appropriate shall notify the Department of Ecology in writing of any change to the effective date of a permit, authorized by SMP 23.60.19.A through C, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by the sections of this Program previously listed shall require a new permit application.

## Chapter 7 Administration

### 23.70.01 Administrator

- A. The Administrator, as defined in SMP 23.110.A, is hereby vested with the authority to:
1. Overall administrative responsibility for this Program.
  2. Determine if a public hearing should be held on a shoreline permit application by the Hearing Examiner pursuant to SMP 23.60.13.
  3. Grant or deny statements of exemption.
  4. Authorize, approve or deny shoreline substantial development permits, except for those for which the Hearing Examiner or County Council is the designated decision maker.
  5. [Serve a cease and desist](#) [Issue a stop work](#) order pursuant to the procedure set forth in WAC 173-27-270 upon a person undertaking an activity on shorelines in violation of RCW 90.58 or this Program; and seek remedies for alleged violations of this Program's regulations, or of the provisions of the Act, or of conditions attached to a shoreline permit issued by Whatcom County.
  6. Decide whether or not a proposal is subject to the consolidated review process of WCC 2.33 and determine what other permits are required to be included in the consolidated review.
  7. Make field inspections as needed, and prepare or require reports on shoreline permit applications.
  8. Make written recommendations to the County Council or Hearing Examiner as appropriate and insofar as possible, assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter.
  9. Propose amendments to the Planning Commission deemed necessary to more effectively or equitably achieve the purposes and goals of this Program.
  10. The Administrator shall perform the following administrative responsibilities:
    - a. Advise interested persons and prospective applicants/proponents as to the administrative procedures and related components of this Program;
    - b. Collect fees as provided for in SMP 23.60.07 of this Program; and

- 
- c. Assure that proper notice is given to interested persons and the public through news media, posting or mailing of notice.
11. Review administrative and management policies, regulations, plans and ordinances relative to lands under County jurisdiction that are adjacent to shorelines so as to achieve a use policy on such lands that is consistent with the Act and this Program.
  12. Review and evaluate the records of project review actions in shoreline areas and report on the cumulative effects of authorized development of shoreline conditions. The Administrator shall coordinate such review with the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Lummi Nation and Nooksack Tribe and other interested parties.<sup>47</sup>
  13. Make recommendations to the Planning Commission for open space tax designations pursuant to RCW 84.34.
- B. The Director of Planning and Development Services shall have the authority to develop administrative guidance materials related to the interpretations of principles and terms in this Program as required to provide for consistent and equitable implementation of this Program. Such administrative guidance documents shall be developed in consultation with the Washington State Department of Ecology to insure that any formal written interpretations are consistent with the purpose and intent of RCW 90.58, ~~and~~ the applicable guidelines, and the goals and objectives of this Program.

#### **23.70.02 SEPA Official**

The Whatcom County SEPA Responsible Official is designated by WCC 16.08.040. The Responsible Official or his/her designee is hereby authorized to conduct environmental review of all use and development activities subject to this Program, pursuant to WAC 197-11 and RCW 43.21C.

#### **23.70.03 Hearing Examiner**

The Whatcom County Hearing Examiner is hereby vested with the authority to:

- A. Grant or deny shoreline permits requiring public hearings.
- B. Grant or deny variances from this Program.
- C. Grant or deny conditional uses under this Program.
- D. For consolidated applications for permits for which the County Council is designated as the decision maker, the Hearing Examiner shall have the authority to hold an open record public hearing and make a recommendation to the County Council on shoreline permits as part of a consolidated review as provided in WCC 2.33.
- E. Decide on appeals of administrative decisions issued by the Administrator of this Program.

---

<sup>47</sup> ~~WAC 173-26-191(2)(a)(iii)(D)~~

**23.70.04 Planning Commission**

The Whatcom County Planning Commission is hereby vested with the responsibility to review the Program from time to time as a major element of the County's planning and regulatory program, and make recommendations for amendments thereof to the County Council.

**23.70.05 County Council**

The Whatcom County Council is hereby vested with authority to:

- A. Initiate an amendment to this Program according to the procedures prescribed in WAC 173-26-100.
- B. Adopt all amendments to this Program, after consideration of the recommendation of the Planning Commission and pursuant to the procedural requirements of WCC 2.02, provided that substantive amendments shall become effective immediately upon adoption by the Department of Ecology.
- C. Make final decisions with regard to shoreline permit, shoreline variance or shoreline conditional use applications that require County Council action on a consolidated review as provided by WCC 2.33.
- D. Review and decide appeals to Hearing Examiner decisions pursuant to the procedures of SMP 23.60.15.

## Chapter 8 Legal Provisions

### 23.80.01 Amendments

- A. The County Council or the Planning Commission may initiate an amendment to this Program according to the procedures prescribed in WAC 173-26-100. The Planning Commission shall conduct a public hearing on any amendment proposed by the County Council.
- B. Any person may petition the County Council or Planning Commission to amend this Program. Petitions shall specify the changes requested and any and all reasons therefore. The County Council or Planning Commission may schedule a public hearing on said petition(s) if it deems the proposed amendment would make this Program more consistent with the Act and/or any applicable Department of Ecology Guidelines, or more equitable in its application to persons or property due to changed conditions in an area.
- C. After approval or disapproval of a Program amendment by the Department of Ecology as provided in RCW 90.58.090, the County shall publish a notice that the Program amendment has been approved or disapproved by the Department of Ecology. For the purposes of RCW 36.70A.290, the date of publication for the amendment of a Program is the date the County publishes notice that the Program amendment has been approved or disapproved by the Department of Ecology.
- D. The Administrator shall submit an annual report to the County Council reviewing the effectiveness of the Program in achieving its stated purpose, goals, and objectives. Such report may also include any proposed amendments deemed necessary to increase its effectiveness or equity. If said report contains proposed amendments, the Council may schedule a public hearing to consider such matter in accordance with the procedure described in SMP 23.80.01.A above. Said report shall also include a determination of whether or not the goal of no net loss of shoreline ecological function is being achieved and provide recommendations for achieving and maintaining the goal.
- E. Upon County Council adoption of a detailed community or subarea plan under the Whatcom County Comprehensive Plan, the Planning and Development Services Department shall prepare amendments, as appropriate, for the purpose of incorporating the goals, objectives, and standards of the community or subarea plan into this Program. The Planning Commission shall schedule a public hearing upon receipt of such proposals, and shall give due consideration to the community objectives so expressed.

### 23.80.02 Violations and Penalties

- A. In the event any person violates any of the provisions of this chapter, the County may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the site. In a non-emergency situation, such notice may include notice of the intent to issue a stop work order no less than ten (10) calendar days following the receipt of the correction notice, and provide for an administrative predeprivation hearing within ten (10) calendar days of the notice. In an emergency situation where there is a significant threat to public safety or the environment, the County may issue a stop work

order. The stop work order shall include, in writing, the right to request an administrative predeprivation hearing within seventy-two (72) hours following receipt of the stop work order.

B. In addition to incurring civil liability under SMP 23.80.03 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the Act or of this Program, or other regulations adopted pursuant thereto shall be punished by:

1. A fine of not less than twenty-five dollars (\$25) or more than one thousand dollars (\$1,000);
2. Imprisonment in the county jail for not more than ninety (90) days; or
3. Both such fine and imprisonment;

provided that, the fine for the third and all subsequent violations in any five (5) year period shall not be less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000). Provided further, that fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

C. The penalty provided in Subsection B shall be assessed and may be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.

D. Within thirty (30) calendar days after the notice is received, the person incurring the penalty may apply in writing to the County for remission or mitigation of such penalty. Upon receipt of the application, the County may remit or mitigate the penalty upon whatever terms the County in its discretion deems proper. The County's final decision on mitigation or revisions may be reviewed by the Hearing Examiner if the aggrieved party files a written appeal therewith of said decision within ten (10) calendar days of its issuance.

E. If work activity has occurred on a site in violation of this Program, prompt corrective action, restoration or mitigation of the site will be required when appropriate. If this provision is not complied with, the County may restore or mitigate the site and charge the responsible person for the full cost of such an activity. Additionally, any and all permits or approvals issued by the County may be denied for that site for a period of up to six (6) years.

F. The County may suspend or revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.

GB. Any person who willfully violates any court order or regulatory order of injunction issued pursuant to this Program shall be subject to a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than ninety (90) days, or both.

---

**23.80.03 Remedies**

- A. The Whatcom County Prosecuting Attorney or Administrator, where authorized, shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state located within Whatcom County in conflict with the provisions of this Program, the Act, or other regulations adopted pursuant thereto, and to otherwise enforce the provisions of this Program.
- B. Any person subject to the regulatory provisions of this Program or the Act who violates any provision thereof, or permit, or permit condition issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The Whatcom County Prosecuting Attorney shall bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.
- C. A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance issued under RCW 90.58.140, who undertakes a development or use on shorelines of the state without first obtaining any required permit or authorization, or who fails to comply with a cease and desist stop work order may be subject to a civil penalty. The penalty shall be imposed pursuant to the procedure set forth in WAC 173-27-280 and become due and recovered as set forth in WAC 173-27-290(3) and (4). Persons incurring a penalty may appeal the same to the Shoreline Hearings Board or the County Council pursuant to WAC 173-27-290(1) and (2).
- D. Any order, requirement or determination by the Administrator pursuant to SMP 23.80.02 may be appealed in accordance with the provisions of SMP 23.60.15.G and H.

**23.80.04 Abatement**

Structures or development on shorelines considered by the Administrator to present a hazard or other public nuisance to persons, properties or natural features may be abated by the County under the provisions of the applicable provisions of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition or successor as adopted by Whatcom County, or by other appropriate means.

## Chapter 9 General Policies and Regulations

### 23.90.01 Applicability

All use and development activities on shorelines shall be subject to all of the following general policies and regulations in addition to the applicable use policies and regulations of Chapter 10 provided that all use and development that is to be located within the Cherry Point Management Area, as defined in Chapter 11, shall be subject to the policies and regulations found in SMP 23.100.17 and shall not be subject to the policies and regulations found in Chapters 9 and 10 unless otherwise specified.

### 23.90.02 Land Use

The following land use policies delineate the use preferences of the Act and this Program and are intended to support the goals and objectives of the Program.

#### 23.90.02.A Policies

1. Single family residences should be given preference for location on shorelines in those limited instances when an alteration of the shorelines is authorized (RCW 90.58.020). Single family residences occupied prior to January 1, 1992 and their appurtenant structures should be protected against damage or loss caused by shoreline erosion provided that measures to protect single family residences should be designed to minimize harm to the shoreline environment.<sup>49</sup>
2. Shoreline uses that are water-dependent or water-related should be given preference (RCW 90.58.020). Such uses should be located, designed, and maintained in a manner that minimizes adverse impacts to shoreline ecological functions and/or processes. Nonwater-oriented development may be allowed, provided that existing water-dependent uses are not displaced and the future supply of sites for water-dependent or water-related uses is not compromised.
3. Adequate space should be reserved on shorelines to meet the current and projected demand for water-dependent uses, in conjunction with areas provided in cities, towns and areas under tribal jurisdiction.

#### 23.90.02.B Regulations

1. Single family residential uses shall be allowed on all shorelines not subject to a preference for commercial or industrial water-dependent uses and shall be located, designed, and used in accordance with applicable policies and regulations of this Program.
2. Resource uses such as agriculture, forestry and mining activities shall be carried out in a manner consistent ~~located, designed and used in accordance~~ with the applicable policies and regulations of this Program.

---

<sup>49</sup> ~~RCW 90.58.100.6~~

3. Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed and implemented in accordance with applicable policies and regulations of this Program.
4. Shoreline uses and developments that are water-dependent shall be given priority. Permit conditions may limit the range of uses or sites developed for such uses. Interim nonwater-dependent uses authorized as a conditional use may be allowed to respond to short term market conditions, provided that permit conditions are placed on such uses to provide for a specific timetable or review process to ensure water-dependent use of the development in the long term.
5. Shoreline uses and developments ~~and uses~~ should be located, designed, and managed so that other appropriate uses are neither subjected to substantial or unnecessary adverse impacts, nor deprived of reasonable, lawful use of navigable waters, other publicly owned shorelines, or private property.
96. Navigable waters should be kept free of obstructions for the general benefit of the region, state, and nation. No use or development shall be allowed to effectively exclude other appropriate uses from navigable waters.
7. Shoreline uses and developments should be located in a manner so that shoreline stabilization is not likely to become necessary in the future.

**23.90.03 Ecological Protection and Critical Areas**

**23.90.03.A Policies**

1. Shoreline use and development ~~that is appropriate, necessary, and planned~~ should be carried out ~~occur~~ in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become is no worse than the current condition. This means assurings no net loss of ecological functions and processes and protectings critical areas designated in WCC 16.16, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
2. In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
3. Development standards for density, frontage, setbacks, impervious surface ~~lot coverage~~, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

**23.90.03.B Regulations**

1. Mitigation Sequencing - To comply with the policies of SMP 23.90.03.A, a shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:
  - a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
  - b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
  - c. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
  - d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
  - e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.
2. The provisions of the Whatcom County Critical Areas Ordinance, WCC 16.16, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with WCC 16.16 and the Program, provided that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225.B.3. Within shoreline jurisdiction, the regulations of WCC 16.16 shall be liberally construed together with the Program to give full effect to the objectives and purposes of the provisions of the Program and Act.
3. Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
4. Use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Motor vehicle use, except for vessels and float planes, is prohibited waterward of the ordinary high water mark, on tidelands, public or private beaches, wetlands and/or their associated buffers; except as necessary for public health and safety or permitted maintenance activities associated with approved developments or as otherwise permitted.
5. Buildings, fencing, walls, hedges and similar features shall be designed, located, and constructed in a manner that allows for, or at minimum does not preclude or significantly interfere with wildlife movement to/from important habitat areas consistent with the applicable provisions of WCC 16.16, provided that the Administrator may exempt security fencing associated with residential, industrial and/or commercial developments from this requirement on a case-by-case basis.

6. To provide for flexibility in the administration of the ecological protection provisions of this Program, alternative mitigation approaches as provided for in WCC 16.16.260.E may be approved within shorelines as a conditional use where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this Program and are scientifically supported.
7. The cumulative ~~ae~~effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.
8. Whenever the administrator issues a determination or recommendation and/or conditions of approval on a proposal, which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s).

**23.90.04 Water Quality and Quantity**

**23.90.04.A Policies**

1. The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.
2. Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.
3. Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.

**23.90.04.B Regulations**

1. Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
2. New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the current stormwater management standards. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.
3. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan, or administrative conditions.
4. To avoid water quality degradation by malfunctioning or failing septic systems located within shoreline jurisdiction, on-site sewage systems shall be located and designed to meet all applicable water quality, utility, and health standards; ~~provided that, an~~

~~operation and maintenance plan is developed and implemented by the property owner to ensure that such systems are examined every one (1) to three (3) years, depending on the system design, to ensure that such systems are functioning properly. The owner must be in compliance with WCC 24.05.160 – Operation and Maintenance.~~

5. All materials that may come in contact with water shall be constructed of materials, such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited in shoreline water bodies.

### **23.90.05 Views and Aesthetics**

#### **23.90.05.A Policies**

1. Shoreline use and development activities should be designed and operated to minimize obstructions of the public's visual access to the water and shoreline.
2. Shoreline use and development should not significantly detract from shoreline scenic and aesthetic qualities that are derived from natural or cultural features, such as shoreforms, vegetative cover and historic sites/structures.
3. Aesthetic objectives should be implemented through regulations and criteria for site planning, maximum height, setbacks, siting of buildings and accessories, screening, vegetation conservation, architectural standards controls, sign control regulations, appropriate development siting, ~~screening and architectural standards~~, designation of view corridors and maintenance of natural vegetative buffers.
4. Clearing, thinning, and/or limbing for limited view corridors should only be allowed where it does not adversely impact ecological and/or aesthetic values, and/or slope stability. Vegetation conservation should be preferred over the creation or maintenance of views from property on the shoreline to protect shoreline ecological functions and aesthetics.

#### **23.90.05.B Regulations**

1. Protection and/or enhancement of critical areas and their associated buffers shall be preferred over provisions for visual access, when the two are in conflict.
2. The following standards shall apply to developments and uses within the jurisdiction of this Program:
  - a. Where commercial, industrial, mixed use, multifamily and/or multi-lot developments are proposed, primary structures shall provide for reasonable view corridors between buildings.
  - b. Buildings shall incorporate architectural features that reduce scale such as setbacks, pitched roofs, offsets, angled facets, and recesses.

- c. Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.
  - d. Building mechanical equipment shall be incorporated into building architectural features, such as pitched roofs, to the maximum extent possible. Where mechanical equipment cannot be incorporated into architectural features, a visual screen shall be provided consistent with building exterior materials that obstructs views of such equipment.
  - e. Any other design standards included in community plans or regulations adopted by Whatcom County.
  - f. Fences, walls, hedges and other similar accessory structures, excluding those associated with agricultural uses, shall be limited to 4 feet in height between the ordinary high water mark and structures, and within shoreline view areas as defined in Chapter 11; provided that, within shoreline view areas, the Administrator may approve a greater height where a fence or other feature is parallel to the right-of-way and does not extend above a line of sight between the ordinary high water mark and a point 3.5 feet above the centerline of the road.
  - g. Where permitted, fences, walls, hedges and other similar structures shall be limited to 4 feet in height within critical area buffers. Outside of critical area buffers, fences shall be limited to 6 feet in height.
  - h. Fences, walls, hedges or private accessory structures on public property shall not be permitted to obscure shoreline views within shoreline view areas as defined in Chapter 11 or from existing residences on adjacent property, unless specific findings are made that the proposed view obstruction is justified by overriding considerations of the public interest.
3. Stairs and walkways located within the shoreline or critical area buffers shall not exceed 4 feet in width; provided that, where ADA requirements apply, such facilities may be increased to 5 feet in width. Stairways shall conform to the existing topography to the extent feasible and minimize impervious surfaces.

**23.90.06 Vegetation Conservation**

**23.90.06.A Policies**

- 1. Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:
  - a. Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
  - b. Regulating microclimate in riparian and nearshore areas.
  - c. Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.

- d. Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
- e. Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
- f. Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
- g. Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
- h. Providing habitat for wildlife, including connectivity for travel and migration corridors.

**23.90.06.B Regulations**

- 1. Shoreline developments shall comply with the vegetation conservation policies of this Program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.
- 2. Where compliance with SMP 23.90.06.B.1 is not feasible or required, new developments shall be required to develop and implement a vegetation management plan. When required, vegetation management plans shall be prepared by a qualified professional and shall be consistent with the requirements in WCC 16.16.260.B and C, provided that the Administrator may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community [to the extent possible given the area that is feasibly available](#). Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County Auditor.
- 3. Non-conforming lots ~~or structures~~ that do not provide sufficient area to meet the standard dimensional requirements for buffers and setbacks as provided for in SMP 23.50.07.K and are not located within a landslide, alluvial fan, or riverine and coastal erosion hazard areas as defined in WCC 16.16.310, may employ the following standards in lieu of the vegetation management provisions of SMP 23.90.06.B.2, above:
  - a. An inner management zone shall extend perpendicularly from the shoreline ordinary high water mark or critical area edge a distance equal to fifty percent (50%) of the buffer dimension established for non-conforming lots in SMP 23.50.07.K. In the inner management zone:
    - (1) Lawn or turf is prohibited due to its limited functional benefits and need for chemical and fertilizer applications. Understory consisting of native groundcover and shrubs shall be provided at a sufficient density to prevent erosion, stabilize soils, and intercept surface runoff.

- (2) Native trees shall be provided at a sufficient density and species composition to mimic natural vegetative conditions for purposes of creating shade, attenuating water temperature, stabilizing soils, and providing large woody debris and other organic inputs critical for aquatic resources.
- b. An outer management zone shall extend from the outer boundaries of the inner management zone to the edge of the critical area buffer. Within the outer management zone:
  - (1) Vegetation management shall consist of the requirements of SMP 23.90.06.B.3.a, provided that on slopes of twenty-five percent (25%) or less, lawn, ~~or~~ turf, ornamental vegetation or gardens may be allowed on up to ten percent (10%) of the area or 500 square feet, whichever is greater.
  - (2) Lawn or turf shall be prohibited on slopes greater than twenty-five percent (25%).
- 4. Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.
- 5. Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants.
- 6. Clearing, pruning and re-vegetation of buffer areas, except landslide hazard areas and buffers and riverine and coastal erosion hazard areas and buffers, may be conducted in accordance with the regulations in WCC 16.16.235.G.
- 7. Selective vegetation clearing and pruning may be allowed in landslide hazard areas and/or riverine and coastal erosion hazard areas and/or their buffers pursuant to an approved vegetation management plan designed to improve overall slope or bank stability. The plan shall be prepared by a qualified professional and reviewed by a licensed geologist or geotechnical engineer.
- 8. Vegetation conservation standards shall not apply retroactively to existing uses and developments, such as existing agricultural practices.
- 9. Vegetation conservation standards do not apply to the removal of hazard trees pursuant to WCC 16.16.230.F.
- 10. Unless otherwise stated, the vegetation conservation regulations of this Program do not apply to commercial forest practices as defined by this Program when such activities are covered under the Washington State Forest Practices Act (RCW 76.09), except where such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority. For the purposes of this Program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this Program and WCC 16.16, and shall be limited to the minimum necessary to accommodate an approved use.

**23.90.07 Archaeological, Historic and Cultural Resources**

**23.90.07.A Policies**

1. The County should work with tribal, state, federal and local governments as appropriate to maintain an inventory of all known significant local historic, cultural and archaeological sites in observance of applicable state and federal laws protecting such information from general public disclosure. As appropriate, such sites should be protected, preserved and/or restored for study, education and/or public enjoyment to the maximum possible extent.
2. Site development plans should incorporate provisions for historic, cultural and archaeological site preservation, restoration and education with open space or recreation areas whenever compatible and possible.
3. Cooperation among involved private and public parties is encouraged to achieve the Archaeological, Historical and Cultural element goals and objectives of this Program.
4. Owners of property containing identified historic, cultural or archaeological sites are encouraged to make development plans known well in advance of application, so that appropriate agencies such as the Lummi Nation, Nooksack Tribe, Washington State Department of Archaeology and Historic Preservation, and others may have ample time to assess the site and make arrangements to preserve historical, cultural and archaeological values as applicable.
5. Private and public owners of historic sites should be encouraged to provide public access and educational opportunities in a manner consistent with long term protection of both historic values and shoreline ecological functions.
6. Historic, cultural and archaeological site development should be planned and carried out so as to prevent impacts to the resource. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.
7. If development is proposed adjacent to an identified historic, cultural or archaeological site, then the proposed development should be designed and operated so as to be compatible with continued protection of the historic, cultural or archaeological site.
8. [The cultural resource provisions of this Program are consistent with RCW 27.44, RCW 27.53 and WAC 25-48-060. In accordance with state law, all applicants are subject to these requirements.](#)

**23.90.07.B Regulations**

1. Known Archaeological, Historic and Cultural Resources
  - a. Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural or archaeological resource(s), the County shall require a cultural resource site assessment; provided that, the provisions of this section may be waived if the Administrator determines that the proposed development activities

---

do not include any ground disturbing activities and will not impact a known historic, cultural or archaeological site. The site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of significant historic or archaeological resources. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. The applicant shall submit a minimum of five (5) copies of the site assessment to the Administrator for distribution to the applicable parties for review.

- b. If the cultural resource site assessment identifies the presence of significant historic or archaeological resources, a Cultural Resource Management Plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office and Nooksack Tribe. Comments received shall be incorporated into the conclusions and recommended conditions of the CRMP to the maximum extent practicable. The applicant shall submit a minimum of five (5) copies of the CRMP to the Administrator for distribution to the applicable parties for review.

(1) A CRMP shall contain the following minimum elements:

- (a) The purpose of the project; and
- (b) A site plan for proposed on-site development; and
- (c) Depth and location of all ground disturbing activities including, but not limited to, utilities, driveways, clearing and grading; and
- (d) An examination of project on-site design alternatives; and
- (e) An explanation of why the proposed activity requires a location on, or access across and/or through, a significant historic or archaeological resource; and
- (f) A description of the historic/archaeological resources affected by the proposal; and
- (g) An assessment of the historic/archaeological resource and an analysis of the potential adverse impacts as a result of the activity; and
- (h) An analysis of how these impacts have been avoided; or
- (i) Where avoidance is not possible, how these impacts have been mitigated/minimized; and
- (j) A recommendation of appropriate mitigation measures, which may include but are not limited to the following:

- (i) Recording the site with the State Department of Archaeology and Historic Preservation, or listing the site in the National Register of Historic Places, Washington Heritage Register, as applicable, or any locally developed historic registry formally adopted by the Whatcom County Council;
  - (ii) Preservation in place;
  - (iii) Reinterment in the case of grave sites;
  - (iv) Covering an archaeological site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);
  - (v) Excavation and recovery of archaeological resources;
  - (vi) Inventorying prior to covering of archaeological resources with structures or development; and
  - (vii) Monitoring of construction excavation.
- (k) An outline of actions to be taken by the property owner, developer, archaeologist, or historic preservation professional, as applicable, in the event that an inadvertent discovery of historic, cultural or archaeological sites or artifacts occurs during site development, which includes the following:
- (i) A statement that work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the Administrator and other appropriate governments and agencies.
  - (ii) Contact information for applicable parties, agencies and governments including the County Administrator, the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe, professional archaeologist or historic preservation professional; and in the event of inadvertent discovery of human remains, additional contact information for the Whatcom County Sheriff's Office, Whatcom County Medical Examiner, and/or Lummi Repatriation Office.
  - (iii) Proposed measures to stabilize, contain or otherwise protect the area of inadvertent discovery until a site investigation and/or site assessment is conducted.
- (l) Where provision of public access for the purpose of public education related to a private or publicly owned building or structure of historic significance is desired by the property owner, a public access management plan shall be developed in consultation with the Washington State Department of Archaeology and Historic

Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe and/or other agencies, as appropriate, to address the following:

- (i) The type and/or level of public access that is consistent with the long term protection of both historic resource values and shoreline ecological functions and processes; and
  - (ii) Site and resource specific conditions and/or improvements including the following, as applicable:
    - hours of operation,
    - interpretive and/or directional signage,
    - lighting,
    - pedestrian access, and/or
    - traffic and parking.
  - (m) Where provision of public access for purposes of public education related to an archaeological or cultural resource site is desired by the property owner, the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe and/or other agencies, as appropriate, shall be in agreement prior to providing public access to the site. An access and resource management plan shall be developed in consultation with the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and the Nooksack Tribe.
- (2) The recommendations and conclusions of the CRMP shall be used to assist the Administrator in making final administrative decisions concerning the presence and extent of historic/archaeological resources and appropriate mitigating measures. The Administrator shall consult with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe prior to approval of the CRMP.
- (3) The Administrator may reject or request revision of the conclusions reached in a CRMP when the Administrator can demonstrate that the assessment is inaccurate or does not fully address the historic/archaeological resource management concerns involved.
- c. Upon receipt of a complete development permit application in an area of known historic/archaeological resources, the County shall notify and request a recommendation from appropriate agencies such as the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe. Recommendations of such agencies and other affected persons shall be duly considered and adhered to whenever possible and reasonable. Notification shall include the following information:

- (1) The date of application, the date of notice of completion for the application, and the date of the notice of application;
  - (2) A site map including the street address, tax parcel number, township, range, and section of the proposed project area;
  - (3) A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the County;
  - (4) The identification of other permits not included in the application to the extent known by the County;
  - (5) The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;
  - (6) Any other information determined appropriate by the County;
  - (7) A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;
  - (8) A statement of the limits of the comment period and the right of each agency to comment on the application within a fifteen (15) day time period, request a copy of the decision once made, and to appeal a decision when allowed by law.
- d. In granting shoreline permits or statements of exemption for such development, the County may attach conditions to provide sufficient time and/or conditions for consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office and Nooksack Tribe, and to assure that historic/archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long term arrangements. Provision for the protection and preservation of historic/archaeological sites shall be incorporated to the maximum extent practicable. Permit or other requirements administered by the Washington State Department of Archaeology and Historic Preservation pursuant to RCW 27.44 and RCW 27.53 may apply in addition.

2. Inadvertent Discovery

- a. Whenever historic, cultural or archaeological sites or artifacts are discovered in the process of development on shorelines, work on that portion of the development site shall be stopped immediately, the site secured and the find reported as soon as possible to the Administrator. Upon notification of such find, the property owner shall notify the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, and the Administrator shall conduct a site investigation to determine the significance of the discovery. Based upon the findings of the site investigation and

consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, the Administrator may require that an immediate site assessment be conducted or may allow stopped work to resume.

- b. If a site assessment is required, the area of inadvertent discovery shall be stabilized, contained or otherwise protected until the site assessment and/or CRMP is completed. The site assessment shall be prepared pursuant to SMP 23.90.07.B.1(a) to determine the significance of the discovery and the extent of damage to the resource and shall be distributed to the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe for a fifteen (15) day review period or, in the case of inadvertent discovery of human remains, a thirty (30) day review period to determine the significance of the discovery. If the site has been determined not to be significant by the above listed agencies or governments, or if the above listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.
- c. Upon receipt of a positive determination of a site’s significance, the Administrator may invoke the provisions of SMP 23.90.07.B.1(b) through (d) above for a Cultural Resource Management Plan, if such action is reasonable and necessary to implement related SMP objectives.

3. The requirements of SMP 23.90.07.B.1 do not apply where an applicant/project proponent has obtained an approved Archeological Excavation and Removal permit from the Washington State Department of Archaeology and Historic Preservation pursuant to WAC 25-48-060, provided that the applicant must adhere to the requirements of said approved permit.

**23.90.08 Public Access**

**23.90.08.A Policies**

- 1. Use and development that provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state are a preferred use.
- 2. Physical or visual access to shorelines should be incorporated in all new development when the development proposal would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights, to provide the public with the opportunity to reach, touch and enjoy the waters edge and view the water and shoreline when pPublic health and safety concerns can should also be adequately addressed and when consistent with maintenance of shoreline ecological functions and/or processes should be assured. As required by the Governing Principles, all such conditions should be consistent with all relevant constitutional and other legal limitations on regulation of private property.
- 3. Public access should be provided for water-oriented uses and nonwater-dependent uses and developments that directly or indirectly increase public use of the shorelines and public aquatic lands, or that would impair existing, legal access opportunities.

4. Nonwater-related uses or activities located on the shoreline should provide public access as a public benefit.
5. Public access area and/or facility requirements should be commensurate with the scale and character of the development and should be reasonable, effective and fair to all affected parties including but not limited to the land owner and the public and effective.
6. Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and shoreline ecological functions and processes.
7. Shoreline development by public entities, such as local governments, port districts, state agencies, and public utility districts, should provide public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline.

#### **23.90.08.B Regulations**

1. In the review of all shoreline substantial development, conditional use permits, or developments of more than four (4) residential lots or dwelling units, consideration of public access shall be required, subject to the test stated above in SMP 23.90.08.A.2. When appropriate, ~~Provisions for adequate public access shall be incorporated into such proposals, a shoreline development proposal for each shoreline substantial development or conditional use permit (including land division), unless the applicant/proponent demonstrates that one or more of the following provisions apply:~~
  - a. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;
  - b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  - c. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long term cost of the proposed development;
  - d. Unacceptable Significant environmental harm impacts will result from the public access that cannot be mitigated;
  - e. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
- ~~2. Public access areas and facilities shall be provided commensurate with the scale of development and the need for public physical and visual access opportunities in the vicinity of the subject development.~~
2. When provisions for public access are required as a condition of project approval, the Administrator shall prepare written findings, pursuant to SMP 23.60, demonstrating consistency with the with principles of nexus and proportionality and the test stated in SMP 23.90.08.A.2 and SMP 23.50.08.A.

- ~~332~~. Prior to deciding public access is not required pursuant to SMP 23.90.08.B.1(a) through (e) above, the County must determine that all reasonable alternatives have been exhausted; including, but not limited to:
- a. Regulating access by such means as maintaining a gate and/or limiting hours of use;
  - b. Designing separation of uses and activities (e.g. fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and
  - c. Providing for access at a site geographically separated from the proposal such as a street end, vista, tideland or trail system.
- ~~443~~. Public access shall not be required for the following uses except as determined on a case-by-case basis in conjunction with the provisions of SMP 23.90.08.A and this section:
- a. Single family residential development of four (4) or fewer lots
  - b. Dredging
  - c. Forest Practices
  - d. Landfill and Excavation
  - e. Mining
  - f. Private docks serving four (4) or fewer dwelling units
  - g. Flood Control and Instream Structures
  - h. Shoreline Stabilization
  - i. Ecological restoration or enhancement activities not associated with development
  - j. Agriculture
- ~~554~~. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means of view and/or physical approach to public waters and may include interpretive centers and displays.
- ~~665~~. Alternate off-site provision of public access to shorelines may be used upon approval, as a means of offsetting identifiable on-site impacts. If public access is demonstrated to be infeasible or inappropriate on site due to significant interference to operations or hazards to life and property, alternative visual access opportunities may be provided at a location not directly adjacent to the water such as a viewpoint, observation tower, or other areas serving as a means to view public waters such as an interpretive center and displays explaining maritime history and industry, provided that visual access to the water is provided.
- ~~776~~. Public access provided by shoreline street ends, public utilities and rights-of-way shall not be diminished (RCW 35.79.035 and RCW 36.87.130).
- ~~887~~. Public access shall incorporate the following location and design criteria:
- a. Where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological functions and/or processes, a public pedestrian access walkway parallel to the ordinary high water mark of the property is preferred. The walkway shall be buffered from

sensitive ecological features and provide limited and controlled access to sensitive features and the waters edge where appropriate. ~~Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate.~~ Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to 5 feet in width to reduce impacts to ecologically sensitive resources.

- b. Public access shall be located adjacent to other public areas, accesses and connecting trails, connected to the nearest public street; and include provisions for handicapped and physically impaired persons where feasible.
  - c. Where views of the water or shoreline are available and physical access to the waters edge is not present or appropriate, a public viewing area shall be provided.
  - d. Design shall minimize intrusions on privacy by avoiding locations adjacent to windows and/or outdoor private open spaces or by screening or other separation techniques.
  - e. Design shall provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The Administrator may authorize a public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.
  - f. Public amenities appropriate to the use of a public access area such as benches, picnic tables and sufficient public parking to serve the users shall be provided.
  - g. Commercial developments that attract a substantial number of persons and developments by government/public entities may be required to provide public restrooms, facilities for disposal of animal waste and other appropriate public facilities.
- ~~998.~~ The minimum width of public access easements shall be 10 feet, unless the Administrator determines that undue hardship would result. In such cases, easement widths may be reduced only to the extent necessary to relieve the hardship.
- ~~10409.~~ The requirement for public access on a specific site may be fulfilled by:
- a. Participation in a public access plan incorporated in the Program; or
  - b. Provision of facilities specified in a permit approval.
- ~~41110.~~ Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
- ~~42124.~~ Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.

- ~~13132~~. Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the County Auditor's Office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.
- ~~14143~~. Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office.
- ~~15154~~. Public access facilities shall be available to the public twenty-four (24) hours per day unless specific exceptions are granted through the shoreline permit process subject to the provisions of SMP 23.90.08.B.1.
- ~~16165~~. The standard State approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.
- ~~17176~~. Incentives for public access improvements such as density or bulk and dimensional bonuses shall be considered through applicable provisions of zoning and subdivision regulations.

**23.90.09 Site Planning**

**23.90.09.A Policies**

1. Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering and other appropriate design approaches.
2. Low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including but not limited to, porous paving blocks, porous concrete and other similar materials, should be incorporated in developments where site conditions allow to maintain shoreline ecological functions and processes. Topographic modification, vegetation clearing, use of impervious surfaces and alteration of natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. A ~~geotechnical~~ engineering geologist should be consulted prior to using infiltration practices on shore bluffs.
3. Accessory development or use that does not require a shoreline location should be located outside of shoreline jurisdiction unless such development is required to serve approved water-oriented uses and/or developments. When sited within shorelines jurisdiction, uses and/or developments such as parking, service buildings or areas, access roads, utilities, signs and storage of materials should be located inland away from the land/water interface and landward of water-oriented developments and/or other approved uses.

4. Development should be located, designed, and managed so that impacts on shoreline or upland uses are minimized through bulk and scale restrictions, setbacks, buffers, and control of proximity impacts such as noise or light and glare.
5. Shoreline uses should not deprive other uses of reasonable access to navigable waters. Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation should be preserved and enhanced. The rights of treaty tribes to resources within their usual and accustomed areas should be accommodated.

#### **23.90.09.B Regulations**

1. Where appropriate new development shall use clustering to minimize adverse impacts on shoreline ecological functions and processes.
2. An assessment of the existing ecological functions and/or processes provided by topographic, physical and vegetation characteristics of the site, shall accompany development proposals, provided that proposals for single family residences shall be exempt from this requirement. Such assessments shall include the following general information:
  - a. Impacts of the proposed use/development on ecological processes with clear designation of existing and proposed routes for water flow, wildlife movement and other features.
  - b. Infrastructure requirements such as parking, services, lighting and other features, together with the effects of those infrastructure improvements on shoreline ecological functions and/or processes.
3. Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible. Elevated walkways should be utilized to cross wetlands.
4. Impervious surfacing for parking lot/space areas shall be minimized through the use of alternative surfaces where feasible, consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound.
5. Utilities shall be located within roadway and driveway corridors and right-of-ways wherever feasible.
6. Design of structures should conform to natural contours and minimize disturbance to soils and native vegetation. Foundations shall be tiered with earth retention incorporated into the structure.
7. Stormwater infiltration systems ~~for stormwater~~ shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.
8. Fencing, walls, hedges and similar features shall be designed in a manner that does not preclude or significantly interfere with ~~to allow for~~ wildlife movement to/from important habitat areas.

9. Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and landward of the principal use and unless, otherwise specified, shall observe critical area regulations and buffers in WCC 16.16.
10. Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized.
11. Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation shall be protected through specific provisions to avoid impacts, or provide access as applicable.
12. Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.
13. All facilities shall be located and designed to avoid impediments to navigation and to avoid depriving other properties of reasonable access to navigable waters. Review and approval by the U.S. Coast Guard may be required as a condition of issuance of building or development permits to assure compliance. All in-water structures shall be marked and lighted in compliance with U.S. Coast Guard regulations.
14. All shoreline use and development shall provide setbacks from adjacent properties in accordance with SMP Table 23.90.13.C. Setbacks shall be of adequate width to attenuate proximity impacts such as noise, light and glare, and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.

**23.90.10 Landfill and Excavation**

**23.90.10.A Policies**

1. Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.
2. Landfill in water bodies, floodways, and/or wetlands should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity. Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with this Program.

3. Fill should not be allowed where shore stabilization works would be required to maintain the materials placed.
4. Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.
5. The predicted economic benefits of landfills and excavation should be weighed against long term cumulative impacts on ecological processes and functions.

#### **23.90.10.B Regulations**

1. Landfill and excavation shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with this Program.
2. Landfill and excavation within wetlands or waterward of the ordinary high water mark shall only be permitted in limited instances for the following purposes only, with due consideration given to specific site conditions, and only along with approved shoreline use and development activities that are consistent with this Program:
  - a. Port development for water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports are infeasible.
  - b. ~~Road development in floodplains or wetlands where pile or pier supports are infeasible~~ Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.
  - c. Ecological restoration or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.
  - d. Maintenance of lawfully established development.
  - e. Development of shore stabilization projects, flood control and instream structures.
  - f. Fill and excavation waterward of the OHWM may only be authorized a conditional use, except for landfill for approved ecological restoration.
3. Excavation waterward of the OHWM or within wetlands shall be considered dredging or gravel bar scalping for purposes of this Program.
4. Landfills or excavation shall not be located where shore stabilization will be necessary to protect materials placed or removed. Disturbed areas shall be immediately stabilized and revegetated, as applicable.
5. On marine shores, fill may be permitted in the foreshore where located at drift sector ends in low energy driftways, or on erosional pocket beaches for restoration and enhancement programs where the effect of the landfills interruption of the littoral process can be mitigated.

6. Landfills, beach nourishment and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long term appropriate use including lawful access and enjoyment of scenery.
7. Perimeter banks shall generally be sloped no steeper than 1 foot vertical for every 3 feet horizontal unless a specific engineering analysis has been provided, and the Administrator determines that the landfill blends physically and visually with existing topography.
8. A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

**23.90.11 Forest Practices**

**23.90.11.A Policies**

1. Forest lands should be reserved for long term forest management and such other uses as are compatible with the dominant use. Other more intensive and incompatible uses tending to impair the dominant use should be discouraged from locating on forest lands.
2. Forest practices should maintain high levels of water quality, as well as surface and ground water movement patterns.
3. Forest practices should minimize damage to wetlands, fish and wildlife species and habitats, especially aquatic habitats.
4. Extreme caution must be observed whenever chemicals are to be used along shorelines; such use should be avoided altogether if possible.
5. Forest practices should maintain or improve the quality of soils and minimize erosion.
6. Where slopes are extremely steep or soils are subject to sliding, rapid erosion or high water table, special practices should be employed to minimize damage to shoreland and water features, and adjacent properties.

**23.90.11.B Regulations**

1. For the purposes of this Program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered forest practices and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this Program, including vegetation conservation, and shall be limited to the minimum necessary.
2. All forest practices undertaken on shorelines shall comply with the applicable policies and provisions of the Forest Practices Act, RCW 76.09 as amended, and any regulations adopted pursuant thereto (WAC 222), as administered by the Department of Natural Resources and the following:
  - a. Forest practices roads are prohibited on marine or lake shores where slopes exceed thirty-five percent (35%) except when necessary to obtain access to road networks on land outside the Act's jurisdiction.

- b. Cutting of more than thirty percent (30%) of the merchantable trees over a ten (10) year period within 50 feet of the bank rim on feeder bluffs and landslide hazard areas is prohibited. Only selective thinning methods that minimize erosion potential shall be employed.
- c. With respect to timber situated within shoreline jurisdiction along shorelines of statewide significance, only selective commercial timber cutting may be permitted so that no more than thirty percent (30%) of the merchantable timber may be harvested in any ten (10) year period; provided that, other timber harvesting methods may be permitted as a conditional use permit in those limited instances where topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental.

### **23.90.11.C Shoreline Area Regulations**

1. Urban: Forest practices are prohibited.
2. Urban Resort: Forest practices are prohibited.
3. Urban Conservancy: Forest practices are prohibited.
4. Shoreline Residential: Forest practices are prohibited.
5. Rural: Forest practices are permitted subject to policies and regulations of this Program and critical areas buffer regulations.
6. Resource: Forest practices are permitted subject to policies and regulations of this Program and critical areas buffer regulations.
7. Conservancy: Forest practices are permitted subject to policies and regulations of this Program and critical areas buffer regulations.
8. Natural: Commercial forestry may be permitted as a conditional use ~~in the Natural shoreline area~~ provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of the ~~Natural~~ is environment designation and this Program.
9. Aquatic: Forest practices ~~are prohibited may be authorized as a conditional use on Aquatic shorelines; provided that removal of natural downed trees may be approved on a case by case basis.~~

### **23.90.12 Dredging**

#### **23.90.12.A Policies**

1. Dredging should be permitted for water-dependent uses of economic importance to the region and/or essential public facilities only when necessary and when alternatives are infeasible or less consistent with this Program.
2. Dredging to provide water-oriented recreation should not be permitted.

3. Minor dredging as part of ecological restoration or enhancement, beach nourishment, public access or public recreation should be permitted if consistent with this Program.
4. New development should be sited and designed to avoid or, where avoidance is not possible, to minimize the need for new maintenance dredging.
5. Dredging of bottom materials for the primary purpose of obtaining material for landfill, construction, or beach nourishment should not be permitted.
6. Spoil disposal on land away from the shoreline is generally preferred over open water disposal.
7. Long term cooperative management programs that rely primarily on natural processes, and involve land owners and applicable local, state and federal agencies and tribes should be pursued to prevent or minimize conditions which make dredging necessary.

**23.90.12.B Regulations**

1. Dredging shall only be permitted for the following activities:
  - a. Development of approved wet moorages, harbors, ports and water-dependent industries of economic importance to the region only when there are no feasible alternatives.
  - b. Development of essential public facilities when there are no feasible alternatives.
  - c. Maintenance dredging for the purpose of restoring ~~or enhancing~~ a lawfully established development or the hydraulic capacity of streams.
  - d. Maintenance of irrigation reservoirs, drains, canals, or ditches for agricultural purposes.
  - e. Establishing, expanding, relocating or reconfiguring navigation channels where necessary to assure safe and efficient accommodation of existing navigational uses. Maintenance dredging of established navigation channels and basins shall be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.
  - f. Removal of gravel for flood management purposes consistent with an adopted flood hazard reduction plan and only after a biological and geomorphological study demonstrates that extraction has a long term benefit to flood hazard reduction, does not result in a net loss of shoreline ecological functions and processes, and is part of a comprehensive flood management solution.
  - g. Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.
  - h. Minor trenching to allow the installation of necessary underground pipes or cables if no alternative, including boring, is feasible, and:

- (1) Impacts to fish and wildlife habitat are avoided to the maximum extent possible.
  - (2) The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration.
  - (3) Appropriate best management practices are employed to prevent water quality impacts or other environmental degradation.
- i. Dredging for the purpose of obtaining landfill material is prohibited, except that limited bar scalping of gravel in streams is permitted subject to policies and regulations for Mining under SMP 23.100.08.
2. The physical alignment and ecological functions and processes of streams, lakes or marine shorelines shall be maintained, except to improve hydraulic function, water quality, fish or wildlife habitat, or fish passage.
3. Limitations on dredge or disposal operation may be imposed to reduce proximity impacts, protect the public safety and assure compatibility with the interests of other shoreline users. Conditions may include limits on periods and hours of operation, type of machinery, and may require provision of landscaped buffer strips and/or fencing to address noise and visual impacts at land disposal or transfer sites.
4. Spoil Disposal
  - a. Spoil disposal on land away from the shoreline is permitted only under the following conditions:
    - (1) Shoreline ecological functions and processes will be preserved, including protection of surface and ground water.
    - (2) Erosion, sedimentation, floodwaters or runoff will not increase adverse impacts to shoreline ecological functions and processes or property.
    - (3) Sites will be adequately screened from view of local residents or passersby on public right-of-ways.
  - b. Spoil disposal is prohibited on marine shorelines between the line of extreme low tide and the ordinary high water mark, on lake shorelines or beds, and in streams; except that, dredge spoil may be used in approved projects for the restoration or enhancement of shoreline ecological functions and processes, such as beach nourishment.
  - c. Spoil disposal in open waters may be approved only in accordance with the Puget Sound Dredged Disposal Analysis (PSDDA) evaluation procedures for managing in-water disposal of dredged material; when approved by applicable agencies, which may include the U.S. Army Corps of Engineers pursuant to Section 10 (Rivers and Harbors Act) and Section 404 (Clean Water Act) permits, and Washington State Department of Fish and Wildlife Hydraulic Project Approval (HPA); and when found to meet one or more of the following conditions:

- (1) Land disposal is infeasible, less consistent with this Program, or prohibited by law.
  - (2) Nearshore disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible.
  - (3) Offshore habitat will be protected, restored, or enhanced.
  - (4) Adverse effects on water quality or biologic resources from contaminated materials will be mitigated.
  - (5) Shifting and dispersal of spoil will be minimal.
  - (6) Water quality will not be adversely affected.
5. In addition to the minimum application requirements specified in SMP 23.60.05, the following information shall be required for all dredging applications:
- a. A description of the purpose of the proposed dredging and an analysis of compliance with the policies and regulations of this Program.
  - b. A detailed description of the existing physical character, shoreline geomorphology and biological resources provided by the area proposed to be dredged, including:
    - (1) A site plan map outlining the perimeter of the proposed dredge area. The map must also include the existing bathymetry depths based on Mean Lower Low Water (MLLW) and have data points at a minimum of 2-foot depth increments.
    - (2) A habitat survey must be conducted and WDFW must be contacted to ensure the survey is conducted according to the most recent WDFW eelgrass/macroalgae survey guidelines.
    - (3) Information on stability of bedlands adjacent to proposed dredging and spoils disposal areas.
  - c. A detailed description of the physical, chemical and biological characteristics of the dredge spoils to be removed.
    - (1) Physical analysis of material to be dredged: material composition and amount, grain size, organic materials present, source of material, etc.
    - (2) Chemical analysis of material to be dredged: volatile solids, chemical oxygen demand (COD), grease and oil content, mercury, lead and zinc content, etc.
    - (3) Biological analysis of material to be dredged.
  - d. A description of the method of materials removal, including facilities for settlement and movement.

- (1) Dredging procedure: length of time it will take to complete dredging, method of dredging and amount of materials removed.
- (2) Frequency and quantity of project maintenance dredging.
- e. Detailed plans for dredge spoil disposal, including specific land disposal sites and relevant information on the disposal site, including but not limited to:
  - (1) Spoils disposal area:
    - (a) Physical characteristics including location, topography, existing drainage patterns, surface and ground water;
    - (b) Size and capacity of disposal site;
    - (c) Means of transportation to the disposal site;
    - (d) Proposed dewatering and stabilization of spoils;
    - (e) Methods of controlling erosion and sedimentation; and
    - (f) Future use of the site and conformance with land use policies and regulations.
  - (2) Total initial spoils volume.
  - (3) Plan for disposal of maintenance spoils for at least a fifty (50) year period.
- f. Hydraulic modeling studies sufficient to identify existing geo-hydraulic patterns and probable effects of dredging.

**23.90.12.C Shoreline Area Regulations**

1. Urban: Dredging may be permitted as a conditional use subject to policies and regulations of this Program.
2. Urban Resort: Dredging may be permitted as a conditional use subject to policies and regulations of this Program.
3. Urban Conservancy: Dredging may be permitted as a conditional use subject to policies and regulations of this Program.
4. Shoreline Residential: Dredging may be permitted as a conditional use subject to policies and regulations of this Program.
5. Rural: Dredging may be permitted as a conditional use subject to policies and regulations of this Program.
6. Resource: Dredging may be permitted as a conditional use subject to policies and regulations of this Program.

7. Conservancy: Dredging may be permitted as a conditional use subject to policies and regulations of this Program.
8. Natural: Dredging is prohibited except that dredging is permitted as an essential element of an approved shore restoration or enhancement plan, subject to policies and regulations of this Program.
9. Aquatic: Dredging may be permitted as a conditional use subject to the use and development regulations of the abutting upland shoreline area designation; provided that, the conditional use permit requirement may be waived upon County and Ecology approval of a sediment management plan component for a mutually designated reach of river. Dredging associated with an exempt activity pursuant to SMP 23.60.02.2.B and D is permitted subject to policies and regulations of this Program.

**23.90.13 Shoreline Bulk Provisions: Buffers, Setbacks, Height, ~~and~~ Open Space and Impervious Surface Coverage**

**23.90.13.A Policies**

Standards for density, setbacks, height, and other provisions should ensure no net loss of shoreline ecological functions and/or processes and preserve the existing character of the shoreline consistent with the purpose of the Shoreline Area Designation.

**23.90.13.B Regulations**

1. Table of Bulk Regulations: SMP Table 23.90.13.C establishes the minimum required dimensional requirements for development including all structures and substantial alteration of natural topography. Additional standards may be established in Chapter 10, Shoreline Use Policies and Regulations. All measurements except height and area shall be measured outward on the horizontal plane and in the direction that results in the greatest dimension from property lines, or from other features specified. Dimensional standards relating to critical areas are governed by the provisions of WCC 16.16. Dimensional standards specified in this Program shall not exceed the geographic limit of the Act's jurisdiction.
2. Except as otherwise stated, the Whatcom County Comprehensive Plan, zoning regulations, critical areas regulations, flood control regulations, subdivision regulations, health regulations and other adopted regulatory provisions apply within shoreline jurisdiction. In the event the provisions of this Program conflict with provisions of other county regulations, the more restrictive shall prevail.
3. All use and development activities shall conform to all applicable plans, policies, standards, guidelines and regulations of other agencies with jurisdiction in shoreline areas.
4. Sideyard setbacks shall be measured from all property lines that intersect the shore side of a lot or tract; provided that for development not requiring a wider buffer, 5 feet of the total required sideyard setbacks may be provided on one side and the balance on the other side; and provided further that, for a single family residence or duplex on a non-

conforming lot that does not provide sufficient area to meet the standard dimensional requirements for buffers and setbacks, the non-conforming provisions of SMP 23.50.07 apply.

5. Table 23.90.13.C establishes the maximum allowed building height for all primary and accessory structures. Height is measured according to the definition in SMP 23.110.H.7; provided that, on Urban Resort shorelines only, commercial development and multi-unit residential development more than 100 feet from the ordinary high water mark may exceed the standard height limit, when approved with a shoreline conditional use permit, up to a maximum height of 75 feet; provided that, specific location design and other conditions may be imposed to meet the policies and regulations of this Program; provided further that, pursuant to RCW 90.58.320, no permit may be issued for any new or expanded building or structure more than 35 feet above average grade level that will obstruct the view of a substantial number of residences on or adjoining such shorelines except where the Program does not prohibit such development and only when overriding considerations of the public interest will be served. The applicant/proponent shall be responsible for providing sufficient information to the Administrator to determine that such development will not obstruct the view of a substantial number of residences on or adjoining such shorelines.
6. Necessary power poles and transmission towers are not subject to height limits but shall not be higher than necessary to achieve the intended purpose.
7. The following development activities are not subject to buffers and setbacks, provided that they are constructed and maintained in a manner that minimizes adverse impacts on shoreline functions and processes, and provided further that they comply with all the applicable regulations in WCC 16.16:
  - a. Those portions of approved water-oriented development that require a location waterward of the ordinary high water mark of streams, rivers, lakes, ponds, marine shorelines, associated wetlands and/or within their associated buffers.
  - b. Underground utilities.
  - c. Modifications to existing development that are necessary to comply with environmental requirements of any agency, when otherwise consistent with this Program, provided that the decision maker determines that the facility cannot meet the dimensional standard and accomplish the purpose for which it is intended and the facility is located, designed, and constructed to meet specified dimensional standards to the maximum extent feasible, and the modification is in conformance with the provisions of SMP 23.50.07 for non-conforming development and uses.
  - d. Roads, railways and other essential public facilities that must cross shorelines and are necessary to access approved water-dependent development.
  - e. Stairs and walkways not greater than 5 feet in width nor 18 inches in height above grade, except for railings.
  - f. An essential public facility or public utility where the decision maker determines that no feasible alternative location will accommodate the facility; the facility cannot meet the dimensional standard and accomplish the purpose for which it is

intended; and the facility is located, designed, and constructed to meet specified dimensional standards to the maximum extent feasible.

- g. Shared moorages shall not be subject to sideyard setbacks when located on or adjacent to a property line shared in common by the project proponents and where appropriate easements or other legal instruments have been executed providing for ingress and egress to the facility.

**SMP Table 23.90.13.C Buffer, Setbacks, Height, ~~and~~ Open Space, and Impervious Surface Coverage Standards for Shoreline Development**

Shoreline Uses	Shoreline Area Designation								
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic
<b>Agriculture</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
*Side Setback	20'	N/A	20'	20'	20'	20'	20'	N/A	N/A
Height Limit (a/b)	35'	N/A	35' / 35'	35' / 35'	35' / 35'	35' / 35'	35' / 35'	N/A	N/A
<u>Impervious Surface Coverage</u>	<a href="#">Per the underlying zone district, WCC Title 20.</a>					<a href="#">10%</a>	<a href="#">10%</a>	<a href="#">Per the underlying zone district, WCC Title 20.</a>	
<b>Aquaculture</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
*Side Setback	10'	10'	10'	10'	10'	10'	15'	N/A	N/A
*Height Limit (a/b)	25' / 35'	25' / 35'	20' / 30'	25' / 35'	20' / 30'	20' / 30'	15' / 25'	N/A	10'
Open Space %	30%	40%	50%	30%	50%	50%	60%	N/A	N/A
<u>Impervious Surface Coverage</u>	<a href="#">Per the underlying zone district, WCC Title 20.</a>					<a href="#">10%</a>	<a href="#">10%</a>	<a href="#">Per the underlying zone district, WCC Title 20.</a>	
<b>Commercial</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
*Side Setback	5' +	5' +	10' +	10' +	10' +	10' +	15' +	N/A	N/A
*Height Limit (a/b)	25' / 35'	25' / 35'	20' / 30'	25' / 35'	20' / 30'	20' / 30'	15' / 25'	N/A	15'
Open Space % (c/d)	30% / 15%	40% / 20%	60% / 30%	30% / 15%	50% / 25%	50% / 25%	60% / 30%	N/A	N/A
<u>Impervious Surface Coverage</u>	<a href="#">Per the underlying zone district, WCC Title 20.</a>					<a href="#">10%</a>	<a href="#">10%</a>	<a href="#">Per the underlying zone district, WCC Title 20.</a>	
<b>Boating Facilities: Marinas and Launch Ramps</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
*Side Setback	10'	10'	10'	10'	10'	10'	15'	N/A	N/A
*Height Limit (a/b)	25' / 35'	25' / 35'	25' / 35'	25' / 35'	20' / 25'	20' / 25'	15' / 25'	N/A	N/A
Open Space % (c/d)	15%	30%	50%	15%	30%	30%	50%	N/A	N/A
<u>Impervious Surface Coverage</u>	<a href="#">Per the underlying zone district, WCC Title 20.</a>					<a href="#">10%</a>	<a href="#">10%</a>	<a href="#">Per the underlying zone district, WCC Title 20.</a>	
<b>Mining</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
*Side Setback	N/A	N/A	N/A	N/A	50'	50'	100'	N/A	N/A

Shoreline Uses	Shoreline Area Designation								
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic
Open Space %	N/A	N/A	N/A	N/A	50%	50%	50%	N/A	N/A
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone district, WCC Title 20.</u>					<u>□ 10%</u>	<u>□ 10%</u>	<u>Per the underlying zone district, WCC Title 20.</u>	
<b>Industrial and Port Development</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <u>Buffers</u>								
*Side Setback	30'	10'	30'	30'	40'	40'	60'	N/A	N/A
Height Limit (a/b)	35' / 35'	15' / 25'	20' / 30'	35' / 35'	25' / 35'	25' / 35'	25' / 35'	N/A	20'
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone district, WCC Title 20.</u>					<u>□ 10%</u>	<u>□ 10%</u>	<u>Per the underlying zone district, WCC Title 20.</u>	
<b>Recreation</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <u>Buffers</u>								
*Side Setback	10'	10'	15'	10'	15'	15'	20'	20'	N/A
*Height Limit (a/b)	25' / 35'	25' / 35'	20' / 35'	25' / 35'	20' / 35'	20' / 35'	15' / 25'	10' / 15'	15'
Open Space % (c/d)	30% / 25%	40% / 40%	50% / 60%	30% / 25%	50% / 60%	50% / 60%	60% / 75%	95%	N/A
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone district, WCC Title 20.</u>					<u>□ 10%</u>	<u>□ 10%</u>	<u>Per the underlying zone district, WCC Title 20.</u>	
<b>Residential – Single Family &amp; Duplex</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <u>Buffers</u>								
<u>□ Maximum Density</u>	<u>6:1 ac.</u>	<u>22:1 ac.</u>	<u>6:1 ac.</u>	<u>6:1 ac.</u>	<u>1:1 ac.</u>	<u>1:20 ac.</u>	<u>1:1 ac.</u>	<u>N/A</u>	<u>N/A</u>
*Side Setback	5'	5'	10'	5'	10'	10'	15'	15'	N/A
*Height Limit (a/b)	30' / 30'	30' / 30'	30' / 35'	30' / 30'	30' / 35'	30' / 35'	30' / 35'	30' / 35'	N/A
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone district, WCC Title 20.</u>					<u>□ 10%</u>	<u>□ 10%</u>	<u>Per the underlying zone district, WCC Title 20.</u>	
<b>Residential – Multifamily (3-6 units)</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <u>Buffers</u>								
<u>□ Maximum Density</u>	<u>6:1 ac.</u>	<u>22:1 ac.</u>	<u>6:1 ac.</u>	<u>6:1 ac.</u>	<u>1:1 ac.</u>	<u>1:20 ac.</u>	<u>1:1 ac.</u>	<u>N/A</u>	<u>N/A</u>
*Side Setback (e/f)	5' +	5' +	15' +	5' +	15' +	15' +	20'	N/A	N/A
*Height Limit (a/b)	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone district, WCC Title 20.</u>					<u>□ 10%</u>	<u>□ 10%</u>	<u>Per the underlying zone district, WCC Title 20.</u>	
<b>Residential – Multifamily (7+ units)</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <u>Buffers</u>								
<u>□ Maximum Density</u>	<u>6:1 ac.</u>	<u>22:1 ac.</u>	<u>6:1 ac.</u>	<u>6:1 ac.</u>	<u>1:1 ac.</u>	<u>1:20 ac.</u>	<u>1:1 ac.</u>	<u>N/A</u>	<u>N/A</u>

WHATCOM COUNTY SHORELINE MANAGEMENT PROGRAM

Shoreline Uses	Shoreline Area Designation								
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic
<u>Density</u>									
*Side Setback (e/f)	5' +	5' +	15' +	5' +	15' +	15' +	20'	N/A	N/A
*Height Limit (a/b)	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A
Open Space	30%	40%	50%	30%	50%	50%	60%	N/A	N/A
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone district, WCC Title 20.</u>					<u>□□ 10%</u>	<u>□□ 10%</u>	<u>Per the underlying zone district, WCC Title 20.</u>	
<b>Residential – Decks &amp; Accessory Structures</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
*Side Setback	5'	5'	10'	5'	10'	10'	15'	<u>15' N/A</u>	N/A
*Height Limit	15'	15'	15'	15'	15'	15'	15'	<u>15' N/A</u>	N/A
<b>Transportation Facilities</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
<b>Signs</b>									
**Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
*Side Setback	5'	5'	10'	5'	10'	10'	15'	N/A	N/A
*Height Limit (a/b)	10' / 15'	10' / 15'	6' / 10'	10' / 15'	6' / 10'	6' / 10'	6' / 10'	N/A	10'
<b>Utilities</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
*Side Setback	5'	5'	10'	5'	10'	10'	15'	N/A	N/A
*Height Limit (a/b)	20' / 35'	20' / 35'	20' / 20'	20' / 35'	20' / 20'	20' / 20'	20' / 20'	N/A	N/A
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone district, WCC Title 20.</u>					<u>□□ 10%</u>	<u>□□ 10%</u>	<u>Per the underlying zone district, WCC Title 20.</u>	
<b>All Other Development</b>									
Shore Setback	Per Whatcom County Critical Areas Ordinance, WCC 16.16 <a href="#">Buffers</a>								
*Side Setback	10'	10'	10'	10'	15'	15'	20'	N/A	N/A
*Height Limit (a/b)	25' / 35'	25' / 35'	25' / 35'	20' / 30''	20' / 30'	20' / 30'	20' / 30'	N/A	N/A
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone district, WCC Title 20.</u>					<u>□□ 10%</u>	<u>□□ 10%</u>	<u>Per the underlying zone district, WCC Title 20.</u>	

- a = Applies to structures within 100 feet of OHWM or wetland edge
- b = Applies to structures more than 100 feet from OHWM or wetland edge
- c = Applies to development that includes overnight lodging
- d = Applies to development that does not include overnight lodging
- e = Applies to structures not more than 35 feet high
- f = Applies to structures more than 35 feet high

+ = Add 5 feet of setback for each 5 feet of height over 15 feet

\* = Maximum height for accessory buildings is 15 feet

\*\* = ~~For sign shore setbacks~~ See [23.100.160.32\(g\) SMP 23.100.14.B.10 – B.14.](#)

■ = [Roof overhangs or other architectural features shall not project further than 18 inches into the side yard setbacks.](#)

□ = [Maximum allowable development density shall be calculated pursuant to the applicable underlying zone district, per WCC Title 20; provided that, maximum allowable density shall not exceed the density ratios identified above. Density shall be calculated based on the total area of the parent parcel including those areas located outside of shoreline jurisdiction. Submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in density calculations.](#)

□□ = [Where the maximum total impervious surface percentage does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.](#)

N/A = Not Applicable

## **Chapter 10 Shoreline Use Policies and Regulations**

### **23.100.01 Shoreline Use and Development**

Shoreline use and development shall be classified by the Administrator and regulated under one or more of the following applicable sections of Chapter 10. Unless otherwise stated, all use and development shall also comply with all of the General Policies and Regulations of Chapter 9 and, if applicable, the policies of Chapter 4.

SMP Table 23.100.01 Shoreline Use by Area Designation<sup>(a)</sup>

Shoreline Uses	Shoreline Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point
<b>Agriculture</b>										
	P <sup>(-)</sup>	X	P <sup>(-)</sup>	P <sup>(-)</sup>	P	P	P	P <sup>(+)</sup>	X	
<b>Aquaculture</b>										
	P	P <sup>(+)</sup>	P	P <sup>(+)</sup>	P <sup>(+)</sup>	P	P	P <sup>(+)</sup>	P	
Commercial salmon net pen facilities	X <sup>(*)</sup>	X <sup>(*)</sup>	X <sup>(*)</sup>	X <sup>(*)</sup>	X <sup>(*)</sup>	X <sup>(*)</sup>	X <sup>(*)</sup>	X <sup>(*)</sup>	X <sup>(*)</sup>	
<b>Boating Facilities</b>										
Launch Ramps	P	P	P	P	P	P	P	X <sup>(*)</sup>	P	
Marinas	P	P	C	P	P	P	C	X	P	
Covered over-water structures	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	P <sup>(+)</sup>	P <sup>(+)</sup>
<b>Commercial</b>										
Water-oriented commercial	P	P <sup>(-)</sup>	C <sup>(-)</sup>	P	P	P <sup>(-)</sup>	C <sup>(-)</sup>	X	X <sup>(*)</sup>	
Nonwater-oriented commercial	C	C <sup>(-)</sup>	C <sup>(-)</sup>	C	C	C <sup>(-)</sup>	C <sup>(-)</sup>	X	X	
<b>Dredging</b>										
	C	C	C	C	C	C	C	X <sup>(*)</sup>	C <sup>(*)</sup>	X <sup>(*)</sup>
<b>Essential Public Facilities</b>										
	C	C	C	C	C	C	C	C	C	
<b>Flood Control and Instream Structures</b>										
	P	P	P	P	P	P	P	X	P	
Channelization or dams for flood control	P	P	X	P	C	C	X	X	P	
<b>Forest Practices</b>										
	X	X	X	X	P	P	P	C	X	
<b>Industrial and Port</b>										
Water-oriented industrial and port development	P	X <sup>(*)</sup>	X	X	P <sup>(-)</sup>	P <sup>(-)</sup> / C	X	X	P / C <sup>(-)</sup>	P <sup>(-)</sup> (+)
Nonwater-oriented industrial and port development	C	X	X	X	C	C <sup>(-)</sup>	X	X	X	X
Dams, diversion and	C	<del>C</del>	C	C	C	C	C	X	P	

Shoreline Uses	Shoreline Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point
tailrace structures for hydroelectric power generation										
<b>Institutional</b>										
	C	C	C	C	C	C	C	X	X	X
<b>Landfill and Excavation</b>										
	P	P	P	P	P	P	P <sup>(-)</sup> / C	X <sup>(*)</sup>	C <sup>(-)</sup> / X	X <sup>(*)</sup>
<b>Mining</b>										
	X	X	X	X	C	C	C	X	C <sup>(-)</sup> / X	
Surface oil or gas drilling	X	X	X	X	X	X	X	X	X	X
<b>Moorage: Docks, Piers and Mooring Buoys</b>										
Private and shared moorage	P	C	P <sup>(-)</sup> / C <sup>(-)</sup>	P	P	P	P <sup>(-)</sup> / C <sup>(-)</sup>	X <sup>(*)</sup>	P	
Public moorage	C	C	C	C	C	C	C	X <sup>(*)</sup>	P	
Commercial moorage	C	X <sup>(*)</sup>	C	C	C	C	C	X <sup>(*)</sup>	P	
Industrial moorage	C	X	X	X	C	C	X	X <sup>(*)</sup>	P	P <sup>(+)</sup>
Covered moorage accessory to permitted moorage	C	C	X	C	X	X	X	X	P	C
Float plane moorage accessory to permitted moorage	C	C	C	C	C	C	C	X	P	
<b>Recreational</b>										
Water-oriented recreation	P	P	P <sup>(+)(-)</sup>	P	P	P <sup>(+)</sup>	P <sup>(+)(-)</sup>	P <sup>(+)(-)</sup>	P / C <sup>(-)</sup>	P <sup>(+)(-)</sup>
<b>Residential</b>										
	P	P	P <sup>(-)</sup> / C	P	P	P <sup>(+)(-)</sup>	P <sup>(-)</sup> / C	<del>P</del> C <sup>(+)(-)</sup> / X	X	
<b>Restoration and Enhancement</b>										
	P	P	P	P	P	P	P	P	P	P
<b>Shoreline Stabilization</b>										
Groins	C	C	X	C	C	C	X	X	C	X
Breakwaters and jetties	C	C	C <sup>(+)(-)</sup>	C	C	C	C <sup>(+)(-)</sup>	X	C	C <sup>(+)(-)</sup>
Bulkheads and revetments	P	P	P	P	P	P	P	X	X <sup>(*)</sup>	P
Bioengineering	P	P	P	P	P	P	P	P <sup>(+)</sup>	P <sup>(+)</sup>	P

Shoreline Uses	Shoreline Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point
approaches										
<b>Signs</b>										
	P	P	P	P	P	P	P	X <sup>(*)</sup>	P <sup>(+)(-)</sup>	P
<b>Transportation</b>										
	P	P	P <sup>(-)</sup>	P	P	P	P <sup>(-)</sup>	X <sup>(*)</sup>	P <sup>(-)</sup> / C <sup>(-)</sup>	P <sup>(-)</sup>
Transportation facilities not serving a specific approved use	C	C	X	C	C	C	X	X	C	X
<b>Utilities</b>										
Local distribution facilities	P	P	P <sup>(-)</sup> / C	P	P	P	P <sup>(-)</sup> / C	X <sup>(*)</sup>	P <sup>(-)(+)</sup> / C <sup>(-)</sup> / X	P <sup>(-)(+)</sup>
Regional transmission facilities	C	C	C	C	C	C	C	X	C <sup>(-)</sup> / X	C
<u>Desalinization facilities</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>P<sup>(-)</sup></u>	<u>P<sup>(-)</sup></u>

P = Permitted, may be [subject to policies and regulations of this Program and](#) subject to Shoreline Substantial Development Permit requirements  
 C = Shoreline Conditional Use [subject to policies and regulations of this Program and may be subject to Shoreline Substantial Development Permit requirements](#)  
 X = Prohibited  
 N/A = Not applicable.

(-) Subject to limitations.  
 (+) Subject to conditions.  
 (-) Subject to exceptions.

- (a) In the event that there is a conflict between the use(s) identified in Table 23.~~X100.01XX~~ and the [policies or](#) regulations in Chapters 3, 9, or 10, the policies and regulations shall apply.
- (b) Aquatic: Water-dependent use only, subject to the use and development regulations of the abutting upland shoreline area designation.

## **23.100.02 Agriculture**

### **23.100.02.A Agriculture – Policies**

1. This Program recognizes the importance of agriculture in Whatcom County and supports its continued economic viability. This Program ~~should~~ allows for ongoing agricultural activities and should ~~protects~~ agricultural lands from conflicting uses such as intensive or unrelated residential, industrial or commercial uses, while also maintaining shoreline ecological functions and processes.
2. Agricultural uses and development in support of agricultural uses should be conducted in such a manner as to assure no net loss of shoreline ecological functions and processes and ~~should~~ avoid substantial adverse impacts on other shoreline resources and values.
3. Conversion of agricultural uses to other uses should comply with all policies and regulations for non-agricultural ~~the-proposed~~ uses.

### **23.100.02.B Agriculture – Regulations**

1. Agricultural activities within shorelines are governed by the critical area regulations in WCC 16.16 including the Conservation Program on Agricultural Lands (CPAL) provided for in WCC 16.16.290.
2. Accessory uses and buildings shall observe critical area buffer requirements as defined in WCC 16.16; except that, utility development associated with an approved agriculture activity or development may encroach on critical area buffers where it can be demonstrated that the proposed utility development is essential to the agriculture activity or development and that such development complies with the general provisions of WCC 16.16; such utilities shall be placed underground where feasible.
3. Intentional discharge of any manure storage facility into ground or surface water is prohibited.
4. New feedlots are prohibited in critical area buffers as defined in WCC 16.16.
5. Conversion of agricultural uses to other uses shall comply with the provisions of WCC 16.16 and this Program for the proposed ~~non-agricultural~~ uses.

### **23.100.02.C Agriculture – Shoreline Area Regulations**

1. Urban: Agricultural activities are permitted subject to policies and regulations of this Program, except that new liquid manure storage facilities and liquid manure spreading are not permitted.
2. Urban Resort: New agricultural activities are prohibited.

3. Urban Conservancy: Agricultural activities are permitted subject to policies and regulations of this Program, except that new animal feeding operations/concentrated animal feeding operations (AFO/CAFOs) are not permitted.
4. Shoreline Residential: Agricultural activities are permitted subject to policies and regulations of this Program, except that new liquid manure storage facilities and liquid manure spreading are not permitted.
5. Rural: Agricultural activities are permitted subject to policies and regulations of this Program.
6. Resource: Agricultural activities are permitted subject to policies and regulations of this Program.
7. Conservancy: Agricultural activities are permitted subject to policies and regulations of this Program.
8. Natural: Low intensity agricultural activities are permitted subject to policies and regulations of this Program; provided that, the use does not expand or alter agricultural practices in a manner inconsistent with the purpose of this designation. All other agricultural activities are prohibited.
9. Aquatic: New agricultural activities are prohibited. Farming of fin fish, shellfish and management of other aquatic products are subject to the policies and regulations for Aquaculture under SMP 23.100.03.

### **23.100.03 Aquaculture**

Aquaculture in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9.

Nothing in these policies or regulations may be construed as to impinge on tribal treaty rights exercised within Usual and Accustomed Areas. See also policy SMP 23.100.03.A.8 and regulation SMP 23.100.03.B.1.u.

#### **23.100.03.A Aquaculture – Policies**

1. Aquaculture is a water-dependent use and, when consistent with control of pollution and avoidance of adverse impacts to the environment and preservation of habitat for resident native species, is a preferred use of the shoreline (WAC 173-26-241(3)(b)).<sup>49</sup>
2. Potential locations for aquaculture activities are relatively restricted because of specific requirements related to water quality, temperature, oxygen content, currents, adjacent land use, wind protection, commercial navigation,<sup>20</sup> and salinity. The technology associated with some forms of aquaculture is still experimental and in formative states. Therefore, some latitude should be given when implementing the regulations of this section, provided that potential impacts on existing uses and shoreline ecological functions and processes should be given due consideration.
3. Preference should be given to those forms of aquaculture that involve lesser environmental and visual impacts and lesser impacts to native plant and animal species. In general, projects that require no structures, submerged structures or intertidal structures are preferred over those that involve substantial floating structures. Projects that involve little or no substrate modification are preferred over those that involve substantial modification. Projects that involve little or no supplemental food sources, pesticides, herbicides or antibiotic application are preferred over those that involve such practices.
4. Community restoration projects associated with aquaculture should be reviewed and permitted in a timely manner.
5. Aquaculture activities should be designed, located and operated in a manner that supports long term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species including eelgrass, kelp, and [other](#) macroalgae; adversely impact other habitat conservation areas; or interfere with navigation or other water-dependent uses.<sup>24</sup>

---

~~<sup>49</sup> Aquaculture or shellfish are not specifically mentioned in the act and are not an enumerated “priority use” in RCW 90.58.020~~

~~<sup>20</sup> Consistency with language in WAC 173-26-241(3)(b).~~

~~<sup>24</sup> Global policy statement inserted to comply with language found in WAC 173-26-241(3)(b).~~

6. Aquaculture that involves significant risk of cumulative adverse effects on water quality, sediment quality, benthic and pelagic organisms, and/or wild fish populations through potential contribution of antibiotic resistant bacteria, or escapement of non-native species, or other adverse effects on ESA-listed species should not be permitted.<sup>22</sup>
- ~~7. Staked or cultivated shellfish aquaculture operations should not be located or conducted in a manner that damages, overrides or covers existing natural shellfish beds, or that would reduce shellfish populations or the harvest of shellfish by tribal members and non-commercial harvesters.<sup>23</sup>~~
- ~~87.~~ The County should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate Federal, State and local agencies; the Lummi Nation, Nooksack Tribe, and other affected tribes; and the general public regarding potential adverse impacts. Comments of nearby residents or property owners directly affected by a proposal should be considered and evaluated, especially in regard to use compatibility and aesthetics.
- ~~98.~~ The rights of treaty tribes to aquatic resources within their usual and accustomed areas should be addressed through the permit review process. Direct coordination between the applicant/proponent and the tribe should be encouraged.
- ~~109.~~ Consideration should be given to both the potential beneficial impacts and potential adverse impacts that aquaculture development might have on the physical environment; on other existing and approved land and water uses, including navigation; and on the aesthetic qualities of a project area.
- ~~110.~~ Legally established aquaculture enterprises, including authorized experimental projects, should be protected from incompatible uses that may seek to locate nearby. Use or developments that have a high probability of damaging or destroying an existing aquaculture operation may be denied.
- ~~111.~~ Experimental aquaculture projects in water bodies should be limited in scale and should be approved for a limited period of time. Experimental aquaculture means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in the State of Washington.

**23.100.03.B Aquaculture Regulations**

**23.100.03.B.1 Site Design and Operation**

- a. Aquaculture activities proposed within shorelines of statewide significance shall be subject to, first, the policies contained in Chapter 4, Shorelines of Statewide Significance, and, second, the policies and regulations contained in this section.

~~<sup>22</sup> Incorporates intent of Whatcom Co. Ordinance 2005-026 providing that salmon net pen facilities are not permitted in Whatcom County waters.~~

~~<sup>23</sup> Locations of staked and cultivated shellfish beds that are restricted from access and harvest by Tribes within their established usual and accustomed areas are confined to sites where shellfish beds do not naturally occur (excerpted from the Rafeodie Decision, 873 F. Supp. 1422 US v Washington, No CV 0213).~~

- b. Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant/proponent shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible aquaculture operations at the site.
- c. The installation of submerged structures, intertidal structures, and floating structures shall be allowed only when the applicant/proponent demonstrates that no alternative method of operation is feasible.
- de. Aquaculture proposals that involve substantial substrate modification or sedimentation through dredging, trenching, digging, mechanical clam harvesting, or other similar mechanisms, shall not be permitted in areas where the proposal would adversely impact existing kelp beds or other,<sup>24</sup> macroalgae, eelgrass beds or habitat conservation areas.<sup>25</sup>
- ed. Aquaculture activities, which would have a significant adverse impact on natural, dynamic shoreline processes or which would result in a net loss of shoreline ecological functions,<sup>26</sup> shall be prohibited.
- f. Aquaculture practices shall be designed to minimize use of artificial substances and shall use chemical compounds that are least persistent and have the least impact on plants and animals.
- ge. Commercial salmon net pen facilities shall not be located in Whatcom County waters,<sup>27</sup> except for limited non-profit penned cultivation of wild salmon stocks during a limited portion of their lifecycle to enhance restoration of native stocks when such activities involve minimal supplemental feeding and no use of chemicals or antibiotics.
- hf. Aquaculture uses and facilities shall be located at least 600 feet from any National Wildlife Refuge lands; except that:
  - (1) Projects involving substantial substrate modification and/or fish net pens, if authorized, shall be located 1,500 feet or more from such areas.
  - (2) Lesser distances may be authorized by permit if it is demonstrated by the applicant/proponent that the wildlife resource will be protected and if the change is supported by the WDFW, the Lummi Nation and/or Nooksack Tribe.
  - (3) Greater distances may be required if supported by the reviewing resource agencies and/or where there is sound evidence demonstrating that a greater distance is required.

---

<sup>24</sup> ~~WAC 173-26-241(3)(b) states that aquaculture should not be permitted in areas where it would adversely impact eelgrass and macroalgae.~~

<sup>25</sup> ~~TAC concluded that these thresholds are not adequate measures of adverse impact.~~

<sup>26</sup> ~~WAC 173-26-241(3)(b): Aquaculture should not be permitted where it would result in a net loss of ecological functions.~~

<sup>27</sup> ~~Incorporates intent of Whatcom Co. Ordinance 2005-026 providing that salmon net pen facilities are not permitted in Whatcom County waters.~~

- 
- ig. If uncertainty exists regarding potential impacts of a proposed aquaculture activity, and for all experimental aquaculture activities, baseline and periodic operational monitoring by a County-approved consultant (unless otherwise provided for) may be required, at the applicant's/proponent's expense, and shall continue until adequate information is available to determine the success of the project and/or the magnitude of any probable significant adverse environmental impacts. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant, adverse environmental impacts that cannot be adequately mitigated.
- jh. Aquaculture developments approved on an experimental basis shall not exceed 5 acres in area (except land based projects and anchorage for floating systems) and three (3) years in duration; provided that, the County may issue a new permit to continue an experimental project as many times as is deemed necessary and appropriate.
- ki. The County shall reserve the right to require aquaculture operations to carry liability insurance in an amount commensurate with the risk of injury or damage to any person or property as a result of the project. Insurance requirements shall not be required to duplicate requirements of other agencies.
- lj. Where aquaculture activities are authorized to use public facilities, such as boat launches or docks, the County shall reserve the right to require the applicant/proponent to pay a portion of the cost of maintenance and any required improvements commensurate with the use of such facilities.
- mk. New aquatic species that are not previously cultivated in Washington State shall not be introduced into Whatcom County saltwaters or freshwaters without prior written approval of the Director of the Washington State Department of Fish and Wildlife and the Director of the Washington Department of Health. In saltwaters, the County shall not issue permits for projects that include the introduction of such organisms until it has also received written comment from the Marine Resources Committee, the Lummi Nation and the Nooksack Tribe, provided that such comment is received in a timely manner. This regulation does not apply to Pacific, Olympia, Kumomoto, Belon or Virginica oysters; Manila, Butter, or Littleneck clams; or Geoduck clams.
- nl. Unless otherwise provided in the shoreline permit issued by the County, repeated introduction of an approved organism in the same location shall require approval by the County only at the time the initial aquaculture use permit is issued. Introduction, for purposes of this section, shall mean the placing of any aquatic organism in any area within the waters of Whatcom County regardless of whether it is a native or resident organism within the county and regardless of whether it is being transferred from within or without the waters of Whatcom County.
- om. For aquaculture projects using over-water structures, storage of necessary tools and apparatus waterward of the ordinary high water mark shall be limited to containers of not more than 3 feet in height, as measured from the surface of the raft or dock; provided that, in locations where the visual impact of the proposed aquaculture structures will be minimal, the County may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant/proponent. Materials, which are not necessary for the immediate and regular operation of the facility, shall not be stored waterward of the ordinary high water mark.

- pa.** No processing of any aquaculture product, except for the sorting or culling of the cultured organism and the washing or removal of surface materials or organisms after harvest, shall occur in or over the water unless specifically approved by permit. All other processing and processing facilities shall be located on land and shall be subject to the policies and regulations of SMP 23.100.07, Industrial and Port Development, in addition to the policies and regulations in this section.
- pe.** Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (RCW 90.48). No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.
- pf.** Predator control shall not involve the killing or harassment of birds or mammals. Approved controls include, but are not limited to, double netting for seals, overhead netting for birds, and 3-foot high fencing or netting for otters. The use of other non-lethal, non-abusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.
- pg.** Fish net pens and rafts shall meet the following criteria in addition to the other applicable regulations of this section:
- (1) Fish net pens shall meet, at a minimum, State approved administrative guidelines for the management of net pen cultures. In the event there is a conflict in requirements, the more restrictive requirement shall prevail.
  - (2) Fish net pens shall not occupy more than 2 surface acres of water area, excluding booming and anchoring requirements. Anchors that minimize disturbance to substrate, such as helical anchors, shall be employed. Such operations shall not use chemicals or antibiotics.
  - (3) Aquaculture proposals that include net pens or rafts shall not be located closer than 1 nautical mile to any other aquaculture facility that includes net pens or rafts; provided that, a lesser distance may be authorized if the applicant/proponent can demonstrate that the proposal will be consistent with the environmental and aesthetic policies and objectives of this Program. If a lesser distance is requested, the burden of proof shall be on the applicant/proponent to demonstrate that the cumulative impacts of existing and proposed operations would not be contrary to the policies and regulations of this Program.
  - (4) Net cleaning activities shall be conducted on a frequent enough basis so as not to violate state water quality standards. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing, or hand washing.
  - (5) In the event of a significant fish kill at the site of a net pen facility, the fin fish aquaculture operator shall submit a timely report to the Whatcom County Environmental Health Division and the Whatcom County Planning and Development Services Department stating the cause of death and shall detail remedial action(s) to be implemented to prevent reoccurrence.

- 
- te. All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.
  - us. The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the applicant/proponent and the affected tribe(s) through the permit review process.
  - vt. Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and/or equipment shall be removed or repaired promptly by the owner. Where any structure might constitute a potential hazard to the public in the future, the County shall require the posting of a bond commensurate with the cost of removal or repair. The County may abate an abandoned or unsafe structure, following notice to the owner, if the owner fails to respond in thirty (30) days and may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement. Bonding requirements shall not duplicate requirements of other agencies.

### **23.100.03.B.2 Application Requirements**

- a. Applications for aquaculture use or development shall include in their applications all information necessary to conduct a thorough evaluation of the proposed aquaculture activity, including but not limited to the following:

  - (1) A site plan map including:

    - (a) The perimeter of the proposed aquaculture operations area.
    - (b) Existing bathymetry depths based on Mean Lower Low Water (MLLW datum).
    - (c) Adjacent upland use, vegetation, presence of structures, docks, bulkheads and other modifications. If there are shore [stabilization structures protection works](#), provide the beach elevation at the toe of the structure and the top of the structure (MLLW datum).
    - (d) Areas where specific substrate modification will take place or structures [will be constructed or](#) installed.
    - (e) Access provisions for barges or track equipment.
    - (f) Location of storage or processing structures or facilities.
  - (2) A baseline description of existing conditions, including best available information on:

    - (a) Water quality
    - (b) Tidal variations
    - (c) Prevailing storm wind conditions

- (d) Current flows
- (e) Flushing rates
- (f) Littoral drift
- (g) Areas of differing substrate composition.
- (h) Areas of aquatic, intertidal, and upland vegetation complexes.
- (i) Existing shoreline or water uses and structures.
- (j) Aquatic and benthic organisms.
- (k) A vegetation habitat survey must be conducted. The WDFW must be contacted prior to the survey to ensure it is conducted according to the most current WDFW eelgrass/macroalgae survey guidelines.
- (l) Assessment of aquatic species, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site.

Further baseline studies including surveys and sampling may be required depending upon the adequacy of available information, existing conditions, and the nature of the proposal.

- (3) A detailed description of the project proposal including:
  - (a) Species to be reared.
  - (b) Substrate modification or vegetation removal.
  - (c) Planting, harvest and processing location, method and timing, including work proposal and construction techniques proposed (list all hand tools, machinery used (such as track hoes, trucks or barges), type of work, frequency, and duration.
- (4) Anticipated use of any feed, pesticides, herbicides, antibiotics, vaccines, growth stimulants, antifouling agents, or other chemicals, and an assessment of predicted impacts. No such materials shall be used until approval is obtained from all appropriate State and Federal agencies, including but not limited to the U.S. Food and Drug Administration, and the Washington State Departments of Ecology, Fish and Wildlife, and Agriculture, as required, and proof thereof is submitted to the County. Compounds with the least persistence shall be used. An annual report of antibiotic use shall be submitted to the Whatcom County Environmental Health Division. The report shall indicate the type and amount of antibiotics used during the previous calendar year. Actual usage data for all chemicals and antibiotics shall be maintained for review by County inspectors at all times.
- (5) Number of employees/workers necessary for the project, including average and peak employment.

- 
- (6) Methods of waste disposal and predator control.
  - (7) Methods to address pollutant loading, including biological oxygen demand (BOD).
  - (8) Assessment of potential impacts on shoreline ecological functions and processes addressing the baseline conditions identified, including but not limited to indirect and cumulative effects.
  - (9) For floating culture facilities or other structures, the County may require a visual impact analysis. (See the Department of Ecology's "Aquaculture Siting Study" 1986 for general approach.) Depending on the size and complexity of the proposal, such analysis may be prepared by the applicant/proponent, without professional assistance, provided that it includes an adequate assessment of impacts.
  - (10) Information demonstrating that the site has natural potential for the type(s) of aquaculture proposed, due to necessary substrate or other conditions, as well as water quality suitable for the type(s) of aquaculture proposed.
  - (11) Information demonstrating that the proposed aquaculture activities will not result in a net loss of shoreline ecological functions or processes or adversely affect habitat conservation areas as defined by WCC 16.16.
  - (12) Information demonstrating that the proposed aquaculture activities will not substantially and materially conflict with areas devoted to established uses of the aquatic environment. Such uses include but are not limited to navigation, moorage, sport or commercial fishing, log rafting, underwater utilities, and scientific research. Existing public opportunities for gathering wild stock aquatic resources on public lands shall be addressed in any application for aquaculture on public tidelands or bedlands. Compensation for loss of public access to public aquatic resources may be required.
  - (13) Other pertinent information deemed necessary by the Administrator.
- b. Applications for aquaculture activities must demonstrate that the proposed activity will be compatible with surrounding existing and planned uses.
- (1) Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise.
  - (2) Aquaculture activities shall be restricted to reasonable hours and/or days of operation when necessary to minimize substantial, adverse impacts from noise, light, and/or glare on nearby residents, other sensitive uses or critical habitat.
  - (3) Aquaculture facilities shall not introduce incompatible visual elements or substantially degrade the aesthetic qualities of the shoreline. Aquaculture structures and equipment, except navigation aids, shall be designed, operated and maintained to blend into their surroundings through the use of appropriate colors and materials.

**23.100.03.C Aquaculture – Shoreline Area Regulations**

1. Urban: Aquaculture activities are permitted subject to policies and regulations of this Program.
2. Urban Resort: Aquaculture activities are permitted subject to policies and regulations of this Program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.
3. Urban Conservancy: Aquaculture activities are permitted subject to policies and regulations of this Program.
4. Shoreline Residential: Aquaculture activities are permitted subject to policies and regulations of this Program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.
5. Rural: Aquaculture activities are permitted subject to policies and regulations of this Program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis.
6. Resource: Aquaculture activities are permitted subject to policies and regulations of this Program.
7. Conservancy: Aquaculture activities are permitted subject to policies and regulations of this Program.
8. Natural: Aquaculture activities that do not require structures, facilities or mechanized harvest practices and that will not result in the alteration of natural systems or features are permitted subject to policies and regulations of this Program. ~~Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis.~~
9. Aquatic: Aquaculture activities are permitted, subject to the use and development regulations of the abutting upland shoreline area designation.

### 23.100.04 Boating Facilities: Marinas and Launch Ramps

Boating facilities, including marinas and launch ramp development, in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9. Docks serving four (4) or fewer single family residences are subject to the policies and regulations of SMP 23.100.09, Moorage: Docks, Piers, and Mooring Buoys.

#### 23.100.04.A Boating Facilities – Policies

1. Boating facilities, including marinas and launch ramps, are water-dependent uses and should be given priority for shoreline location. Boating facilities should also contribute to public access and enjoyment of waters of the state. Shorelines particularly suitable for marinas and launch ramps are limited and should be identified and reserved to prevent irreversible commitment for other uses having less stringent site requirements.
2. Regional needs for marina and boat launch facilities should be carefully considered in reviewing new proposals as well as in allocating shorelines for such development. Such facilities should be coordinated with park and recreation plans and, where feasible, co-located with port or other compatible water-dependent uses. Review of such facilities should be coordinated with recreation providers, including cities, adjacent counties, port districts, [the Whatcom County Parks and Recreation Department](#), the Washington State Parks and Recreation Commission, and the Washington State Department of Natural Resources to avoid unnecessary duplication and to efficiently provide recreational resources while minimizing adverse [impacts to shoreline ecological functions and processes impacts](#).
3. [Upland boat storage is preferred over new in-water moorage. Mooring buoys are preferred over docks and piers.](#) Boating facilities that minimize the amount of shoreline modification are preferred. ~~Mooring buoys are preferred over docks and piers. Upland boat storage is preferred over new in-water moorage.~~
4. Boating facilities should provide physical and visual public shoreline access and provide for multiple use, including water-related use, to the extent compatible with shoreline ecological functions and processes and adjacent shoreline use.
5. Accessory uses at marinas or launch ramps should be limited to water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public.
6. New or expanding boating facilities including marinas, launch ramps, and accessory uses should only be sited where suitable environmental conditions are present and should avoid critical saltwater habitat including kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sandlance); subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.
7. Boating facilities should be located and designed to avoid adverse effects upon coastal, riverine, and nearshore processes such as erosion, littoral or riparian transport, and

accretion, and, should where feasible, enhance degraded, scarce, and/or valuable shore features including accretion shoreforms.

8. A—l launch ramps are preferred over a marinas on accretion shores because associated impacts it is are often reversible and such structures will not normally interfere with littoral drift and accretion unless offshore defense structures or dredging are also required.
9. Non-regulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged during the design, development and operation of boating facilities. Non-regulatory methods may include public facility and resource planning, education, voluntary protection and enhancement projects, or incentive programs.
10. Boating facilities should be located, designed and operated so that other appropriate water-dependent uses are not adversely affected.
11. Location and design of B boating facilities should not unduly obstruct navigable waters and should consider avoid adverse effects to recreational opportunities such as fishing, shellfish gathering, pleasure boating, commercial aquaculture, swimming, beach walking, picnicking and shoreline viewing.
12. Boating facilities should be located, designed, constructed and maintained to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; and impacts to public visual access to the shoreline.

#### **23.100.04.B Boating Facilities – Regulations**

##### **23.100.04.B.1 Site Design and Operation**

- a. Marinas or launch ramps shall not be permitted on the following marine shores unless it can be demonstrated that interference with littoral drift and/or degradation or loss of shoreline ecological functions and processes, especially those vital to maintenance of nearshore habitat, will not occur. Such areas include:
  - (1) Feeder bluffs exceptional
  - (2) High energy input driftways
- b. Marinas or launch ramps shall not be permitted within the following marine shoreline habitats because of their scarcity, biological productivity and sensitivity unless no alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this Program:
  - (1) Marshes, estuaries and other wetlands;
  - (2) Tidal pools on rock shores;
  - (3) Kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sandlance);

- (4) Subsistence, commercial and recreational shellfish beds; and
  - (5) Other critical saltwater habitats.
- c. Marinas or launch ramps shall not be permitted on the following marine accretion shoreforms unless it can be demonstrated that no other alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this Program. Hoists are preferred over dredged marinas or launch ramps at such locations:
- (1) Open points;
  - (2) Spits and hooks;
  - (3) Tombolos;
  - (4) Open bay barrier beaches;
  - (5) Accretional pocket beaches.
- d. Foreshore marinas or launch ramps may be permitted on low erosion rate marine feeder bluffs or on low energy input erosional driftways if the proposal is otherwise consistent with this Program. Foreshore marinas or launch ramps are prohibited on accretional lake shores because these natural features are uncommon on lakes and are highly valuable for recreation.
- e. Backshore marinas and launch ramps may be permitted on closed accretional points, closed accretional bluff and bay barrier beaches, or low energy input driftways, except where wetlands are present or it can be demonstrated that a foreshore location would result in fewer impacts to shoreline ecological functions and processes, natural features and uses.
- f. Marinas or launch ramps may be permitted on low bank lake shores where backshore wetlands are protected, or where wetlands are not present, if most of the beach and backshore are preserved in a natural condition for public or quasi-public recreation.
- g. Marinas shall not be permitted in low gradient, broad meander stream channel reaches, except where located on outer, concave bends or straight, moderately eroding or stable banks, so that dredging and/or shore protection will not be necessary.
- h. Marina basins or structures shall not be permitted on river point bars or other accretional beaches. A limited number of launch ramps may be permitted on accretion shoreforms, provided that any necessary grading will not adversely affect shoreline ecological functions or fluvial processes, and any accessory facilities are located out of the floodway.
- i. Marinas shall not be permitted in areas of active channel migration, where channel dredging will be required, if a flood hazard will be created, or if valuable shoreline ecological functions and processes will be degraded.

- j. Launch ramps may be located immediately downstream of accretion shoreforms, or on other non-erosional banks, where no or a minimum number of current deflectors will be necessary.
- k. Floating piers shall be required in rivers and streams unless it can be demonstrated that fixed piers will result in substantially less impact on geo-hydraulic processes and flood hazards can be minimized or mitigated.
- l. Where foreshore marinas are permitted:
  - (1) Open pile or floating breakwater designs shall be used unless it can be demonstrated that riprap or other solid construction would not result in any greater net impacts to shoreline ecological functions or processes or shore features over the short and long term.
  - (2) Solid structures shall not be permitted to extend without openings from the shore to zero tide level (Mean Lower Low Water, or MLLW), but shall stop short to allow sufficient shallow fringe water for fish passage.
- m. Foreshore and backshore marinas shall be designed to allow the maximum possible circulation and flushing of all enclosed water areas.
- n. New or expanding marinas with dredged entrances that adversely affect littoral drift to the detriment of other shores and their users shall be required to periodically replenish such shores with the requisite appropriate quantity and quality of aggregate as determined by professional coastal geologic engineering studies.
- o. Design and other standards for physical improvement of docks and piers are found in SMP 23.100.9, Moorage: Docks, Piers and Mooring Buoys.

#### **23.100.04.B.2 Public Access**

- a. New launch ramps shall be approved only if they provide public access to public waters, which are not adequately served accessed by existing access facilities, or if use of existing facilities is documented to exceed the designed capacity. Prior to providing ramps at a new location, documentation shall be provided demonstrating that expansion of existing launch facilities would not be adequate to meet demand. Public access areas shall provide space and facilities for physical and/or visual access to water bodies, including as well as for feasible types of public shore recreation.
- b. Marinas and boat launches shall provide public access for as many water-dependent recreational uses as possible, commensurate with the scale of the proposal. Features for such access could include, but are not limited to docks and piers, pedestrian bridges to offshore structures, fishing platforms, artificial pocket beaches, and underwater diving and viewing platforms.

#### **23.100.04.B.3 Site Considerations**

- a. Marinas, launch ramps, and accessory uses shall be designed so that lawfully existing or planned public shoreline access is not unnecessarily blocked, obstructed nor made dangerous.

- b. Public launch ramps and/or marina entrances shall not be located near beaches commonly used for swimming, valuable fishing and shellfish harvest areas, or sea lanes used for commercial navigation unless no alternative location exists, and mitigation is provided to minimize impacts to such areas and protect the public health, safety and welfare.
- c. Marinas and accessory uses shall be located only where adequate utility services are available, or where they can be provided concurrent with the development.
- d. Marinas, launch ramps, and accessory uses shall be located where water depths are adequate to avoid the need for dredging and minimize potential loss of shoreline ecological functions or processes.
- e. Marinas, launch ramps, and accessory uses shall be located and designed with the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft from floods, abnormally high tides, and/or destructive storms.

**23.100.04.B.4 Boat Storage**

- a. Marinas shall provide dry upland boat storage with a launch mechanism to protect shoreline ecological functions and processes, efficiently use shoreline space, and minimize consumption of public water surface area unless:
  - (1) no suitable upland locations exist for such facilities; or
  - (2) it can be demonstrated that wet moorage would result in fewer impacts to ecological functions and processes; or
  - (3) it can be demonstrated that wet moorage would enhance public use of the shoreline.
- b. Dry moorage and other storage areas shall be located away from the shoreline and be landscaped with native vegetation to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas.
- c. New covered moorage for boat storage is prohibited. Covered over-water structures may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water.

**23.100.04.B.5 Waste Disposal**

- a. Marinas shall provide pump out, holding, and/or treatment facilities for sewage contained on boats or vessels.
- b. Discharge of solid waste or sewage into a water body is prohibited. Marinas and boat launch ramps shall provide adequate restroom and sewage disposal facilities in compliance with applicable health regulations.
- c. Garbage or litter receptacles shall be provided and maintained by the operator at several locations convenient to users.

- d. Disposal or discarding of fish or shellfish cleaning wastes, scrap fish, viscera, or unused bait into water or in other than designated garbage receptacles is prohibited.
- e. Marina operators shall post all regulations pertaining to handling, disposal and reporting of waste, sewage, fuel, oil or toxic materials where all users may easily read them.

**23.100.04.B.6 Oil Product Handling, Spills, and Wastes**

Fail safe facilities and procedures for receiving, storing, dispensing, and disposing of oil or hazardous products, as well as a spill response plan for oil and other products, shall be required of new marinas and expansion or substantial alteration of existing marinas. Compliance with federal or state law may fulfill this requirement. Handling of fuels, chemicals or other toxic materials must be in compliance with all applicable Federal and State water quality laws as well as health, safety and engineering requirements. Rules for spill prevention and response, including reporting requirements, shall be posted on site.

**23.100.04.B.7 Parking and Vehicle Access**

- a. Parking facilities shall meet County zoning standards; provided that, at a minimum, one (1) vehicle space shall be maintained for every four (4) moorage spaces and for every 400 square feet of interior floor space devoted to accessory retail sales or service use. Bicycle parking shall be provided commensurate with the anticipated demand.
- b. ~~At p~~Public or quasi-public launch ramps shall provide, trailer spaces, at least 10 feet by 40 feet, ~~shall be provided~~ commensurate with projected demand.
- c. Parking that does not require a shoreline location in order to carry out its functions shall:
  - (1) be sited away from the land/water interface unless no feasible alternative location exists outside of the shoreline;
  - (2) be planted or landscaped, preferably with native vegetation, to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas;
  - (3) observe critical area buffers in WCC 16.16; and
  - (4) be designed to incorporate low impact development practices, such as pervious surfaces, and bioswales, to the extent feasible, ~~such as pervious surfaces, and bioswales~~.
- d. Connecting roads between marinas and public streets shall have all weather surfacing, and be satisfactory to the County Engineer in terms of width, safety, alignment, sight distance, grade and intersection controls.

**23.100.04.B.8 Launch Ramp Design**

- a. Preferred ramp designs, in order of priority, are:
  - (1) Open grid designs with minimum coverage of beach substrate.

- (2) Seasonal ramps that can be removed and stored upland.
  - (3) Structures with segmented pads and flexible connections that leave space for natural beach substrate and can adapt to changes in beach profile.
- b. Ramps shall be placed and maintained near flush with the foreshore slope.

**23.100.04.B.9 Accessory Uses**

- a. Accessory uses at marinas or launch ramps shall be limited to those water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public. Accessory development includes, but is not limited to, parking, open air storage, waste storage and treatment, stormwater management facilities, utility and upland transportation development.
- b. Water-oriented accessory uses reasonably related to marina operation may be located over water or at the waters edge by conditional use if an over-water or waters'-edge location is essential to the operation of the use or if opportunities are provided for public access for a substantial number of persons.

**23.100.04.B.10 Application Requirements**

- a. Applications for new boating facilities, including marinas and launch ramps, shall be approved only if enhanced public access to public waters outweighs the potential adverse impacts of the use. Applications shall be accompanied by supporting application materials that document the market demand for such facilities, including:
- (1) The total amount of moorage proposed;
  - (2) The proposed supply, as compared to the existing supply within the service range of the proposed facility, including vacancies or waiting lists at existing facilities;
  - (3) The expected service population and boat ownership characteristics of the population;
  - (4) Existing approved facilities or pending applications within the service area of the proposed new facility.
- b. New marinas with in-water moorage and expansion of in-water moorage facilities in existing marinas shall be approved only when:
- (1) Opportunities for upland storage sufficient to meet the demand for moorage are not available on site; and
  - (2) Expansion of upland storage at other existing marinas is not feasible.

Applications shall document that a preferred method of providing moorage facilities is not feasible. Review of proposals involving public aquatic lands may be required to include an analysis of other alternative sites not controlled by the applicant/proponent.

- c. Applications for launch ramps shall contain:
  - (1) A habitat survey.
  - (2) A slope bathymetry map.
  - (3) Evaluation of effects on littoral drift.
- d. Applications for marinas, launch ramps, and accessory uses shall include an assessment of existing water-dependent uses in the vicinity including, but not limited to, navigation, fishing, shellfish harvest, pleasure boating, swimming, beach walking, picnicking and shoreline viewing and document potential impacts and mitigating measures. Impacts on these resources shall be considered in review of proposals and specific conditions to avoid or minimize impacts may be imposed.
- e. Marina and launch ramp proposals may be required to prepare a visual assessment of views from surrounding residential properties, public viewpoints and the view of the shore from the water surface.

**23.100.04.B.11 Tabular Regulations: Setbacks, Height and Open Space for Marinas and Launch Ramp Development**

Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in SMP 23.90.13 - Setback, Height and Open Space Standards for Shoreline Development.

**23.100.04.C Boating Facilities – Shoreline Area Regulations**

- 1. Urban: Marinas and launch ramps are permitted subject to policies and regulations of this Program.
- 2. Urban Resort: Marinas and launch ramps are permitted subject to policies and regulations of this Program.
- 3. Urban Conservancy: Launch ramps are permitted subject to policies and regulations of this Program. Marinas may be permitted as a conditional use.
- 4. Shoreline Residential: Marinas and launch ramps are permitted subject to policies and regulations of this Program.
- 5. Rural: Marinas and launch ramps are permitted subject to policies and regulations of this Program.
- 6. Resource: Marinas and launch ramps are permitted subject to policies and regulations of this Program.
- 7. Conservancy: Launch ramps are permitted subject to policies and regulations of this Program. Marinas may be permitted as a conditional use.

8. Natural: Marinas or launch ramps are prohibited; except that, primitive ramps to facilitate hand launching of small craft are permitted if materials and design are compatible with the site.
9. Aquatic:
  - a. Marinas and launch ramps are permitted ~~if such development is permitted in the abutting upland shoreline area designation~~, subject to the policies use and development regulations of the abutting upland shoreline area designation ~~and this Program~~.
  - b. Covered over-water structures may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water.

### **23.100.05 Commercial Use**

Commercial development in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9.

#### **23.100.05.A Commercial Use – Policies**

1. In securing shoreline locations [for commercial use](#), preference should be given first to water-dependent commercial uses, then to water-related<sub>u</sub> and water-enjoyment commercial uses.
2. Restoration of impaired shoreline ecological functions and processes should be encouraged as part of commercial development.
3. Commercial development should ensure visual compatibility with adjacent non-commercial properties.
4. Commercial uses located in the shoreline should provide public access in accordance with constitutional or other legal limitations unless such improvements are demonstrated to be infeasible or present hazards to life and property.

#### **23.100.05.B Commercial Use – Regulations**

##### **23.100.05.B.1 Allowed Use**

Commercial uses that result in no net loss of shoreline ecological functions and processes are allowed subject to the policies and regulations of SMP 23.90.03 and the specific criteria below:

- a. Water-dependent commercial uses shall be given preference over water-related and water-enjoyment commercial uses. Prior to approval of water-dependent uses, the Administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-dependent use.
- b. Water-related commercial uses may not be approved if they displace existing water-dependent uses. Prior to approval of a water-related commercial use, the Administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-related use.
- c. Water-enjoyment commercial uses may be not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use [identified](#) in a substantial development permit or other approval. Prior to approval of water-enjoyment uses, the Administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-enjoyment use.
- d. Nonwater-oriented commercial uses may be permitted where located on a site physically separated from the shoreline by another property in separate ownership or a public right-of-way such that access for water-oriented use is precluded, [provided that such conditions were lawfully established prior to the effective date of this Program](#). All other

nonwater-oriented commercial uses are prohibited in the shoreline unless the use provides significant public benefit with respect to the objectives of the Act and is:

- (1) part of a mixed use project that includes a water-oriented use; or
  - (2) proposed on a site where navigability is severely limited.
- e. When permitted, nonwater-oriented [commercial](#) uses shall provide access and/or restoration as follows:
- (1) Nonwater-oriented [commercial](#) uses shall provide public access in the form of unrestricted open space. The Administrator shall determine the amount of access in accordance with the provisions of SMP 23.90.08 on a case-by-case basis.
  - (2) If no water-oriented [commercial](#) uses are located on or adjacent to the water as part of ~~the a~~ mixed use development, eighty percent (80%) of the shoreline and associated buffers shall be [preserved or](#) restored to provide shoreline ecological functions that approximate the functions provided by the site in natural conditions.
  - (3) The requirement in SMP 23.100.05.B.1.e(1) and (2) may be modified when:
    - (a) The site is designated as a public access area by a shoreline public access plan, in which case public access consistent with that plan element shall be provided; or
    - (b) Specific findings are made demonstrating that the size of the parcel and the presence of adjacent uses preclude restoration of shoreline ecological functions. Where on-site restoration is infeasible, equivalent off-site restoration shall be provided consistent with the policies and regulations of this Program.
  - (4) [Where restoration is proposed.](#) ~~B~~uffers shall be designed as appropriate to protect shoreline resources based on a specific restoration plan and may differ from the standard critical area buffer dimensions provided in WCC 16.16, provided that the building envelope for the proposed nonwater-oriented use shall be based on current site conditions.
  - (5) [The requirements of this section shall not apply to those nonwater-oriented commercial uses located on a site physically separated from the shoreline where access to the land/water interface is precluded.](#)
- f. If water-oriented [commercial](#) uses are located on or adjacent to the water, the remaining undeveloped water frontage that is not devoted to water-dependent use shall be preserved ~~if~~ in a substantially undeveloped condition [until such time that an appropriate water-dependent use has been identified for the area](#). If the site has been previously altered by past development, the balance of the site may be reserved for future water-related use.

### 23.100.05.B.2 Recreation Facilities

Commercial recreation-oriented uses, including commercial resorts and rental campgrounds shall provide adequate access to water areas for their patrons or shall provide adequate on-site outdoor recreation facilities so that such resort or campground will neither be dependent on nor place undue burdens upon public access and recreational facilities.

**23.100.05.B.3 Access and Utilities**

New and expanded commercial development shall install or establish access roads of sufficient capacity and with appropriate improvements to provide vehicular and pedestrian access to the site. Utilities shall be adequate to serve the demands of the proposed uses.

**23.100.05.B.4 Over-water Structures**

- a. Only those portions of water-dependent commercial uses that require over-water facilities such as boat fuel stations shall be permitted to locate waterward of the OHWM, provided they are located on piling or other open-work structures.
- b. Nonwater-dependent commercial uses shall not be allowed over water except in limited instances where they are appurtenant to and necessary in support of water-dependent uses.

**23.100.05.B.5 Building Height**

- a. As mandated by the [Shoreline Management](#) Act (RCW 90.58.320), no permit may be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where this Program does not prohibit such development and only when overriding considerations of the public interest will be served.
- b. Lodging developments over 35 feet in height may be allowed in resort communities within the Urban Resort shoreline area designation, subject to the requirements of SMP 23.090.13.B.5. However, due to the potential for adverse impact upon adjacent uses and the community from such development, special consideration must be given to the following factors during review of such proposals:
  - (1) Urban services, including sanitary sewers, public water supply, fire protection, storm drainage, and police protection, must be provided at adequate levels to protect the public health, safety, and welfare.
  - (2) Circulation, parking areas, and outdoor storage or loading areas should be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas should be screened from open space areas by landscaping, [fences or similar](#) structures, or grade separation.
  - (3) Recreational needs of building clientele must be provided for through several on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases.

**23.100.05.B.6 Tabular Regulations: Setbacks, Height and Open Space for Commercial Development**

Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in SMP 23.90.13 - Setback, Height and Open Space Standards for Shoreline Development.

### 23.100.05.C Commercial Use – Shoreline Area Regulations

1. Urban: Water-oriented commercial use and development is permitted subject to policies and regulations of this Program. Nonwater-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in SMP 23.100.05.B.1.d.
2. Urban Resort: Water-oriented resort oriented commercial use and development is permitted subject to policies and regulations of this Program. ~~Examples of permitted uses are high-rise resorts or hotels, motels, restaurants and small-scale delicatessens, barber and beauty shops, sporting goods stores, bicycle rental, camera shops, book shops, and other water-oriented related uses.~~ Nonwater-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in SMP 23.100.05.B.1.d. Commercial uses allowed in this designation are permitted either by themselves or as part of a structure or development also containing residential uses, subject to policies and regulations of this Program.
3. Urban Conservancy: Low intensity water-oriented commercial use and development limited to resort, bed and breakfast, campgrounds and similar facilities ~~is~~ may be permitted as a conditional use. ~~Low intensity Nonwater-oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities~~ may be permitted as a conditional use subject to the criteria for such uses in SMP 23.100.05.B.1.d.
4. Shoreline Residential: Water-oriented commercial use and development is permitted subject to ~~a conditional use permit and compliance with~~ policies and regulations of this Program, ~~provided such use is part of a mixed use development where the primary use is residential.~~ Nonwater-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in SMP 23.100.05.B.1.d.
5. Rural: Water-oriented commercial use and development is permitted subject to policies and regulations of this Program. Nonwater-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in SMP 23.100.05.B.1.d.
6. Resource: Water-oriented commercial use and development related to natural resource products predominantly produced on site is permitted subject to policies and regulations of this Program. Nonwater-oriented commercial related to natural resource products predominantly produced on site may be permitted as a conditional use subject to the criteria for such uses in SMP 23.100.05.B.1.d.
7. Conservancy: Low intensity water-oriented commercial use and development limited to resort, bed and breakfast, campgrounds and similar facilities ~~is~~ may be permitted as a conditional use. Low intensity nonwater-oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use subject to the criteria for such uses in SMP 23.100.05.B.1.d.
8. Natural: Commercial use and development is prohibited.

9. Aquatic: Commercial use and development is prohibited, except that for water-dependent uses and appurtenant structures may be permitted subject to the use and development regulations of the abutting upland shoreline area designation.

**23.100.06 Flood Control Works and Instream Structures**

Flood control works and instream structures in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9.

**23.100.06.A Flood Control Works and Instream Structures – Policies****23.100.06.A.1 Purpose and Need**

- a. New or expanding development or uses in the shoreline, including subdivision of land, that would likely require structural flood control works within a stream, channel migration zone, or floodway should not be allowed.
- b. Flood control works and instream structures should be planned and designed to be compatible with appropriate multiple uses of stream resources over the long term, especially in shorelines of statewide significance.
- c. Flood control works should only be allowed in the shoreline if they are necessary to protect existing development and where non-structural flood hazard reduction measures are infeasible.
- d. Flood control works to protect existing development should be permitted only when the primary use being protected is consistent with this Program, and the works can be developed in a manner that is compatible with multiple use of streams and associated resources for the long term, including shoreline ecological functions, fish and wildlife management, and recreation.

**23.100.06.A.23 Design Considerations**

- a. Flood control works should incorporate native vegetation to enhance ecological functions, create a more natural appearance, improve ecological processes, and provide more flexibility for long term shoreline management. Such features include vegetated berms; vegetative stabilization including brush matting and buffer strips; and retention of existing trees, shrubs and grasses on stream banks.
- b. Flood control works and instream structures should be located, designed, constructed and maintained so their resultant effects on geo-hydraulic shoreline processes will not cause significant damage to other properties or valuable shoreline resources, and so that the physical integrity of the shoreline process corridor is maintained
- c. To minimize flood damages and to maintain natural resources associated with streams, overflow corridors and other alternatives to traditional bank levees, [dikes](#) [revetments](#) and/or [floodwater storage behind](#) dams should be considered. ["Tangent" \(setback\)](#), ["chord" diking](#) [Setback levees](#) and similar measures should be employed where they will result in lower flood peaks and velocities, and more effective conservation of resources than with high bank levees.
- d. Recognizing the large number of physical variables to be considered in properly locating and designing flood control works and instream structures, such as dams and weirs, and

the high probability that poorly located and inadequately designed works will fail and/or adversely affect properties and shore features, such works should be sited and designed consistent with appropriate engineering principles, ~~including guidelines of the Natural Resource Conservation Service and the U.S. Army Corps of Engineers and the Whatcom County Comprehensive Flood Hazard Management Plan~~, and WCC Title 17.

- e. Non-structural and non-regulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged as an alternative to structural flood control works and instream structures. Non-regulatory and non-structural methods may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.
- f. Design of flood control works should incorporate continued long term multiple use of shoreline resources by all appropriate user groups.
- g. Design of flood control works should provide access to public shorelines whenever possible, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, security problems, unmitigatable ecological impacts, unavoidable conflicts with proposed uses, or unreasonable cost. At a minimum, flood control works should not decrease public access or use potential of shorelines.

#### **23.100.06.A.3 Coordination**

- a. In cooperation with other applicable agencies and persons, the County should continue to develop long term, comprehensive flood hazard management plans, such as the Lower Nooksack River Comprehensive Flood Hazard Management Plan, to prevent needless flood damage, maintain the natural hydraulic capacity of floodways, and conserve valuable, limited resources such as fish, water, soil, and recreation and scenic areas.
- b. Planning and design of flood control works and instream structures should be consistent with and incorporate elements from applicable watershed management plans, ~~and~~ restoration plans and/or surface water management plans.

#### **23.100.06.B Flood Control Works and Instream Structures – Regulations**

##### **23.100.06.B.1 Purpose and Need**

- a. Flood control works shall be permitted when it is demonstrated by engineering and scientific evaluations that:
  - (1) they are necessary to protect health/safety and/or existing development; ~~and~~
  - (2) non-structural flood hazard reduction measures are infeasible; ~~and-~~
  - ~~(3) b-~~ Mmeasures are consistent with an adopted comprehensive flood hazard management plan that evaluates cumulative impacts to the watershed system.
- eb. New Fflood control works are prohibited on estuarine shores, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat

- enhancement or restoration.
- dc. New structural flood control works shall be placed landward of associated wetlands, and designated habitat conservation areas, except for works that improve ecological functions, such as wetland restoration.
- ed. ~~Dikes-Revetments~~ shall not be placed waterward of the OHWM except for weirs and current deflectors where necessary to protect bridges and roads.
- fe. ~~Dikes-Revetments~~ and levees shall be designed consistent with appropriate engineering standards and the Whatcom County Comprehensive Flood Hazard Mitigation Plan, WCC Title 17, and WCC 16.16 and may be limited to that hHeight shall be limited to the minimum required to protect the adjacent lands from the designed predictable annual flood and unless it can be demonstrated through hydraulic modeling that the a larger height will not adversely impact shoreline ecological functions and processes.
- gf. Where flood control works are necessary, ~~chord diking shall be used instead of continuous bank levees unless engineering and scientific studies demonstrate that other management approaches and/or techniques would provide equal or greater protection of shoreline ecological functions or processes. Such works they~~ shall be setback at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. ~~Dikes-Levees~~ that have already cut off point bars, should be relocated where feasible to lower flood stages and current velocities.
- hg. Where ~~dikes-levees~~ are necessary to protect floodway fringe areas, ~~tangent diking shall be used over bank levees unless engineering and scientific studies demonstrate that other management approaches and/or techniques would provide equal or greater protection of they shall be located and designed to protect~~ shoreline ecological functions ~~or-and~~ processes. Such works should be located near the tangent to outside meander bends so that the stream can maintain normal meander progression and utilize most of its natural flood water storage capacity.
- ih. Channelization projects that damage fish and wildlife resources, degrade recreation and aesthetic resources, or result in high flood stages and velocities shall not be permitted when feasible alternatives are available.
- ji. No motor vehicles, appliances, other similar structures or parts thereof; nor structure demolition debris; nor any other solid waste shall be used for flood control works.
- kj. Cut-and-fill slopes and back-filled areas shall be stabilized with brush matting and buffer strips and revegetated with native grasses, shrubs, or trees to prevent loss of shoreline ecological functions and processes.
- lk. Flood control works and instream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The County may require reasonable conditions to achieve this objective such as setbacks, buffers, or storage basins.
- ml. Natural instream features such as snags, uprooted trees, or stumps should be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages.

- [am.](#) Flood control works and instream structures shall allow for normal ground water movement and surface runoff.
- [en.](#) Flood control works and instream structures shall preserve valuable recreation resources and aesthetic values such as point and channel bars, islands, and braided banks.

**23.100.06.B.2 Design and Operation**

- a. The County shall require professionally engineered design of any proposed flood control works or instream structure.
- b. The design of all dams and the suitability of the proposed site for dam construction shall be certified by a professional engineer licensed in the State of Washington. The professional design shall include a maintenance schedule.
- c. For all dams that are not regulated by either the Federal Energy Regulatory Commission licensing procedures, or the State Department of Ecology reservoir permit requirements, a maintenance agreement and construction bond for one-hundred-fifty percent (150%) of the cost of the structure shall be filed with the Director of the Public Works Department prior to construction. The maintenance agreement shall specify who is responsible for maintenance, shall incorporate the maintenance schedule specified by the design engineer, shall require annual inspections by a Civil Engineer licensed in the State of Washington and shall stipulate abandonment procedures which shall include, where appropriate, provisions for site restoration.
- d. No flood control works or instream structure may commence without the developer having obtained all applicable federal, state, and local permits and approvals, including but not limited to an HPA from the State Department of Fish and Wildlife.

**23.100.06.C Flood Control Works and Instream Structures – Shoreline Area Regulations**

- 1. Urban: Flood control works and instream structures are permitted subject to policies and regulations of this Program.
- 2. Urban Resort: Flood control works and instream structures are permitted subject to policies and regulations of this Program.
- 3. Urban Conservancy: Flood control works and instream structures are permitted subject to policies and regulations of this Program; provided that, channelization or dams for flood control are prohibited.
- 4. Shoreline Residential: Flood control works and instream structures are permitted subject to policies and regulations of this Program.
- 5. Rural: Flood control works and instream structures are permitted subject to policies and regulations of this Program; provided that, channelization or dams for flood control may be permitted as a conditional use.

6. Resource: Flood control works and instream structures are permitted subject to policies and regulations of this Program; provided that, channelization or dams for flood control may be permitted as a conditional use.
7. Conservancy: Flood control works and instream structures are permitted subject to policies and regulations; provided that, channelization or dams for flood control are prohibited.
8. Natural: Flood control works and instream structures are prohibited except for normal maintenance and repair.
9. Aquatic: Flood control works [and instream structures](#) are permitted subject to the use and development regulations of the abutting upland shoreline area designation.

### **23.100.07 Industrial and Port Development**

Industrial and port development in shoreline areas outside of the Cherry Point Management Area shall be subject to the policies and regulations of this Section and Chapter 9.

Cherry Point Management Area: All industrial and port development in shorelines within the Cherry Point Management Area as defined in Chapter 11 shall be subject to the policies and regulations found in SMP 23.100.17 instead of the policies and regulations of this section, unless otherwise specified therein.

#### **23.100.07.A Industrial and Port Development – Policies**

1. Shoreline sites particularly suitable for development such as deep water harbors with access to adequate rail, highway and utility systems should be reserved for ~~port and~~ water-dependent or water-related industrial and port development.
2. In order to provide adequate shoreline for future water-dependent and water-related uses, industrial or port development at deep water sites should be limited to those uses that produce the greatest long term economic base. Industrial and port development that is consistent with this Program should be protected from encroachment or interference by incompatible uses with less stringent siting requirements, such as residential or commercial uses. Mixed use development, including nonwater-dependent uses, should only be allowed when they include and support water-dependent uses.
3. Regional needs for port facilities should be carefully considered in reviewing new port proposals and in allocating shorelines for such development. Such reviews or allocations should be coordinated with port districts, adjacent counties and cities, and the State. Existing, officially designated State Harbor Areas should be used for new port development to the maximum extent whenever possible.
4. Multiple use of industrial and port facilities is encouraged to limit duplicative facilities and reduce adverse impacts. Multiple use should be implemented in the following manner:
  - a. Cooperative use of piers, cargo handling, storage, parking and other accessory facilities among private or public entities should be required in industrial or port facilities whenever feasible. New facilities for water-dependent uses should be allowed only after assessment of the potential for shared use of existing facilities.
  - b. Industrial and port developments should provide opportunities for physical and/or visual public shoreline access ~~in accordance with as provided in~~ the public access policies, including recreational use of undeveloped shorelines not needed for port or industry operations; provided that, such uses are safely compatible with facility operations.
5. Industrial and port development in the shoreline should be located and designed to avoid significant adverse impacts to other shoreline uses, resources, and values, including shoreline geomorphic processes, water quality, fish and wildlife habitat, commercial aquaculture, and the aquatic food chain.

6. Restoration of impaired shoreline ecological functions and processes should be encouraged as part of industrial and port development.

**23.100.07.B Industrial and Port Development – Regulations**

**23.100.07.B.1 Purpose and Need**

- a1. Water-dependent industrial and port uses designed, developed and operated consistent with the policies and regulations of this Program shall be given preference over all other uses on the shoreline.
- b2. All harbor areas, established pursuant to Article XV of the Washington State Constitution, that have reasonable commercial navigational accessibility and necessary support facilities such as transportation shall be reserved for water-dependent and water-related uses that are associated with commercial navigation unless a specific finding is made in the permit review process that adequate shoreline is reserved for navigation use elsewhere in the affected harbor area.
- c3. Industrial and port uses that result in no net loss of shoreline ecological functions and processes are allowed subject to the policies and regulations of SMP 23.90.03 and the specific criteria below:
- (1)a- Water-dependent industrial and port uses shall be given preference over water-related and water-enjoyment industrial and port uses. Prior to approval of water-dependent industrial or port uses, the Administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water-dependent use.
- (2)b- Water-related industrial and port uses may not be approved if they displace existing water-dependent uses. Prior to approval of water-related industrial or port uses, the Administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water-related use.
- (3)e- Water-enjoyment industrial and port uses may be not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. Prior to approval of water-enjoyment industrial or port uses, the Administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water-enjoyment use.
- (4)e- Nonwater-oriented industrial and port uses may be permitted where located on a site physically separated from the shoreline by another property in separate ownership or a public right-of-way such that access for water-oriented use is precluded. All other nonwater-oriented industrial and port uses are prohibited in the shoreline unless the use provides significant public benefit with respect to the objectives of the Act and is:
- (a1) part of a mixed use project that includes a water-oriented use; or

(b2) proposed on a site where navigability is severely limited.

(5)e. When permitted, nonwater-oriented [industrial and port](#) uses shall provide access and/or restoration as follows:

(a4) Nonwater-oriented [industrial and port](#) uses shall provide public access in the form of unrestricted open space. The Administrator shall determine the amount of required access in accordance with the provisions of SMP 23.90.08 on a case-by-case basis.

(b2) If no water-oriented uses are located on or adjacent to the water as part of ~~the a~~ mixed use development, eighty percent (80%) of the shoreline and associated buffers shall be restored to provide shoreline ecological functions that approximate the functions provided by the site in natural conditions.

(c3) The requirement in SMP 23.100.07.B.1.c(5)(a) and (b) may be modified when:

(ia) The site is designated as a public access area by a shoreline public access plan, in which case public access consistent with that plan element shall be provided; or

(iib) Specific findings are made demonstrating that the size of the parcel and the presence of adjacent uses preclude restoration of shoreline ecological functions. Where on-site restoration is infeasible, equivalent off-site restoration shall be provided consistent with the policies and regulations of this Program.

(d4) Buffers shall be designed as appropriate to protect shoreline resources based on a specific restoration plan and may differ from the standard critical area buffer dimensions provided in WCC 16.16, provided that the building envelope for the proposed nonwater-oriented use shall be based on current site conditions.

(e5) If water-oriented uses are located on or adjacent to the water, the remaining undeveloped water frontage that is not devoted to water-dependent use shall be preserved if in a substantially unaltered condition. If the site has been previously altered by past development, the balance of the site may be reserved for future water-related use.

(f) [The requirements of this section shall not apply to those nonwater-oriented industrial or port uses located on a site physically separated from the shoreline where access to the land/water interface is precluded.](#)

(6)f. Interim use of facilities approved and/or permitted for water-dependent use for nonwater-dependent uses may be approved by a conditional use permit under the following conditions:

(a4) A specific occupancy plan has been approved that allows interim uses for a specific period while the market for water-dependent uses is being

developed, and the proposed interim use is consistent with the occupancy plan.

- (b2) The period of interim lease or commitment of the space shall not exceed five (5) years. At the end of five (5) years, a new application for interim use shall be submitted.
- (c3) A good faith effort to obtain water-dependent uses has been made and suitable tenants were not found. The period of the search for water-dependent uses, the notice of availability, listing or advertising employed, and any inquiries received shall be documented.
- (d4) No permanent improvements will be made to the space that requires more than five (5) years of occupancy to repay the investment. No permanent improvements will be made that will reduce the suitability of the space for water-dependent use.

d4. Required setback areas shall not be used for storage of industrial equipment or materials, or waste disposal, but may be used for outdoor recreation. Portions of such setbacks may be used for light motor vehicle parking if design of such facilities is consistent with this Program and critical area regulations in WCC 16.16.

e5. Disposal or storage of solid or other industrial wastes is not permitted on shorelines; except that, liquid waste treatment facilities may be permitted as a conditional use if it is demonstrated that a shoreline location is required or where it is demonstrated that an alternative site outside of the shoreline is not feasible; and further excepted, that land application of waters used in the processing of fruits and vegetables within the shoreline is permitted as a conditional use.

f6. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in SMP 23.90.13 – Setback, Height and Open Space Standards for Shoreline Development.

#### **23.100.07.B.42 Log Rafts and Storage**

- a. Storage of logs is prohibited in water bodies, except where an upland location is not feasible, provided that no new log storage may be allowed in marine or estuarine waters or tidelands.
- b. Log rafting shall be allowed in cases where overland transportation of logs would produce unacceptable transportation impacts, or for transportation of logs from islands or from other locations in Puget Sound. Areas for assembly and disassembly of log rafts shall meet all standards below for log storage.
- c. Offshore log storage shall only be allowed on a temporary basis, and should be located where natural tidal or current flushing and water circulation are adequate to disperse polluting wastes. ~~Logs should only be dumped, stored, or rafted where depths are sufficient to prevent grounding.~~

- ~~d. Existing in-water log storage facilities in habitats used by federally listed threatened or endangered species shall be reevaluated if use is discontinued for two (2) years or more or if substantial repair or reconstruction is required.~~
- ed. Log rafting or storage operations are required to implement the following, whenever applicable:
- (1) Logs shall not be dumped, stored, or rafted where grounding will occur.
  - (2) Easy let-down devices shall be provided for placing logs in water.
  - (3) Bark and wood debris controls and disposal shall be implemented at log dumps, raft building areas, and mill-side handling zones. Accumulations of bark and other debris on the land and docks around dump sites shall be fully contained and kept out of the water.
  - (4) Where water depths will permit the floating of bundled logs, they shall be secured in bundles on land before being placed in the water. Bundles shall not be broken again except on land or at mill sites.
- fe. Impervious pavement is required for log yards where the wet season water table is less than 4 feet below surface level in order to reduce waste buildup and impacts on ground water and surface water.
- gf. Stormwater management facilities shall be provided to protect the quality of affected waters.
- hg. Log storage facilities shall be located upland and properly sited to avoid fish and wildlife habitat conservation areas.
- ih. Log storage facilities must be sited to avoid and minimize the need for dredging in order to accommodate new barging activities at the site.
- ji. Log storage facilities shall be located in existing developed areas to the greatest extent feasible. If a new log storage facility is proposed along an undeveloped shoreline, an alternatives analysis shall be required.
- kj. A berm must be located around the outer edge of the upland sort surface using rocks, or other suitable materials to prevent loss of wood debris into the water.
- lk. Log booming shall only be allowed offshore in sub-tidal waters in order to maintain unimpeded nearshore migration corridors for juvenile salmonids and to minimize shading impacts from log rafts. Log booming activities include the placement in or removal of logs and log bundles from the water, and the assembly and disassembly rafts for water-borne transportation.
- ~~m. Log booming areas should be located only where natural tidal or current flushing and circulatory action is adequate to disperse polluting wastes~~
- ~~n. Water surface or shoreline log storage and booming operations are required to implement the following, whenever applicable:~~

- le. A Debris Management Plan describing the removal and disposal of wood waste must be developed and submitted to the County. Debris monitoring reports shall be provided, where stipulated.
- mp. Existing in-water log storage and log booming facilities in critical habitats utilized by threatened or endangered species classified under ESA shall be reevaluated if use is discontinued for two (2) years or more, or if substantial repair or reconstruction is required. The evaluation shall include an alternatives analysis in order to determine if logs can be stored upland and out of the water, or, if the site should be used for other purposes that would have lesser impacts on ESA-listed species. The alternatives analysis shall include evaluation of the potential for moving all, or portions of, log storage and booming to uplands.

### **23.100.07.B.32 Hydropower Development**

- a. Hydropower facilities shall be located, designed, and operated to minimize impacts to fish and wildlife resources including spawning, nesting and rearing habitat and migratory routes, and critical areas. Mitigation measures to achieve no net loss of shoreline ecological functions and processes shall be implemented in accordance with SMP 23.90.03.
- b. Hydropower facilities shall be located, designed and operated to protect and minimize impacts to geo-hydraulic processes; waterfalls; erosion and accretion shoreforms; agricultural land; scenic vistas; recreation sites; and sites having significant historical, cultural, scientific or educational value.
- c. Hydropower facilities shall accommodate public access to, and multiple use of, the shoreline.
- d. For all dams that are not regulated by either the Federal Energy Regulatory Commission licensing procedures, or the State Department of Ecology reservoir permit requirements, a maintenance agreement and construction bond for one-hundred-fifty percent (150%) of the cost of the structure shall be filed with the Director of the Public Works Department prior to construction. The maintenance agreement shall specify who is responsible for maintenance, shall incorporate the maintenance schedule specified by the design engineer, shall require annual inspections by a Civil Engineer licensed in the State of Washington and shall stipulate abandonment procedures which shall include, where appropriate, provisions for site restoration.
- e. The design of all dams and the suitability of the proposed site for dam construction shall be certified by a professional engineer licensed in the State of Washington. The professional design shall include a maintenance schedule.

### **23.100.07.C Industrial and Port Development – Shoreline Area Regulations**

- 1. Urban: Water-oriented industrial and port use and development are permitted subject to policies and regulations of this Program. Nonwater-oriented industrial or port use and development may be permitted as a conditional use, subject to criteria for such uses in SMP 23.100.07.B.1.c(4). [Dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.](#)

2. Urban Resort: ~~Port development limited to passenger terminals is permitted. Dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use. All other~~ industrial or port use and development is prohibited; ~~except for passenger terminals and dams, diversion, and tailrace structures and accessory development for hydroelectric power generation, which may be permitted as a conditional use.~~
3. Urban Conservancy: Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.
4. Shoreline Residential: Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.
5. Rural:
  - a. Water-oriented port development and industrial facilities for processing, manufacturing, and storage of finished or semi-finished goods are permitted.
  - b. Nonwater-oriented industrial or port use and development may be permitted as a conditional use, subject to criteria for such uses in SMP 23.100.07.B.1.c(4).
  - c. Dams, diversion and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.
6. Resource:
  - a. Water-oriented facilities for processing, manufacturing, and storage of ~~natural resource agricultural or forestry~~ products are permitted subject to the policies and regulations of this Program.
  - b. Nonwater-oriented facilities for processing, manufacturing and storage of ~~natural resource agricultural or forestry~~ products, ~~subject to criteria for such uses in SMP 23.100.07.B.1.c(4)~~, and other water-oriented industrial or port use and development may be permitted as a conditional use.
  - c. Dams, diversion and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.
  - d. Other nonwater-oriented industrial or port use and development are prohibited.
7. Conservancy: Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.
8. Natural: Industrial or port use and development are prohibited.

9. Aquatic: Water-dependent industrial or port use and development are permitted, subject to the use and development regulations of the abutting upland shoreline area designation. Log storage may be permitted as a conditional use.

## 23.100.08 Mining

Mining in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9.<sup>28</sup>

The removal of gravel for flood management purposes shall be regulated in accordance with the policies and regulations for Flood Control Works and Instream Structures under SMP 23.100.06.

### 23.100.08.A Mining – Policies

1. ~~New mining and associated activities shall be designed and conducted to result in no net loss of shoreline ecological functions and processes in accordance with SMP 23.90.03. Mining should not be approved where it could interfere with shoreline ecological functions or processes or cause irreparable damage to shoreline resources or features such as accretion shoreforms. Application of this standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. The determination of whether there will be no net loss of ecological function shall be based on an evaluation of the reclamation plan required for the site and shall consider impacts on ecological functions during operation. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.~~
2. Mining should not be located on shorelines where unavoidable adverse impacts on other users or resources ~~taken~~ together equal or outweigh the benefits from mining.
32. Mining should not interfere with public recreation on the shoreline.
43. Mining should be located and operated so as to provide long term protection of water quality, fish and wildlife, and ~~fish and wildlife their various~~ habitats.
54. Mining, particularly surface or strip mining, should provide for timely restoration of disturbed areas to a biologically productive, ~~attractive~~ semi-natural, or other useful condition through a reclamation process consistent with regulations administered by the Department of Natural Resources and other applicable County standards.
65. Mining of marine and lake shores or accretional shoreforms, such as point bars, that have a high value for recreation or as fish or wildlife habitat should generally not be permitted.
76. Mining should only be permitted on accretion point and channel bars where appropriate studies and detailed operation plans demonstrate that:
  - a. Fish habitat, upland habitat and water quality will not be significantly ~~impacted~~harmed; and
  - b. The operation will not adversely affect geo-hydraulic processes, channel alignment, nor increase bank erosion or flood damages.

---

<sup>28</sup> ~~WAC 173-26-241(3)(h).~~

87. Mining operations should be located, designed, and managed so that other appropriate uses are not subjected to substantial or unnecessary adverse impacts from noise, dust or other effects of the operation. The operator may be required to implement measures such as buffers, limited hours, or other mitigating measures for the purpose of minimizing adverse proximity impacts.

### 23.100.08.B Mining – Regulations

1. New mining and associated activities shall be designed and conducted to result in no net loss of shoreline ecological functions and processes in accordance with SMP 23.90.03. Mining should not be approved where it could interfere with shoreline ecological functions or processes or cause irreparable damage to shoreline resources or features such as accretion shoreforms. Application of this standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. The determination of whether there will be no net loss of ecological function shall be based on an evaluation of the reclamation plan required for the site and shall consider impacts on ecological functions during operation. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.
2. Mining shall not be permitted in critical areas except as a part of an approved flood control program or in conjunction with a habitat restoration or enhancement plan; provided that such activities may be permitted where demonstrated to be water-dependent. A determination of water-dependency shall be based on evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on analysis or studies prepared for purposes of GMA designations, be integrated with any relevant environmental review conducted under SEPA (RCW 43.21C), or otherwise be shown in a manner consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a).
23. Application for permits for mining operations shall be accompanied by operation plans, reclamation plans and analysis of environmental impacts in accordance with ~~compliance~~ with WCC 20.73.700. Such information shall provide sufficient documentation to make a determination as to whether the project will result in net loss of shoreline ecological functions and processes during the course of mining and after reclamation. Creation, restoration, or enhancement of habitat for priority species and the future productivity of the site may be considered in determining no net loss of ecological functions.<sup>29</sup>
34. The applicant/proponent must show that mining is dependent on a shoreline location, and that demand cannot reasonably be accommodated in operations outside shoreline jurisdiction. Information required to meet this criteria shall evaluate geologic factors such as the distribution and availability of mineral resources as well as evaluation of need for such mineral resources, economic, transportation, and land use factors.
5. Where a lawfully established mining operation has resulted in the creation of a lake(s) greater than 20-acres and such lake(s) is subject to the provisions of the Shoreline Management Program and the Act, such lake(s) shall be given a Resource shoreline

<sup>29</sup> ~~WAC 173-26-241(3)(h)(iii)(A)~~

area designation. Notwithstanding any other applicable regulations, such mining operations shall be permitted to continue and may be expanded subject to approval of a shoreline conditional use permit.

645. Reclamation Plan

- a. A reclamation plan that complies with the format and detailed minimum standards of RCW 78.44 shall be included with any shoreline permit application for mining.
- b. ~~In reviewing reclamation plans together with permit applications, the Administrator shall determine whether or not the plan is also consistent with this Program and other County regulations. An inconsistent~~ reclamation plan that is inconsistent with this Program or the Act shall constitute sufficient grounds for denial of a shoreline permit: provided that, the applicant/proponent shall be given reasonable opportunity to revise the plan.

756. In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, the County shall require compliance with this subsection.

867. Marine and Lake Shores

- a. Mining of, including but not limited to, sand, gravel, cobbles, or boulders from any marine or lake shore is prohibited.
- b. Mining of quarry rock may be permitted as a conditional use; provided that, shore processes and resources are not adversely affected.

978. Rivers and Streams

Scalping of accretional point bars may be permitted as a conditional use for flood control purposes and market demands under the following conditions:

- a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole. Specific studies accompanying the application shall demonstrate that no adverse flood, erosion, or other environmental impacts occur either upstream or downstream of extraction sites. Mining extraction amounts, rates, timing, and locations shall be based on a scientifically determined sediment budget adjusted periodically according to data provided by a regular monitoring plan.
- b. Aggregate washing and ponding of waste water are prohibited in floodways.
- c. Storage within the FEMA Floodway is prohibited in the shoreline during the flood season (November 1 through March 1); provided that, temporary stockpiling is permitted during working hours if all such materials are removed from the floodway at the end of each day's operation.
- d. All applicable permits and approvals, including but not limited to, Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife and a Whatcom County

Flood Permit, shall be obtained and all applicable provisions attached thereto shall be adhered to.

- e. Mining within a designated channel migration zone may be approved as a conditional use.

1089. Open pit mining may be permitted in a floodplain provided that all of the following criteria are met:

- a. All pits and other operations should be located outside of the channel migration zone.
- b. All pits of each operation should be located and excavated to a depth so as to function as a self-flushing chain of lakes whenever the pits are overtopped by floods in order to prevent eutrophication and fish entrapment.
- c. The entire operation should be sized and designed so that neither additional bank erosion, catastrophic changes in channel location, nor adverse impact harm to fish resources or water quality will likely result in the long term.
- d. The scale and mode of operation will not have adverse impacts on fish resources, water quality, and recreation resources, nor adversely impacts a stream's natural capacity to erode, shift channels, accrete, and /or flood.
- e. All equipment, works and structures are designed to withstand flooding without becoming a hazard in themselves nor causing adverse effects on shore features, without the necessity for shore stabilization structures.
- f. All structures or equipment which are not flood-proof shall be located outside of the 100-year floodplain during the flood season (November 1 through March 1); provided that, such equipment is permitted during daily operations.

9110. Overburden

- a. Overburden or other mining spoil or non-putrescible solid wastes shall be disposed of in an appropriate manner to protect shoreline ecological functions and processes, other uses, and aesthetic values.
- ~~b. Disposal of excess topsoil not necessary for reclamation purposes and having value for agriculture or other beneficial uses shall preclude its future utilization.~~
- eb. Overburden or mining spoil on shorelines shall comply with landfill policies and regulations of SMP 23.90.10.

40112. Surface Oil, Coal Bed or Gas Drilling: As provided in the Act (RCW 90.58.160), surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca waterward from OHWM and on all lands within 1,000 feet landward there from. Coal bed drilling is also prohibited.

#### **23.100.08.C Mining – Shoreline Area Regulations**

1. Urban: Mining is prohibited.
2. Urban Resort: Mining is prohibited.
3. Urban Conservancy: Mining is prohibited.
4. Shoreline Residential: Mining is prohibited.
5. Rural: Mining may be permitted as a conditional use subject to policies and regulations of this Program.
6. Resource: Mining may be permitted as a conditional use subject to policies and regulations of this Program.
7. Conservancy: Mining may be permitted as a conditional use subject to policies and regulations of this Program.
8. Natural: Mining is prohibited.
9. Aquatic: Mining is prohibited, except that accretional bar scalping in streams may be permitted as a conditional use subject to policies and regulations of this Program; provided that upon approval by the County and Ecology of a sediment management plan component for a mutually designated reach of river, including incorporating the findings of a Programmatic Environmental Impact Statement, the conditional use requirement will no longer be in effect unless mutually agreed to in said management plan.

**23.100.09 Moorage: Docks, Piers and Mooring Buoys**

Moorage including docks, piers and mooring buoys in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9. Shared moorage with more than four (4) berths and boat launching facilities are regulated under SMP 23.100.04, Boating Facilities: Marinas and Launch Ramps.

**23.100.09.A Moorage: Docks, Piers and Mooring Buoys – Policies**

1. Moorage associated with a single family residence is considered a water-dependent use provided that it is designed and used as a facility to access watercraft, and other moorage facilities are not available or feasible. Moorage for water-related and water-enjoyment uses or shared moorage for multifamily use should be allowed as part of a mixed use development or where it provides public access.<sup>99</sup>
2. New moorage, excluding docks accessory to single family residences, should be permitted only when the applicant/proponent has demonstrated that a specific need exists to support the intended water-dependent or public access use.
3. As an alternative to continued proliferation of individual private moorage, mooring buoys are preferred over docks or floats. Shared moorage facilities are preferred over single-user moorage where feasible, especially where water use conflicts exist or are predictable. New subdivisions of more than two (2) lots and new multifamily development of more than two (2) dwelling units should provide shared moorage.
4. Docks, piers and mooring buoys, including those accessory to single family residences, should avoid locations where they will adversely impact shoreline ecological functions or processes, including currents and littoral drift.
5. Moorage should be spaced and oriented ~~perpendicular to shore~~ in a manner that minimizes hazards and obstructions to public navigation rights and corollary rights thereto such as, but not limited to, fishing, swimming and pleasure boating, as well as private riparian rights of adjacent land owners.
6. Moorage should be restricted to the minimum size necessary to meet the needs of the proposed ~~water-dependent~~ use. The length, width and height of piers and docks should be no greater than that required for safety and practicality for the primary use.
7. Pile supports are preferred over fills because piles do not displace water surface and intertidal or aquatic habitat and are removable and thus more flexible in terms of long term use patterns. Floats may be less desirable than pile structures where aquatic habitat or littoral drift are significant.
8. The use of buoys for small craft moorage is preferred over pile or float structures because of lesser long term impact on shore features and users; moorage buoys should be placed as close to shore as possible to minimize obstruction to navigation.

---

<sup>99</sup> ~~See WAC 173-26-231(3)(b)~~

9. Shoreline resources [and water quality](#) should be protected from overuse by boaters living on vessels (live aboards). [Boaters living on vessels are restricted to established marinas with facilities to address waste handling and other sanitary services.](#)
10. Vessels should be restricted from extended mooring on waters of the state unless [authorization a lease or permission](#) is obtained from the DNR and impacts to navigation and public access are mitigated.
4011. Piers and docks should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.
4412. New pier and dock development should be designed so as not to interfere with lawful public access to or use of shorelines. Developers of new piers and shared moorage should be encouraged to provide physical or visual public access to shorelines whenever safe and compatible with the primary use and shore features.

### **23.100.09.B Moorage: Docks, Piers and Mooring Buoys – Regulations**

1. Shared moorage to serve new development shall be limited to the amount of moorage needed to serve lots with water frontage; provided that, a limited number of upland lots may also be accommodated. Applications for shared moorage shall demonstrate that mooring buoys are not feasible prior to approval of dock moorage. Shared moorage proposed to be leased to upland property owners shall be reviewed as a marina.
2. Private recreational moorage for individual lots is permitted in existing subdivisions approved on or before January 28, 1993, only where shared moorage has not already been developed. Prior to development of a new dock for a single residential lot, the applicant/proponent shall demonstrate that:
  - a. Existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for use;
  - b. On marine shorelines, alternative moorage, such as mooring buoys [or a dock sized to accommodate a tender to provide access in conjunction with a mooring buoy](#), are not adequate or feasible, ~~including a dock sized to accommodate a tender to provide access in conjunction with a mooring buoy~~; and
  - c. The applicant/proponent has contacted abutting property owners and none have indicated a willingness to share an existing dock or develop a shared moorage in conjunction with the applicant/proponent.
  - d. If allowed, only one private dock shall be permitted on a shoreline residential lot.
3. Shared moorage shall be required in accordance with the following to prevent the proliferation of moorage facilities:
  - a. Shared moorage shall be provided for all new residential developments of more than two (2) dwelling units. New subdivisions shall contain a restriction on the face of the plat prohibiting individual docks. A site for shared moorage should be owned in undivided interest by property owners within the subdivision. Shared moorage facilities shall be available to property owners in the subdivision for

community access and may be required to provide public access depending on the scale of the facility. If shared moorage is provided, the applicant/proponent shall file at the time of plat recordation a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:

- (1) Apportionment of construction and maintenance expenses;
  - (2) Easements and liability agreements; and
  - (3) Use restrictions.
- b. On marine shorelines a dock or pier may be approved only if it is not feasible to provide mooring buoys with an adequate landing area or a dock sized to accommodate tenders.
- c. Where a multifamily residential development, camping club or subdivision development provides shared moorage, space for the number of waterfront lots or dwelling units may be provided with an additional provision for sites without water frontage up to a ratio of 1.25 moorage spaces per total lots or units.
- d. Prior to issuing a permit for shared moorage, a proponent shall file with the Whatcom County Auditor a legally enforceable joint use agreement that at minimum, addresses the following:
- (1) Apportionment of construction and maintenance expenses;
  - (2) Easements and liability agreements; and
  - (3) Use restrictions.
4. Commercial docks shall be permitted only for water-dependent uses, and only if the applicant/proponent demonstrates that existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for the proposed water-dependent use.
5. Private moorage for float planes may be permitted as a conditional use where construction will not adversely affect shoreline functions or processes, including wildlife use. Ecological restoration may be required to compensate for the greater intensity of activity associated with the use.
6. ~~New and substantially expanded p~~Piers and docks shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions of a pier or dock, decking and other components that may come in contact with water shall be approved by applicable state agencies for use in water ~~to avoid adverse effects on water quality or aquatic plants and animals in the long term for both submerged portions of the dock and decking and other components~~ to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Piers and docks in lakes providing a public water supply shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete or steel.

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. Single family docks and floats shall not exceed 40 feet in length nor exceed 3 feet in height both measured from the OHWM. 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, 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. Materials that will allow light to pass through the deck may be required where width exceeds 4 feet.
  - b. Dock surfaces designed to allow 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](#) ~~perpendicular to the shoreline~~ to the maximum extent feasible.
9. Private docks shall not encroach into the required sideyard setbacks for residential development (both onshore and offshore); provided that, a shared moorage may be located adjacent to or upon a side property line of the affected properties upon filing of an easement agreement or other legal instrument by the affected property owners.

10. Dock and Pier Design
  - a. Piers and docks shall use pile supports unless engineering studies demonstrate that pile supports are insufficient to ensure public safety. Riprapped or bulkheaded fills may be approved only as a conditional use and only when demonstrated that no feasible alternative is available. Mitigation shall be provided to ensure no net loss of shoreline ecological functions and processes.
  - b. Approaches to piers and docks shall use piers or other structures to span the entire upper foreshore to the point of intersection with stable upland soils and shall be design to avoid interference with littoral drift or wave refraction. Limited fill or excavation may be allowed landward of the OHWM to match the upland with the elevation of the pier or dock.
  - c. Pile spacing shall be the maximum feasible to minimize shading and avoid a "wall" effect that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment.
  - d. Offshore and foreshore pile structures shall allow for continuity of hydraulic energy patterns, unless specifically designed to reduce wave impact on shores.
11. Moorage buoys shall be placed at a distance specified by the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources, and the U.S. Coast Guard to balance the goals of avoiding nearshore habitat and minimizing obstruction to navigation. Anchors and other design features shall meet Washington Department of Fish and Wildlife standards.
12. A covered moorage accessory to a single family pier or dock, not accessory to a marina, shall have no walls other than an open structural framework to support a roof and shall not cover more than 200 square feet nor exceed 15 feet in height above OHWM. Roof materials shall be translucent, or at least fifty percent (50%) clear skylights.
13. Commercial covered moorage may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be [the minimum](#) necessary over water, including demonstration that adequate upland sites are not feasible.
14. No private or shared moorage may be constructed to within 200 feet of OHWM on the opposite shore of any lake or semi-enclosed body of water such as a bay, cove, or natural channel. This restriction shall not apply within marinas, dredged canal systems or approved marina-home developments.
15. If a dock is provided with railing, such railing shall not exceed 36 inches in height and shall be an open framework that does not unreasonably interfere with shoreline views of adjoining properties or lawful use of water surfaces.
16. Water supply, sewage disposal and disposal of non-hazardous materials associated with activities on docks and piers shall conform to applicable health standards.

17. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
18. Moorage facilities shall be constructed and maintained so that no part of a facility creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.
19. No pier ~~or, dock, or watercraft or houseboat moored thereto~~ shall be used for a residence.
20. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable containers when provided with secondary containment.
21. Public access facilities shall be provided in accordance with policies and regulations in SMP 23.90.08.

**23.100.09.C Moorage: Docks, Piers and Mooring Buoys – Shoreline Area Regulations**

1. Urban: Private and shared moorage are permitted subject to policies and regulations of this Program. Public, commercial and industrial moorage, including expansion of existing piers, and covered moorage or floatplane moorage accessory to a permitted moorage may be permitted as a conditional use.
2. Urban Resort: Private, shared and public moorage, and covered moorage or floatplane moorage accessory to a permitted moorage may be permitted as a conditional use subject to the policies and regulations of this Program. Commercial moorage is prohibited, except piers serving small passenger vessels may be permitted as a conditional use. Industrial moorage is prohibited.
3. Urban Conservancy: Private and shared moorage on non-marine shorelines are permitted subject to policies and regulations of this Program. Private and shared moorage on marine shorelines, other than constructed marinas or canals, may be permitted as a conditional use. Public and commercial moorage, including the expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial and covered moorage are prohibited.
4. Shoreline Residential: Private and shared moorage are permitted subject to policies and regulations of this Program. Public and commercial moorage, including expansion of existing piers, and covered moorage or floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial moorage is prohibited.
5. Rural: Private and shared moorage are permitted subject to policies and regulations of this Program. Public, industrial and commercial moorage, including expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Covered moorage is prohibited.
6. Resource: Private and shared moorage are permitted subject to policies and regulations of this Program. Public, industrial and commercial moorage, including expansion of

existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Covered moorage is prohibited.

7. Conservancy: Private and shared moorage on non-marine shorelines are permitted subject to policies and regulations of this Program. Private and shared moorage on marine shorelines, other than constructed marinas or canals, may be permitted as a conditional use. Public and commercial moorage, including the expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial and covered moorages are prohibited.
8. Natural: Moorage is prohibited, except public access, interpretive or nature observation facilities that are compatible with the area's physical and visual character may be conditionally permitted subject to policies and regulations of this Program. Covered and floatplane moorage are prohibited.
9. Aquatic: Moorage is permitted, subject to the use and development regulations of the abutting upland shoreline area designation.

### **23.100.10 Recreation**

Shoreline recreation shall be subject to the policies and regulations of this Section and Chapter 9.

#### **23.100.10.A Recreation – Policies**

1. Shoreline recreational development should be given priority for shoreline location to the extent that the use facilitates the public's ability to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline. Where appropriate, such facilities should be dispersed along the shoreline in a manner that supports more frequent recreational access and aesthetic enjoyment of the shoreline for a substantial number of people.
2. Recreational developments should facilitate appropriate **human** use of shoreline resources while conserving them. These resources include, but are not limited to: accretion shoreforms, wetlands, soils, ground water, surface water, native plant and animal life, and shore processes.
3. Recreational development requiring extensive structures, utilities and roads and/or substantial modifications of topography or vegetation removal should not be located or expanded in areas where damage to persons, property, and/or shoreline functions and processes is likely to occur.
4. Recreational developments and plans should provide the regional population a varied and balanced choice of recreation experiences in appropriate locations. Public agencies and private developers should coordinate their plans and activities to provide a wide variety of recreational opportunities without needlessly duplicating facilities.
5. Trail links between shoreline parks and public access points should be encouraged for walking, horseback or bicycle riding and other non-motorized vehicle access where appropriate. The Whatcom County Comprehensive Park and Recreation Open Space Plan ~~and/or trail plans or policies~~ should be considered in design and approval of public ~~trails and~~ trail systems ~~provided in private developments~~.
6. Access to natural character recreational areas, including but not limited to beaches and fishing streams, should be a combination of linear shoreline trails or easements and small parking or access tracts to minimize user concentration on small portions of the shoreline.
7. Recreation facilities should incorporate public education regarding shoreline ecological functions and processes, the role of human actions on the environment and the importance of public involvement in shorelines management. Opportunities incorporating educational and interpretive information should be pursued in design and operation of recreation facilities and nature trails.
8. Reasonable physical or visual public access to shorelines should be provided and integrated with recreational developments in accordance with SMP 23.90.08.

9. Recreation development should be located only where utility and road capability is adequate, or may be provided without significant damage to shore features commensurate with the number and concentration of anticipated users.
10. Cooperative efforts among public and private persons toward the acquisition and/or development of suitable recreation sites or facilities should be explored to assure long term availability of sufficient public sites to meet local recreation needs.

### **23.100.10.B Recreation – Regulations**

Where significant adverse impacts are adequately mitigated, Rrecreational development is a priority use for shoreline location, if subject to the following:

1. Water-related and water-enjoyment uses do not displace water-dependent uses and are consistent with existing water-related and water-enjoyment uses.
2. Activities provided by recreational facilities must bear a substantial relationship to the shoreline, or provide physical or visual access to the shoreline. Facilities for water-dependent recreation such as fishing, clam digging, swimming, boating, and wading, and water-related recreation such as picnicking, hiking, and walking should be located near the shoreline, while nonwater-related recreation facilities shall be located inland.
3. Recreation areas or facilities on the shoreline shall provide physical or visual public access consistent with the criteria of SMP 23.90.08.
4. Recreational facilities with large grass areas, such as golf courses and playing fields, and facilities or with extensive impervious surfaces shall incorporate means to prevent erosion, control the amount of runoff, and prevent harmful concentrations of chemicals and sediment from entering water bodies in accordance with the policies and regulations of SMP 23.90.04.
5. Recreational use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Such use is prohibited on tidelands, backshore beaches, streams, or wetlands; except as necessary for public health and safety or maintenance.

### **23.100.10.C Recreation – Shoreline Area Regulations**

1. Urban: Water-oriented recreational use and development is permitted subject to policies and regulations of this Program.
2. Urban Resort: Water-oriented recreational use and development is permitted subject to policies and regulations of this Program.
3. Urban Conservancy: Low intensity water-oriented recreational use and development is permitted subject to policies and regulations of this Program and the following criteria:
  - a. Structures will not result in more than ten percent (10%) building coverage or 4,000 square feet, whichever is greater and total impervious surface will not exceed twenty percent (20%), or 10,000 square feet, whichever is greater.

- b. Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.
  - c. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.
4. Shoreline Residential: Water-oriented recreational use and development is permitted [subject to policies and regulations of this Program](#).
5. Rural: Water-oriented recreational use and development is permitted subject to policies and regulations of this Program.
6. Resource: [Low intensity W](#)water-oriented recreational use and development is permitted subject to policies and regulations of this Program, provided that no designated agricultural or forest resource lands of long term significance are displaced.
7. Conservancy: Low intensity water-oriented recreational use and development is permitted subject to policies and regulations of this Program and the following criteria:
  - a. Structures on sites of 1 acre or less will not result in more than ten percent (10%) building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed twenty percent (20%) or 5,000 square feet, whichever is greater.
  - b. Structures on sites greater than 1 acre will not result in more than five percent (5%) building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed ten percent (10%) or 10,000 square feet, whichever is greater.
  - c. Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.
  - d. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.
8. Natural: [Low intensity W](#)water-oriented recreational use and development consisting of primitive trails or primitive campsites is permitted subject to policies and regulations of this Program and the following criteria:
  - a. Essential minor structures such as trails, stairs, small picnic areas, primitive roads, viewpoints, restrooms, interpretive facilities, or development that will not adversely affect shoreline ecological functions and processes are permitted, subject to policies and regulations of this Program.
  - b. Any necessary landscaping shall use native or similar self-maintaining vegetation.
  - c. Recreational development requiring extensive structures or substantial alterations to topography or native vegetation is prohibited.

9. Aquatic: Water-oriented recreational use and development is permitted, subject to the use and development regulations of the abutting upland shoreline area designation; provided that, underwater parks may be permitted as a conditional use.

### **23.100.11 Residential**

Residential development in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9. Residential development as defined in ~~this~~ Chapter 11 also includes multifamily development and the creation of new residential lots through land division.

#### **23.100.11.A Residential – Policies**

1. Single family residences are designated in RCW 90.58 as a priority use in those limited instances when authorization is given for alterations of the natural condition of shorelines of the state.
2. New residential development is encouraged to cluster dwelling units together to reduce physical and visual impacts on shorelines and to reduce utility and road costs. Planned unit developments that include common open space and recreation facilities, or a variety of dwelling sizes and types, are encouraged at suitable locations as a preferable alternative to extensive single lot subdivisions on shorelines. Planned unit developments (WCC 20.85) may also include a limited number of neighborhood commercial business uses where consistent with the applicable zoning regulations.
3. Allowable density of new residential development should comply with applicable comprehensive plan goals and policies, zoning restrictions, and shoreline area designation standards. The density per acre of development should be appropriate to local natural and cultural features.
4. Structures or development for uses accessory to residential use should preserve shoreline open space, be visually and physically compatible with adjacent cultural and shoreline features, be reasonable in size and purpose, and result in no net loss of shoreline ecological functions and processes.
5. Buildings greater than 35 feet above average grade level that will obstruct the views of a substantial number of residences on areas adjoining such shorelines are limited by the Act (RCW 90.58.320) to those cases where this Program does not prohibit such development and then only when overriding considerations of the public interest will be served. This Program provides opportunities for buildings greater than 35 feet in height in limited areas where consistent with development objectives and the goals and policies of this Program.
6. New residential development should be planned and built in accordance with the policies and regulations in SMP 23.90.03 and to minimize the need for shoreline stabilization and flood hazard reduction measures.
7. Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation may include avoidance or minimization of clearing or grading, restoration of areas of native vegetation, and/or control of invasive or non-native vegetation.
8. Whenever possible, non-regulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for residential

development. Such methods may include resource management planning, low impact development techniques, voluntary protection and enhancement projects, education, or incentive programs.

9. New multi-unit residential development, including subdivision of land for more than four (4) parcels, should provide substantial shore space for development residents and the public, unless public access is infeasible due to incompatible uses, safety, impacts to shoreline ecology or legal limitations.
10. Development should provide open space corridors between structures, and along site boundaries, so as to provide space for outdoor recreation, preserve views, and minimize use conflicts.
11. Recreation-oriented residential development in the shoreline should be located only where substantial recreation opportunities are provided on site, and where nearby property owners and other appropriate uses will not be adversely affected.

### **23.100.11.B Residential – Regulations**

#### **23.100.11.B.1 Location and Design**

- a. Where appropriate, N~~ew~~ residential development may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.
- b. New residential development shall assure that the development will not require shoreline stabilization. Prior to approval, geotechnical analysis of the site and shoreline characteristics shall demonstrate that shoreline stabilization is unlikely to be necessary; setbacks from steep slopes, bluffs, landslide hazard areas, seismic hazard areas, riparian and marine shoreline erosion areas shall be sufficient to protect structures during the life of the structure (100 years); and impacts to adjacent, downslope or down-current properties are not likely to occur ~~during the life of the lots created~~.
- c. All new subdivisions shall provide for vegetation conservation to mitigate cumulative impacts of intensification of use within or adjacent to the shoreline that shall include compliance with vegetation conservation requirements of SMP 23.90.06, together with replanting and control of invasive species within setbacks and open space to assure establishment and continuation of a vegetation community characteristic of a native climax community.
- d. Clustering and low impact development techniques may be required where appropriate to minimize ~~New residential development shall cluster dwelling units and employ low impact development practices to reduce~~ physical and visual impacts on shorelines in accordance with policies and regulations of SMP 23.90.09.
- e. Residential structures, accessory uses and related facilities shall be designed and located so as to minimize view obstructions to and from shorelines and water bodies.
- f. New over-water residential structures, including floating homes, are prohibited, except for reasonable accommodation of existing communities of floating or over-water homes

- that may make reasonable improvements associated with life and safety requirements, provided that any expansion or improvement is the minimum necessary to assure consistency with constitutional and other legal limitations.
- g. As mandated by the Act (RCW 90.58.320), no shoreline permit may be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where this Program does not prohibit such development and only when overriding considerations of the public interest will be served.
  - h. Multi-unit residential developments that exceed 35 feet in height may be permitted as a conditional use in resort communities designated Urban Resort, subject to the requirements of SMP 23.090.13.B.5.
  - i. Due to the potential for adverse impact upon adjacent uses and the community from such high-rise and multi-unit buildings that exceed 35 feet in height, the County must find proposals for such buildings to be consistent with this Program and the Act, particularly as related to RCW 90.58.320, and the following factors:
    - (1) Open space areas and setbacks shall be required along shorelines and between buildings wherever feasible. These areas should be large enough so that local views are not extensively blocked, and building residents have privacy and ample space for outdoor recreation and circulation. The amount of open space shall increase proportionately as density and/or height increase. In general a view corridor must be maintained across thirty percent (30%) of the average parcel width with additional width provided for the percentage increase above 35 feet to a maximum of fifty percent (50%) of the lot width. The increased area within a view corridor due to increased height must be devoted to landscaping or other open space.
    - (2) Urban services, including sanitary sewers, public water supply, fire protection, stormwater drainage, and police protection shall be provided at adequate levels to protect the public health, safety and welfare.
    - (3) Circulation, parking areas, and outdoor storage or loading areas shall be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas shall be screened where appropriate from open space areas by landscaping, [fences or other similar](#) structures, or grade separation.
    - (4) Recreational needs of building residents shall be provided through on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases. Where appropriate, public access should be provided and integrated with the development.
  - j. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in SMP 23.90.13 - Setback, Height and Open Space Standards for Shoreline Development.

- 
- k. New residential lots created through land division in the shoreline shall only be permitted when the following standards are met:
- (1) Land division may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.
  - (2) New land division shall assure that the lots created will not require shoreline stabilization in order for reasonable development to occur. New land division that would require shoreline stabilization is prohibited.
  - (3) New or expanded subdivisions ~~and short subdivisions, except those for lot line adjustment, and lot consolidation, and purposes of subdividing land into four (4) or fewer lots,~~ and all multi-unit residential developments shall provide a community recreation and/or open space area for the benefit of all residents or property owners in the development; provided that, such provisions shall not apply to lot line adjustment, lot consolidation, and subdivision of land into four (4) or fewer lots.
  - (4) New or amended subdivisions, except those for lot line adjustment and lot consolidation purposes, shall provide public access as provided for in SMP 23.90.08 and this section.
  - (5) All new subdivisions shall record a prohibition on new private docks on the face of the plat. An area for shared moorage may be approved if it meets all requirements for shared moorage in SMP 23.100.09, including demonstration that public and private marinas and other boating facilities are not sufficient to meet the moorage needs of the subdivision.
  - (6) Subdividing tidelands for sale or lease in connection with individual building lots is prohibited.
  - (7) Substandard shoreline lots unsuitable for development of a primary permitted use under the Official Zoning Ordinance (WCC Title 20) and this Program shall not be subdivided.
- l. New multi-unit development, including subdivision of land for ~~four (4) or~~ more than four (4) parcels, shall incorporate public access to publicly owned shorelines or public water bodies as provided for in SMP 23.90.08 unless the site is designated in a shoreline public access plan for a greater component of public access or public access is demonstrated to be infeasible or inappropriate.
- m. The amount and configuration of public access shall depend on the proposed use(s) and the following criteria:
- (1) Subdivisions within the shoreline that have views of water areas shall provide a public pedestrian viewing area.
  - (2) Subdivisions adjacent to public waterways and marine waters shall provide access to a point that abuts the water that will provide visual access and shall provide

physical access to public waterways, public marine waters, and public tidelands that are physically accessible at low tide or low water.

- (3) Subdivisions subject to requirements for dedication of land to provide open space or mitigate recreation demands of the development shall dedicate such land on or adjacent to public waterways or marine shorelines, as applicable, unless the ecological sensitivity of such land precludes public access. Portions of the area dedicated may be fenced or otherwise restricted to limit public access to ecologically sensitive areas.

### **23.100.11.B.2 Accessory Uses**

- a. Accessory development common to residences includes, but is not limited to, recreational moorage (mooring buoys, docks and floats), garages and shops, parking areas, water craft storage, shoreline stabilization, fences, cabanas, tennis courts, swimming pools, saunas, antennas, decks, walkways and landscaping.
- b. Shoreline permits shall be required for accessory development that does not meet the intent and definition of an appurtenance as defined in SMP 23.110.A. ~~1620~~.
- c. Such development shall not be located in required shoreline setbacks where feasible and where a shoreline location is not necessary, and shall be prohibited over the water unless clearly water-dependent such as moorage (mooring buoys, docks and floats) for recreational or personal use.
- d. For projects involving two (2)<sup>24</sup> or more dwelling units, only shared moorage consisting of mooring buoys, or shared moorage and/or floats are permitted. Individual private docks are prohibited. Shared moorage may be approved if it meets all requirements in SMP 23.100.09.
- e. Private recreational docks and floats for individual lots are permitted in existing subdivisions which were approved on or before January 28, 1993, only where shared moorage has not already been developed and subject to the policies and regulations in SMP 23.100.09.

### **23.100.11.C Residential – Shoreline Area Regulations**

1. Urban: Residential development is permitted subject to policies and regulations of this Program.
2. Urban Resort: Residential development is permitted subject to policies and regulations of this Program.
3. Urban Conservancy: Single family and duplex development is permitted subject to policies and regulations of this Program. ~~Cluster Ss~~ Subdivision of property shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel. All other residential development may be permitted as a conditional use.

---

<sup>24</sup> ~~Threshold for community docks reduced to two units by WAC 173-26-231(3)(b)~~

4. Shoreline Residential: Residential development is permitted subject to policies and regulations of this Program.
5. Rural: Residential development is permitted subject to policies and regulations of this Program.
6. Resource: Residential development limited to farm related residences or one (1) residence and one (1) accessory dwelling unit is permitted ~~on~~ per existing parcels where there is no feasible location outside of the shoreline.
7. Conservancy: Single family and duplex development is permitted subject to policies and regulations of this Program. ~~Cluster SsS~~ Subdivision of property shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel. All other residential development may be permitted as a conditional use.
8. Natural: Residential development is prohibited, except that one (1) single family residence per existing lot of record may be permitted where there is no feasible location outside of the shoreline.
9. Aquatic: Residential development is prohibited.

### **23.100.12 Restoration [and Enhancement](#)**

Restoration in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9.

#### **23.100.12.A Restoration – Policies**

1. This Program recognizes the importance of restoration of shoreline ecological functions and processes and encourages cooperative restoration efforts and programs between local, state, and federal public agencies, tribes, non-profit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.
2. Restoration actions should restore shoreline ecological functions and processes as well as shoreline features and should be targeted towards meeting the needs of sensitive and/or locally important plant, fish and wildlife species as well as the biological recovery goals for early Chinook, bull trout populations, and other salmonid species and populations.
3. Restoration should be integrated with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan and the WRIA 1 Watershed Management Plan.
4. Priority should be given to restoration actions that:
  - a. Create dynamic and sustainable ecosystems.
  - b. Restore connectivity between stream/river channels, floodplains and hyporheic zones.
  - c. Restore natural channel-forming geomorphologic processes.
  - d. Mitigate peak flows and associated impacts caused by high stormwater runoff volume.
  - e. Reduce sediment input to streams and rivers and associated impacts.
  - f. Improve water quality.
  - g. Restore native vegetation and natural hydrologic functions of degraded and former wetlands.
  - h. Replant native vegetation in riparian areas to restore functions.
  - [i. Restore nearshore ecosystem processes, such as sediment transport and delivery and tidal currents that create and sustain habitat.](#)
  - [j. Restore pocket estuaries that support salmon life histories, including feeding and growth, refuge, osmoregulation, and migration.](#)

k.     [Address contamination along industrial shoreline regions.](#)

**23.100.12.B        Restoration – Regulations**

Restoration shall be carried out in accordance with an approved shoreline restoration plan and in accordance with the policies and regulations of this Program.

**23.100.12.C        Restoration – Shoreline Area Regulations**

1.     Urban: Restoration activities are permitted subject to policies and regulations of this Program.
2.     Urban Resort: Restoration activities are permitted subject to policies and regulations of this Program.
3.     Urban Conservancy: Restoration activities are permitted subject to policies and regulations of this Program.
4.     Shoreline Residential: Restoration activities are permitted subject to policies and regulations of this Program.
5.     Rural: Restoration activities are permitted subject to policies and regulations of this Program.
6.     Resource: Restoration activities are permitted subject to policies and regulations of this Program.
7.     Conservancy: Restoration activities are permitted subject to policies and regulations of this Program.
8.     Natural: Restoration activities are permitted subject to policies and regulations of this Program.
9.     Aquatic: Restoration activities are permitted subject to policies and regulations of this Program.

### **23.100.13 Shoreline Stabilization**

Shore stabilization in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9.

#### **23.100.13.A Shoreline Stabilization – Policies**

- a1.** Alternatives to structures for shore protection should be used whenever possible. Such alternatives may include no action (allow the shoreline to retreat naturally), increased building setbacks, building relocation, drainage controls, and bioengineering, including vegetative stabilization, and beach nourishment.
- B2.** New or expanded structural shore stabilization for new primary structures should be avoided. Instead, structures should be located and designed to avoid the need for future shoreline stabilization where feasible. Land subdivisions should be designed to assure that future development of the created lots will not require structural shore stabilization for reasonable development to occur.
- C3.** New or expanded structural shore stabilization should only be permitted where demonstrated to be necessary to protect an existing primary structure that is in **imminent** danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.
- D4.** New or expanded structural shore stabilization for enhancement, restoration, or hazardous substance remediation projects should only be allowed when non-structural measures, vegetation planting, or on-site drainage improvements would be insufficient to achieve enhancement, restoration or remediation objectives.
- E5.** Shore stabilization on streams should be located and designed to fit the physical character and hydraulic energy potential of a specific shoreline reach, which may differ substantially from adjacent reaches.
- F6.** Shore stabilization should not be permitted to unnecessarily interfere with public access to public shorelines, nor with other appropriate shoreline uses including, but not limited to, navigation, seafood harvest, or private recreation.
- G7.** Provisions for multiple use, restoration, and/or public shore access should be incorporated into the location, design and maintenance of shore stabilization for public or quasi-public developments whenever safely compatible with the primary purpose. Shore stabilization on publicly owned shorelines should not be allowed to decrease long term public use of the shoreline.
- H8.** Shore stabilization should be developed in a coordinated manner among affected property owners and public agencies for a whole drift sector (net shore-drift cell) or reach where feasible, particularly those that cross jurisdictional boundaries, to address ecological and geo-hydraulic processes, sediment conveyance and beach management issues. Where beach erosion threatens existing development, a comprehensive program for shoreline management should be established.

- ~~J9.~~ In addition to conformance with the regulations in this section, non-regulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for shore stabilization. Non-regulatory methods may include public facility and resource planning, technical assistance, education, voluntary enhancement and restoration projects, or other incentive programs.
- ~~J10.~~ Shore stabilization should be located, designed, and maintained to protect and maintain shoreline ecological functions, ongoing shore processes, and the integrity of shore features. Ongoing stream, lake or marine processes and the probable effects of proposed shore stabilization on other properties and shore features should be considered. Shore stabilization should not be developed for the purpose of filling shorelines.
- ~~K11.~~ Failing, harmful, unnecessary, or ineffective structures should be removed, and shoreline ecological functions and processes should be restored using non-structural methods or less harmful long term stabilization measures.
- ~~L12.~~ Where non-structural shoreline stabilization measures should only be used when alternatives are infeasible, more natural, flexible, non-structural methods such as vegetative stabilization, beach nourishment and bioengineering have been determined infeasible. Alternatives for shoreline stabilization should be based on the following hierarchy of preference:
- a. No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate structures.
  - b. Flexible defense works constructed of natural materials including soft shore protection, bioengineering, including beach nourishment, protective berms, or vegetative stabilization.
  - c. , are preferred wherever possible over rigid works constructed of artificial materials such as riprap or concrete.
- ~~Proposals for rigid works should be allowed only if it is demonstrated that more flexible, natural works are infeasible.~~—Materials used for construction of shoreline stabilization should be selected for long term durability, ease of maintenance, compatibility with local shore features, including aesthetic values and flexibility for future uses.
- ~~M13.~~ Larger works such as jetties, breakwaters, weirs or groin systems should be permitted only for water-dependent uses when the benefits to the region outweigh short term resource losses from such works, and only where mitigated to provide no net loss of shoreline ecological functions and processes.
- ~~N14.~~ Alternative structures, including floating, portable or submerged breakwater structures, or several smaller discontinuous structures, should be considered where physical conditions make such alternatives with less impact feasible.

### 23.100.13.B Shoreline Stabilization – Regulations

**23.100.13.B.1**      **Allowed Use**

- ~~1.      New, expanded or replacement shore stabilization shall not be permitted unless it can be demonstrated that the proposed measures will not adversely affect shoreline ecological functions or cause adverse impacts to shore processes.~~
- 2a.      New or expanded structural shore stabilization for existing primary structures, including roads, railroads, public facilities, etc. is prohibited unless there is conclusive evidence documented by a geotechnical analysis that there is a significant possibility that the structure will be damaged within three years as a result of is in danger from shoreline erosion caused by stream processes, tidal action or waves, and only when significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes. Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.
- 3b.      New shore stabilization for new ~~water dependent~~ development is prohibited unless it can be demonstrated that the proposed use cannot be developed without shore protection, and a geotechnical analysis documents that alternative solutions are not feasible or do not provide sufficient protection. The need for shore stabilization shall be considered in the determination of whether to approve new water-dependent uses. Proposed designs for new or expanded shore stabilization shall be designed in accordance with applicable Department of Ecology and Department of Fish and Wildlife guidelines and certified by a qualified professional.
- ~~4.      New shore stabilization for new nonwater dependent development and single family residences, is prohibited unless it can be demonstrated that the proposed use cannot be developed on the parcel without shore protection, and a geotechnical analysis documents that alternative solutions, including relocation, are not feasible or do not provide sufficient protection. The need for shore stabilization shall be considered in the determination of whether to approve new nonwater dependent or residential uses.~~
- c.      Shoreline stabilization is prohibited for new nonwater-oriented development; provided that, such stabilization may be approved as a conditional use where a geotechnical analysis demonstrates that shore stabilization is necessary to facilitate reasonable use of a property and documents that alternative solutions, including location outside of the shoreline, are not feasible or do not provide sufficient protection, and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided.
- 5d.      Where shore stabilization is allowed, it shall consist of “soft”, flexible, and/or natural materials or other bioengineered approaches unless a geotechnical analysis demonstrates that such measures are infeasible.
- 6e.      Replacement of an existing shore stabilization structure with a similar structure is permitted if there is a demonstrated need to protect primary uses, structures or public facilities including roads, bridges, railways, and utility systems from erosion caused by stream undercutting or tidal action; provided that, the existing shore stabilization structure is removed from the shoreline as part of the replacement activity. A geotechnical analysis may be required to document that alternative solutions such as

[those listed in SMP 23.100.13.A.12\(a\) and \(b\)](#) are not feasible or do not provide sufficient protection. Existing shoreline stabilization structures that are being replaced shall be removed from the shoreline unless removal of such structures will cause significant damage to shoreline ecological functions or processes. Replacement walls, bulkheads or revetments shall not encroach waterward of the ordinary high water mark or the existing shore defense structure unless the primary use being protected is a residence that was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

- [7f.](#) Groins are prohibited except as a component of a professionally designed community or public beach management program that encompasses an entire drift sector or reach for which alternatives are infeasible, or where installed to protect or restore shoreline ecological functions or processes.
- [8g.](#) Jetties and breakwaters are prohibited except as an integral component of a professionally designed harbor, marina, or port. Where permitted, floating, portable or submerged breakwater structures, or smaller discontinuous structures are preferred where physical conditions make such alternatives with less impact feasible. Defense works that substantially reduce or block littoral drift and cause erosion of downdrift shores, shall not be allowed unless an adequate long term professionally engineered beach nourishment program is established and maintained.
- [9h.](#) New or expanded shore stabilization may be permitted to protect projects with the primary purpose of enhancing or restoring ecological functions, or [projects for](#) hazardous substance remediation [permits](#) pursuant to RCW 70.105D when non-structural approaches, such as vegetation planting, and/or on-site drainage improvements are not feasible or do not provide sufficient protection.
- [10j.](#) Proposed designs for new or expanded shore stabilization shall be designed and certified by a qualified professional.
- [11j.](#) No motor vehicles, appliances, other similar structures nor parts thereof, nor structure demolition debris, nor any other solid waste shall be used for shore stabilization.
- [12k.](#) The size of shore stabilization measures shall be limited to the minimum necessary to provide protection for the primary structure or use it is intended to protect.

#### **23.100.13.B.24 Marine Shorelines and Lakes**

In those limited cases where a proposed bulkhead meets the criteria in this section for a shoreline permit or the exemption criteria under SMP 23.60.02.2, and to assure that such bulkheads will be consistent with the provisions of this Program, the Administrator shall review the proposed design as it relates to local physical conditions and issue written findings that the location and design meet all criteria of this Program, subject to the following:

- a. Bulkheads and other similar hard structures are ~~not permitted~~ [prohibited](#) on marine or lake accretion shoreforms, except where exposure to storm waves and driftwood battering seriously threaten other [existing structures approved development](#). Such bulkheads shall be set back a minimum of 20 feet landward from OHWM.

- b. Bulkheads and other similar hard structures are prohibited on marine feeder bluff and estuarine shores, and on wetland and rock shores; provided that, such structures may be permitted as a conditional use where valuable primary structure(s) are at risk and no feasible alternatives exist and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided.
- c. Bulkheads and other similar hard structures shall be located within 1 foot of the bank toe; and shall generally parallel the shoreline.
- d. Bulkheads and other similar hard structures shall be designed and constructed with gravel backfill and weep holes so that natural downward movement of surface or ground water may continue without ponding or saturation.
- e. Bulkheads exposed to significant wave action shall be designed to dissipate wave energy and scouring.
- f. Walls, revetments or other similar hard structures within 10 feet of the OHWM, shall be considered bulkheads; provided that, on accretion shoreforms walls or revetments or other similar hard structures within 20 feet of the OHWM shall be considered bulkheads.

**23.100.13.B.32 Shore Stabilization on Streams**

In those limited cases where a proposed bulkhead, revetment or other similar structure meets the criteria in this section for a shoreline permit or an exemption under SMP 23.60.02.2, and to assure that such revetment or similar structure will be consistent with this Program, the Administrator shall review the proposed design for consistency with state guidelines for stream bank protection as it relates to local physical conditions and issue written findings that the location and design meet all criteria of this Program, subject to the following:

- a. Revetments or similar hard structures are prohibited on estuarine shores, in wetlands, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.
- b. Revetments or similar hard structures shall be placed landward of associated wetlands unless it can be demonstrated that placement waterward of such features would **result** not adversely affect ecological functions.
- c. A geotechnical analysis of stream geomorphology both upstream and downstream shall be performed to assess the physical character and hydraulic energy potential of the specific stream reach and adjacent reaches upstream or down, and assure that the physical integrity of the stream corridor is maintained, that stream processes are not adversely affected, and that the revetment will not cause significant damage to other properties or valuable shoreline resources. In addition:
  - (1) Revetments or similar structures shall not be developed on the low, inner-most channel banks in a stream except to protect public works, railways and existing commercial farmsteads.
  - (2) Where revetments or similar structures are proposed, analysis shall assure that localized shore stabilization will be effective, as compared to more extensive cooperative measures to address reach scale processes. Revetments shall be

setback at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. Where revetments or similar structures have already cut off point bars from the streamway, consideration should be given to their relocation.

(3) [Revetments shall be designed in accordance with WDFW streambank protection guidelines.](#)

- d. Cut-and-fill slopes and backfilled areas shall be stabilized with brush matting and buffer strips and revegetated with native grasses, shrubs and/or trees so that there is no net loss of ecological functions.
- e. All forms of shore stabilization shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The County may require reasonable conditions to achieve this objective such as setbacks, buffers, or storage basins.
- f. Shore stabilization shall allow for normal ground water movement and surface runoff.
- g. Selection of materials for projects shall be in conformance with applicable engineering standards.

**23.100.13.B.43 Viewpoints and Public Access**

- a. Where appropriate, larger public or private shore stabilization projects shall be required to maintain, replace or enhance existing public access opportunities by incorporating physical or visual access areas and/or facilities into the design of the project.
- b. Publicly financed or subsidized shoreline stabilization shall not restrict appropriate public access to the shoreline and shall 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.

**23.100.13.B.54 Application Materials**

Geotechnical reports required pursuant to this section shall address the need for shoreline stabilization and shall include the following:

- a. A scaled site plan showing:
  - (1) The location of existing and proposed shore stabilization, structures, fill, and vegetation, with dimensions indicating distances to the OHWM; and
  - (2) Existing site topography, preferably with 2-foot contours.
- b. A description of the processes affecting the site, and surrounding areas that influence or could be influenced by the site, including areas in which stream processes, lake or marine geomorphic processes affect the site, including, but not limited to:
  - (1) Soil erosion, deposition, or accretion;
  - (2) Evidence of past or potential channel migration;

- (3) Evidence of past or potential erosion due to tidal action and/or waves;
  - (4) Littoral drift; and
  - (5) An estimate of shoreline erosion rates.
- c. A description and analysis of the urgency and risk associated with the specific site characteristics.
  - d. A discussion and analysis demonstrating conformance with the standards enumerated in WCC 16.16.

**23.100.13.C Shoreline Stabilization – Shoreline Area Regulations**

- 1. Urban:
  - a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this Program.
  - b. Groins, breakwaters and jetties may be permitted as a conditional use.
  - c. Gabions are prohibited.
- 2. Urban Resort:
  - a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this Program.
  - b. Groins, breakwaters and jetties may be permitted as a conditional use.
  - c. Gabions are prohibited.
- 3. Urban Conservancy:
  - a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this Program.
  - b. Breakwaters and jetties may be permitted as a conditional use if accessory to a water-dependent use and littoral sediment transport is not significantly disrupted.
  - c. Groins and gabions are prohibited.
- 4. Shoreline Residential:
  - a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this Program.
  - b. Groins, breakwaters and jetties may be permitted as a conditional use.
  - c. Gabions are prohibited.

5. Rural:
  - a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this Program.
  - b. Groins, breakwaters and jetties may be permitted as a conditional use.
  - c. Gabions are prohibited.
6. Resource:
  - a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this Program.
  - b. Groins, breakwaters and jetties may be permitted as a conditional use.
  - c. Gabions are prohibited.
7. Conservancy:
  - a. Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this Program.
  - b. Breakwaters and jetties may be permitted as a conditional use if accessory to a water-dependent use and littoral sediment transport is not significantly disrupted.
  - c. Groins and gabions are prohibited.
8. Natural: Shoreline stabilization is prohibited; except that, bioengineering approaches may be permitted as a conditional use when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere.
9. Aquatic:
  - a. Bioengineering approaches are permitted on tidelands and shorelands when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere subject to policies and regulations of this Program.
  - b. Groins, breakwaters, and jetties may be permitted as a conditional use if such development is permitted in the abutting upland shoreline area designation.
  - c. Bulkheads or revetments are prohibited except for an approved water-dependent development subject to policies and regulations of this Program.
  - d. Gabions are prohibited.

### 23.100.14 Signs

Signs in shoreline areas shall be subject the policies and regulations of this Section and Chapter 9.

#### 23.100.14.A Signs – Policies

1. Whatcom County recognizes the constitutional right for property owners to communicate using signs on their property. These policies are intended to ensure that signage within shoreline areas is consistent with the purpose and intent of the Act and this Program by addressing impacts to ecological functions, public safety and visual aesthetics.
2. Signs should be located, designed and maintained to be visually compatible with local shoreline scenery as seen from both land and water, especially on shorelines of statewide significance.
23. Sign location and design should not significantly impair shoreline views ~~or public access.~~
34. As a preferable alternative to continued proliferation of single purpose signs, communities, districts, and/or multi-use or multi-tenant commercial developments are ~~should be~~ encouraged to erect single, common use gateway signs to identify and give directions to local premises and public facilities.
45. Signs of a commercial or industrial nature should be limited to those areas or premises to which the sign messages refer.
56. Billboards and other off-premise signs are not water-dependent, reduce public enjoyment of or access to shorelines, and often lower values of nearby properties. Such signs should not be located on shorelines except for approved community gateway or directional signs.
67. Signs near scenic vistas and view points should be restricted in number, location, and height so that lawful enjoyment of these limited and scarce areas is not impaired.
78. Free-standing signs should be located to avoid blocking scenic views and be located on the landward inland side of public transportation routes which generally parallel the shoreline.
89. To minimize negative visual impacts and obstructions to shoreline access and use, low profile, on-premise wall signs are strongly preferred over free-standing signs or off-premises wall signs. ~~Signs should be oriented to non-motorized traffic in terms of height and appearance; signs should be no higher than exterior wall height of the premises advertised, and illumination should be steady, non-glare and indirect.~~
9. ~~Signs in built up or commercial districts should be designed or selected in terms of material, color, height, size, illumination, and other characteristics to achieve visual harmony.~~

10. Signs should be designed mainly to identify the premises and nature of enterprise without unduly distracting uninterested passers-by. Moving or flashing signs should be prohibited on shorelines.

### 23.100.14.B Signs – Regulations

1. Unless otherwise prohibited by zoning regulations or this Program, shoreline developments are permitted to maintain a total of three (3) on-premise signs; ~~provided that, only one (1) may be a free-standing, roof, or projecting sign; further provided, that if this sign is double-faced, then only one (1) other wall sign is permitted. Further provided that~~ This provision does not apply to private informational signs posted on private property by the owner for reasonable purposes such as address, home occupation signs, No Trespass, and temporary signs such as For Sale, Rent and political campaign signs within the campaign season; provided, no sign exceeds four (4) square feet in area. All signs proposed for a development requiring a substantial development permit shall be designated on application and approval documents.
2. Multiuse or multi-tenant commercial developments shall erect no more than one (1) sign at each street gateway.
3. Communities, neighborhoods and districts shall erect no more than one (1) sign at each street gateway identifying and shall be limited to the name of the community or neighborhood and give directions to local premises and public facilities.
4. ~~Private Signs: A maximum of three (3) signs may be posted on private property by the owner for reasonable purposes such as For Sale, Rent, or home occupation signs; provided, no sign exceeds 2 square feet in area; and further provided that, additional signs may be permitted as required by law to post a site for trespass issues. Such signs shall not be lighted except for one (1) permanent sign, subject to the provisions of SMP 23.100.14.B.9, below, identifying the owner and/or address.~~
54. Exception: Signs required by law and signs posted for legitimate safety purposes shall not be subject to limitations with respect to the number, location, and/or size provided that they are the minimum necessary to achieve the intended purpose. Such signs include but are not limited to official or legal notices issued and posted by any public agency or court, or traffic directional or warning signs.
65. All building signs shall be integrated with building design. Roof signs shall be designed to occupy a design feature of the roof such as a dormer or gable and may not be placed above the peak of a pitched roof or the eave of a flat roof. Projecting signs shall be incorporated in a marquee, canopy, or other architectural feature.
76. Applications for substantial development permits shall include a conceptual sign package addressing the size and location of all signs and shall include design standards to assure that all signs in a development are consistent in terms of material, color, height, size, and illumination.
87. Sign permits not associated with a substantial development permit shall demonstrate compliance with all provisions of this code and shall be similar to and compatible with other signs in a development under a single ownership or approved as an integrated development.

98. Sign illumination shall be indirect incorporating exterior lighting shining on the sign, or shadow illumination behind non-transparent materials. Internally illuminated signs are prohibited.
409. Distracting Devices: Any signs or other devices which flash, blink, flutter, rotate, oscillate, or otherwise purposely fluctuate in lighting or position, in order to attract attention through their distractive character are prohibited on shorelines; provided that, searchlights, pennants, banners and other devices of seasonal, holiday, or special event character may be utilized for up to ninety (90) days in one (1) year.
4110. Free-standing signs other than those private informational signs described in subsection SMP 23.100.14.B.14(b) and (c) below are prohibited between a public right-of-way and the water where the water body is visible from the public right-of-way, or publicly accessible beaches or lands adjacent to the water, where the right-of-way generally parallels the shore and where the water body is visible from the right of way and the sign would be in the line of sight from the road to the water or visible from the water or publicly accessible beaches or lands adjacent to the water. Signs may be placed between a building and the public right-of-way where the building blocks the view of the sign from the water or publicly accessible beaches or lands adjacent to the water.
4211. To protect views from the water or publicly accessible beaches or lands adjacent to the water, free-standing signs other than those private informational signs described in subsection SMP 23.100.14.B.1 are prohibited between buildings and OHWM, and waterward of a line drawn from the nearest point of the building parallel to the shoreline; provided that:
- a. W where a public road or path used for general circulation by the public separates said building from OHWM, and building mounted signs are not visible to persons in vehicles then up to one (1) free-standing sign not to exceed 12 square feet is permitted between the road or path and said building for each building at a distanced from the OHWM of not less than one third of the distance to the building
  - b. Where a public path used for pedestrian circulation is provided between buildings and OHWM up to one (1) free-standing sign not to exceed 2 square feet is permitted for each business, at a distanced from the OHWM of not less than one third of the distance to the building.
43. Directional or interpretive signs up to 2 square feet in area relating to public access areas, and required traffic safety signs may be permitted between such rights of way and water bodies.
4412. Signs may not be located in critical areas or buffers as established by WCC 16.16 except as otherwise provided for in WCC 16.16; provided that, pursuant to SMP 23.100.14.B.1 and 23.100.14.B.4, signs may be permitted within critical area buffers where the placement of such signs does not require the removal of vegetation.
4513. Minimum required setbacks for permanent free-standing signs are:
- a. From shorelines the ordinary high water mark where not subject to critical areas or buffers: 50 feet

- b. From side property lines: 10 feet
- c. Maximum height: 15 feet

4614. Building mounted signs are subject to setbacks applicable to buildings. Height of wall signs may be measured from the floor elevation of the uppermost finished story; provided, the sign does not project above the roof of the building. Roof signs shall not extend higher than the maximum height of the primary building.

4715. Sign Area Limit

- a. The maximum area of individual sign faces shall be consistent with applicable zoning standards, provided that, the combined area of sign faces per premise shall not exceed 60 square feet with a maximum face area of free-standing signs not to exceed 12 square feet in all shoreline designations where signs are permitted, except on Aquatic, Urban Conservancy, and Conservancy shorelines and shorelines of statewide significance where the total sign area shall not exceed 24 square feet per premise and free-standing signs shall not exceed 4 square feet.
- b. The size of individual building or tenant signs shall be governed in accordance with the following table.

<b>Relevant building wall vertical surface area or façade area for a specific tenant (1)</b>	<b>Maximum sign surface area for that facade</b>	<b>Maximum Sign Area (2)</b>
Below 100 sq. ft.	4 sq. ft.	4 sq. ft.
100 – 199 sq. ft.	4 sq. ft. + 4% of the façade area over 100 sq. ft.	8 sq. ft.
200 – 499 sq. ft.	10 sq. ft. + 3% of the façade area over 200 sq. ft.	20 sq. ft.
500 sq. ft. or greater	26 sq. ft. + 2% of the façade area over 500 sq. ft. up to a maximum of 40 sq. ft.	40 sq. ft.

- (1) Includes only vertical building walls, excludes all roof area above the eaves and any dormers or other vertical areas above roof eaves. For building tenants, includes the area of the projection of the interior partitions onto the exterior wall.
- (2) On Aquatic and Conservancy shorelines and shorelines of statewide significance, no sign visible from a public right-of-way, the water, or publicly accessible beaches or lands adjacent to the water, shall exceed 24 square feet, and free-standing signs shall not exceed 4 square feet.

4816. Free-standing signs shall be entirely self-supporting and structurally sound without permanent use of guy wires or cables.

4917. Signs shall comply with the standards in this section at any time a change in use or modification of structures requiring a substantial development permit is approved.

Abandoned or derelict signs should either be properly restored or completely removed within a reasonable period of time by the sign owner or property owner as necessary.

**23.100.14.C Signs – Shoreline Area Regulations**

1. Urban: Sign development is permitted subject to policies and regulations of this Program.
2. Urban Resort: Sign development is permitted subject to policies and regulations of this Program.
3. Shoreline Residential: Sign development is permitted subject to policies and regulations of this Program.
4. Urban Conservancy: Sign development is permitted subject to policies and regulations of this Program.
5. Rural: Sign development is permitted subject to policies and regulations of this Program.
6. Resource: Sign development is permitted subject to policies and regulations of this Program.
7. Conservancy: Sign development is permitted subject to policies and regulations of this Program.
8. Natural: Sign development is prohibited, except for trail marking, hazard warnings, or interpretive scientific or educational purposes [and personal signs provided for in SMP 23.100.14.B.1](#). Such permitted signs shall be limited in size and number to those required to affect their purpose.
9. Aquatic: Only wall signs and low profile free-standing signs under 30 inches in height for water-dependent uses are permitted, except as provided for in SMP 23.100.14.B.1 [and B.4-e](#). No one premise may maintain more than two (2) signs in an Aquatic shoreline area.

---

### 23.100.15 Transportation

Roads, railways, and other transportation developments in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9. These policies and regulations apply to both public transportation projects and private transportation projects.

#### 23.100.15.A Transportation – Policies

1. New public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline, unless:
  - a. Perpendicular water crossings are required for access to authorized uses consistent with this Program; or
  - b. Facilities are primarily oriented to pedestrian and non-motorized use and provide an opportunity for a substantial number of people to enjoy shoreline areas, and are consistent with policies and regulations for ecological protection in SMP 23.90.03.
2. Transportation facilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural sites.
3. Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.
4. New or expanded public transportation facility route selection and development should be coordinated with related local and state government land use and circulation planning.
5. Transportation system route planning, acquisition, and design in the shoreline should provide space wherever possible for compatible multiple uses such as utility lines, pedestrian shore access or view points, or recreational trails.
6. Transportation system plans and transportation projects within shorelines should provide safe trail space for non-motorized traffic such as pedestrians, bicyclists, or equestrians. Space for such uses should be required along roads on shorelines, where appropriate, and should be considered when rights-of-way are being ~~disposed of~~ vacated or abandoned.
7. Public access should be provided to shorelines where safe and compatible with the primary and adjacent use, or should be replaced where transportation development substantially impairs lawful public access. Viewpoints, parking, trails and similar improvements should be considered for transportation system projects in shoreline areas, especially where a need has been identified.
8. Public transportation routes, particularly arterial highways and railways, should be located, designed, and maintained to permit safe enjoyment of adjacent shore areas and properties by other appropriate uses such as recreation or residences. Vegetative screening or other buffering should be considered.

**23.100.15.B Transportation – Regulations**

**23.100.15.B.1 Design and Operation**

- 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.
- b. Raised arterial roads or railways shall ~~not~~ 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. 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 defense works](#).
- f. Parking facilities are not a water-dependent use and shall only be permitted in the shoreline to support an authorized use where it can be demonstrated that there are no feasible alternative locations away from the shoreline, ~~and~~ [Parking facilities](#) shall be buffered from the waters' edge and less intense adjacent land uses by vegetation, undeveloped space, or structures developed for the authorized primary use.
- g. ~~Transportation facilities on shorelines shall be designed to generally follow natural topography to minimize cuts and/or fills.~~ Earth cut slopes and other exposed soils shall be placed, compacted, and planted or otherwise stabilized and protected from surface runoff with native vegetation. [Transportation Facilities sited](#) close to water, wetlands or other sensitive features shall incorporate the maximum feasible buffer of native vegetation in accordance with critical area regulations in WCC 16.16.
- h. Bridge supports and abutments shall be designed and spaced so they do not act as walls baffling or blocking flood waters, or interrupting stream channel processes or littoral drift.
- i. Bridges or bottomless culverts or other similar structures shall be used in accordance with WDFW guidance to protect shoreline ecological functions and processes. Bridge

approaches in floodways shall be constructed on open piling, support piers, or other similar measures to preserve hydraulic processes.

- j. Transportation facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Preferred materials are concrete and steel.
- k. Parking areas shall be developed utilizing low impact development techniques whenever possible including, but not limited to, the use of permeable surfacing materials.
- l. Transportation development shall be carried out in a manner that maintains or improves State water quality standards for affected waters.
- m. Non-emergency construction and repair work shall be scheduled for that time of year when seasonal conditions (weather, streamflow) permit optimum feasible protection of shoreline ecological functions and processes.
- n. Maintenance activity including vegetation control and erosion control shall be carried out consistent with this Program. Necessary minor resurfacing of existing roadways and replacement of culverts that improve shoreline ecological functions may be exempt from substantial development permit requirements as provided by SMP 23.60.02.
- o. RCW 36.87.130 prohibits the County from vacating any County road that abuts a body of saltwater or freshwater except for port, recreational, educational or industrial purposes. [Therefore, development, abandonment, or alteration of undeveloped County road ends within SMP jurisdiction is prohibited unless approved in accordance with this Program.](#)
- ~~p. [Development, abandonment, or alteration of undeveloped County road ends within SMP jurisdiction, as stated above, is prohibited unless approved in accordance with this Program.](#)~~
- ~~pp.~~ Minimum required setbacks from shorelines are contained in SMP 23.90.13 - Setback, Height and Open Space Standards for Shoreline Development.

### **23.100.15.B.2 Application Requirements**

All applications for new or expanded transportation facilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this Program, including but not limited to:

- a. Documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to connect specific end points. An analysis of alternatives may be required. New or expanded public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline.
- b. Documentation that the facilities are primarily oriented to pedestrian use and provide an opportunity for a substantial number of people to enjoy shoreline areas.

- c. Documentation that the proposed facilities comply with critical area regulations in WCC 16.16.
- d. Documentation of how the location, design and use achieves no net loss of shoreline ecological functions and incorporate appropriate mitigation in accordance with SMP 23.90.03.
- e. Documentation that facilities avoid public recreation areas and significant natural, historic, archaeological or cultural resources, or that no alternative is feasible outside of the shoreline and that all feasible measures to minimize adverse impacts have been incorporated into the proposal.

### **23.100.15.C      Transportation – Shoreline Area Regulations**

- 1. Urban: Transportation facilities are permitted subject to policies and regulations of this Program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.
- 2. Urban Resort: Transportation facilities are permitted subject to policies and regulations of this Program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.
- 3. Urban Conservancy: Transportation facilities are permitted only for access to approved development, subject to policies and regulations of this Program ~~only for access to approved development~~.
- 4. Shoreline Residential: Transportation facilities are permitted subject to policies and regulations of this Program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.
- 5. Rural: Transportation facilities are permitted subject to policies and regulations of this Program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.
- 6. Resource: Transportation facilities are permitted subject to policies and regulations of this Program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.
- 7. Conservancy: Transportation facilities are permitted only for access to approved development, subject to policies and regulations of this Program ~~only for access to approved development~~.
- 8. Natural: Transportation facilities are prohibited, except to access approved recreational development.

9. Aquatic: Access to water-dependent or water-related uses, such as ferry terminals, is permitted subject to policies and regulations of this Program. New or expanded bridge crossings for nonwater-dependent or nonwater-related uses may be permitted as a conditional use.

### **23.100.16 Utilities**

Utility development in shoreline areas shall be subject to the policies and regulations of this Section and Chapter 9. These policies and regulations apply to both public and private utilities.

#### **23.100.16.A Utilities – Policies**

1. New public or private utilities should be located inland from the land/water interface, preferably out of the shoreline, unless:
  - a. Perpendicular water crossings are unavoidable; or
  - b. Utilities are required for authorized shoreline uses consistent with this Program.
2. Utilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural resources.
3. Utilities should be located, designed, constructed, and operated to result in no net loss of shoreline ecological functions and processes with appropriate mitigation as provided in SMP 23.90.03.
4. All utility development should be consistent with and coordinated with all local government and state planning, including comprehensive plans and single purpose plans to meet the needs of future populations in areas planned to accommodate growth. Site planning and rights-of-way for utility development should provide for compatible multiple uses such as shore access, trails, and recreation or other appropriate use whenever possible; utility right-of-way acquisition should also be coordinated with transportation and recreation planning.
5. Utilities should be located in existing rights-of-way and corridors whenever possible.<sup>32</sup>
6. Utilities serving new development should be located underground, wherever possible.
7. Development of pipelines and cables on aquatic lands and tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which would disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

#### **23.100.16.B Utilities – Regulations**

##### **23.100.16.B.1 Design and Operation**

- a. Water Systems:

---

<sup>32</sup> ~~WAC 173-26-241(3)(I)~~

- (1) Components of water systems which are not water-dependent shall be located away from shorelines unless alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant adverse impacts to other shoreline resources and values such as parks and recreation facilities, public access and archaeological, historic, and cultural resources, and aesthetic resources.
- (2) Private and public intake facilities, and wells on shorelines should be located where there will be no net loss in ecological functions or adverse impacts upon shoreline resources, values, natural features, or other users.
- (3) Desalinization facilities shall be located consistent with critical area regulations and buffers, except for water-dependent components such as water intakes.

b. Sewage Systems:

- (1) Sewage trunk lines, interceptors, pump stations, treatment plants and other components that are not water-dependent shall be located away from shorelines unless alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant impacts to other shoreline resources and values such as parks and recreation facilities, public access and archaeological, historic, and cultural resources, and aesthetic resources.
- (2) Outfall pipelines and diffusers are water-dependent, but should be located only where there will be no net loss in shoreline ecological functions and processes or adverse impacts upon shoreline resources and values.
- (3) Septic tanks and drainfields are prohibited where public sewer is reasonably available.

c. Solid Waste Facilities:

- (1) Facilities for processing, storage and disposal of solid waste are not normally water-dependent. Components that are not water-dependent shall not be permitted on shorelines.
- (2) Disposal of solid waste on shorelines or in water bodies has potential for severe adverse effects upon ecological processes and functions, property values, public health, natural resources, and local aesthetic values and shall not be permitted.
- (3) Temporary storage of solid waste in suitable receptacles is permitted as an accessory use to a primary permitted use, or for litter control.

d. Oil, Gas and Natural Gas Transmission:

- (1) Oil, gas and natural gas pipelines, except local service lines, shall not be located in shoreline areas unless alternatives are demonstrated to be infeasible and shall

include analysis of alternative routes avoiding aquatic lands and including alternative technology.

- (2) Natural gas local service lines shall not be located in shoreline areas unless serving approved shoreline uses. Crossings of shorelines shall not be approved unless alternatives are demonstrated to be infeasible, ~~and Application materials~~ shall include an analysis of alternative routes avoiding aquatic lands, ~~and~~ including an analysis of alternative technology.
- (3) Application for oil, gas and natural gas pipelines shall demonstrate that the facilities do not result in a net loss of shoreline ecological functions and processes or significant impacts to other shoreline resources and values.
- (4) Developers and operators of pipelines and related appurtenances for gas and oil shall be required to demonstrate adequate provisions for preventing spills or leaks, as well as established procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.

e. Electrical Energy and Communication Systems:

- (1) Energy and communication systems including substations, towers, transmission and distribution lines have critical location requirements, but are not normally water-dependent. Systems components that are not water-dependent shall not be located on shorelines unless alternatives are infeasible, ~~and Application materials for such facilities~~ shall include an analysis of alternative routes avoiding aquatic lands, ~~and~~ including an analysis of alternative technology.
- (2) Underground placement of lines shall be required on shorelines for new or replacement lines that are parallel to the shoreline, and do not cross water or other critical areas defined in WCC 16.16, provided that maintenance of existing aerial lines above 35kv may be permitted above ground where alternatives are demonstrated to be impractical and /or infeasible. New or replacement lines that cross water or other critical areas defined in WCC 16.16 may be required to be placed underground depending on impacts on ecological functions and processes and visual impacts, provided that maintenance of existing aerial lines above 35kv may be permitted above ground where alternatives are demonstrated to be impractical and /or infeasible. Poles or supports treated with creosote or other wood preservatives that may be mobile in water shall not be used along shorelines or associated wetlands. Where road right-of-ways or easements are within 150 feet and also are parallel to the shoreline for more than 500 feet, no new overhead wiring shall be installed between the road and OHWM.
- (3) Utilities for new development within the shoreline shall be installed underground.

f. Fire Protection Facilities: Storage and handling facilities for water borne fire fighting or rescue equipment may be permitted on shorelines at locations which are suitable considering the purpose of the proposal and the policies of this Program.

- g. Other Utility Production and Processing Facilities: Other utility processing facilities, such as power plants, that are nonwater-oriented shall not be allowed in shoreline areas unless no other feasible alternative is available.
- h. Minimum required setbacks from shorelines and side property lines and maximum height limits are contained in SMP 23.90.13 - Setback, Height and Open Space Standards for Shoreline Development.
- i. Site Coverage: Maximum site coverage for utility development including parking and storage areas shall not exceed standards in the underlying zoning in WCC Title 20 and shall not exceed fifty percent (50%) on Urban, Urban Resort and Shoreline Residential shorelines, thirty-five percent (35%) on Rural and Resource shorelines and twenty percent (20%) on Urban Conservancy and Conservancy shorelines.

**23.100.16.B.2 Application Requirements**

All applications for new or expanded utilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this Program, including but not limited to:

- a. Documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to cross shorelands to connect specific end points. An analysis of alternatives may be required. New or expanded public or private utilities should be located inland from the land/water interface, preferably out of shoreline jurisdiction.
- b. Documentation that the proposed facilities comply with critical area regulations in WCC 16.16.
- c. Documentation of how the location, design and use achieves no net loss of shoreline ecological functions and incorporates appropriate mitigation in accordance with SMP 23.90.03.
- d. Documentation that facilities will avoid public recreation areas and significant natural, historic, archaeological or cultural sites, and that all feasible measures to minimize adverse impacts to such resources have been incorporated into the proposal.
- e. Applications must demonstrate adequate provisions for preventing spills or leaks, as well as procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.

**23.100.16.C Utilities – Shoreline Area Regulations**

- 1. Urban: Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this Program. Regional facilities, including [regional transmission facilities](#) serving customers outside of Whatcom County may be permitted as a conditional use, [provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.](#)
- 2. Urban Resort: Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this Program. Regional facilities, including [regional transmission facilities](#) serving customers outside of Whatcom County may be permitted

- as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.
3. Urban Conservancy: Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this Program; provided that, sewage outfalls and treatment plants, over-water communication or power lines, ~~and~~ fuel pipelines, and other types of hazardous material pipelines may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Regional facilities, including ~~regional~~ transmission facilities serving customers outside of Whatcom County may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Free-standing communication towers are prohibited. Desalinization facilities may be permitted as a conditional use.
  4. Shoreline Residential: Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this Program. Regional facilities, including ~~regional~~ transmission facilities serving customers outside of Whatcom County may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.
  5. Rural: Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this Program. Regional facilities, including ~~regional~~ transmission facilities serving customers outside of Whatcom County may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.
  6. Resource: Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this Program. Regional facilities, including ~~regional~~ transmission facilities serving customers outside of Whatcom County may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.
  7. Conservancy: Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this Program; provided that, sewage outfalls and treatment plants, over-water communication or power lines, ~~and~~ fuel pipelines, and other types of hazardous material pipelines may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Regional facilities, including ~~regional~~ transmission facilities serving customers outside of Whatcom County may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Free-standing communication towers are prohibited. Desalinization facilities may be permitted as a conditional use.
  8. Natural:
    - a. Utility development is prohibited.
    - b. Maintenance of existing utilities is permitted and shall take extraordinary measures in protecting the natural features therein.
  9. Aquatic:

- a. Submarine electrical or communications cables, over-waterhead public utility lines consisting of local distribution facilities if adequately flood proofed, and water intakes, and desalinization facility intakes are permitted subject to policies and regulations of this Program.
- b. Submarine water and sewer lines, fuel pipelines, and sewer outfalls may be permitted as conditional uses.
- c. Crossings of water bodies, by over-water transmission or distribution lines and on-site electrical communication wiring may be permitted within 100 feet of the OHWM and wetlands and over bodies of water as a conditional use. All other utility development is prohibited.

## **23.100.17 Cherry Point Management Area**

### **23.100.17.A Cherry Point Management Area – Policies**

#### **23.100.17.A.1 Purpose and Intent**

- a. The purpose of the Cherry Point Management Area is to provide a regulatory framework that recognizes and balances the special port, industrial and natural resource needs associated with the development of this marine resource. This section identifies policies, and regulations for water-dependent industrial activities that apply in addition to specific other elements of this Program as referenced herein.
- b. Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry Point Management Area as providing herring spawning habitat [and other key habitat characteristics](#) that warrant special consideration due to their importance to regional fisheries and other elements of the aquatic environment.
- c. Development of the Cherry Point Major Port/Industrial Urban Growth Area will accommodate uses that require marine access for marine cargo transfer, including oil and other materials. For this reason, water-dependent terminal facilities are encouraged as the preferred use in the Cherry Point Management Area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the number of piers to one (1) pier, in addition to those in operation or approved as of January 1, 1998.
- d. Whatcom County should consider participation with local, state, [and](#) federal [agencies](#), tribal governments and other stakeholders in the development of a plan to address integrated management of the uplands and public aquatic lands within the Cherry Point Management Area. The development of such a plan could provide a forum and process for addressing aquatic resources by all stakeholders. Elements of the plan could be adopted as future amendments to this Program as appropriate.
- e. [All development that is to be located within the Cherry Point Management Area, as defined in Chapter 11, shall be subject to the policies and regulations found in Section 23.100.17 of this chapter, and shall not be subject to the policies and regulations found in Sections 23.100.01 through 23.100.16, nor Chapter 9, unless otherwise referenced in Section 23.100.17. The policies and regulations found in Section 23.100.17 are applicable only within the geographic boundaries of the Cherry Point Management Area and do not apply elsewhere in the county. In the event that the provisions of Section 23.100.17 conflict with other applicable provisions of this Program, the policies and regulations of Section 23.100.17 shall prevail.](#)

#### **23.100.17.A.2 Water-dependent Industrial Development ~~of Statewide Significance~~**

Only water-dependent facilities that serve industrial facilities ~~of statewide significance~~ should be allowed in the Cherry Point Management Area and only where the long term economic benefits of such facilities outweigh potential adverse effects on the ecological functions and processes of the area. Industry within the Major Port/Industrial Urban Growth Area, as designated in the County Comprehensive Plan, which is not water-dependent should locate away from shoreline jurisdiction.

**23.100.17.A.3 Multiple Use Facilities**

Facilities that allow for multiple use of piers, cargo handling, storage, parking and other accessory facilities are encouraged.

**23.100.17.A.4 Public Access**

- a. Where appropriate, industrial and port development within the Cherry Point Management Area should provide public beach and shoreline access in a manner that does not cause interference with facility operations or present hazards to life and property. This may be accomplished through individual action or by joint, coordinated action with other developers and landowners, for example, by setting aside a common public access area.
- b. Special emphasis should be given to providing public beach and shoreline access for recreational opportunities including but not limited to crabbing, small craft launching, surf fishing, picnicking, clamming, and beach walking.
- c. Public access within the Cherry Point Management Area should be consistent with the Whatcom County Parks and Recreation Open Space Plan.

**23.100.17.A.5 Shoreline Ecological Functions and Processes**

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 weighed with the long term statewide economic benefits. ~~Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with SMP 23.90.03.~~ New Port development that requires dredge and fill should not be permitted in the Cherry Point Management Area due to potential adverse effects on ecological functions, including fish and shellfish habitat and geo-hydraulic processes.

**23.100.17.A.6 Aesthetics**

All development should be designed to avoid or minimize negative visual impacts on the scenic character of the area and to ensure visual compatibility with adjacent non-industrial zoned properties.

**23.100.17.A.7 Site Development**

All development should be constructed and operated in a manner that will incorporate the following:

- a. Low impact development approaches to avoid or minimize adverse impact to topography, vegetation, water quality, fish and wildlife habitat, and other natural site conditions ~~and water quality~~;
- b. Adequate temporary and permanent management measures to control erosion and sediment impacts during construction and operation; and
- c. Adequate stormwater management facilities.

### **23.100.17.B Cherry Point Management Area – Regulations**

#### **23.100.17.B.1 Allowed Use**

- a. Water-dependent industrial and port uses ~~of statewide significance~~ are allowed within the Cherry Point Management Area provided that specific findings are made in a shoreline substantial development permit or conditional use permit that:
  - (1) policies for optimum implementation of the statewide interest have been achieved through protection of shoreline ecological functions and processes;
  - (2) ~~that~~ the long term economic benefits of the development outweigh potential adverse impacts on ecological functions; and
  - (3) ~~that~~ proposed mitigation measures to achieve no net loss of ecological functions and processes are incorporated in the proposal.
- b. Water-related and water-enjoyment uses are allowed only as part of public access and public recreation development, subject to the findings in (a) above.
- c. Accessory development, which does not require a shoreline location in order to carry out its support functions, shall be sited away from the land/water interface and landward of the principal use. Accessory development shall observe critical area buffers in WCC 16.16. Accessory development includes, but is not limited to, parking, warehousing, open air storage, waste storage and treatment, stormwater control facilities, utility and land transport development.
- d. Road, railway and utility facilities ~~that~~ servinge approved waterfront facilities related to water-dependent uses ~~and that~~ are located and designed to minimize shoreline alteration are ~~permitted~~allowed.
- e. Waste water disposal/treatment facilities for storage or disposal of industrial or domestic waste water are prohibited, except that elements such as conveyances and outfalls shall be allowed if alternate inland sites have been demonstrated to be infeasible. Waste water conveyance systems for ships at berth shall be permitted.

#### **23.100.17.B.2 Public Access**

- a. Public access shall be provided in accordance with SMP 23.90.08 unless it is demonstrated that public access poses significant interference with facility operations or hazards to life or property.
- b. If public access meeting the criteria above is demonstrated to be infeasible or inappropriate, alternative access may be provided in accordance with SMP 23.90.08 at a location not directly adjacent to the water such as a viewpoint, observation tower, or other areas serving as a means to view public waters. Such facilities may include interpretive centers and displays that explain maritime history and industry, provided that visual access to the water is also provided.

- c. As an alternative to on-site public access facilities, public access may be provided in accordance with a public access plan adopted as an element of the Whatcom County Parks and Recreation Open Space Plan.

### 23.100.17.B.3 Critical Areas

Development and alteration shall not be located or expanded within critical areas designated pursuant to WCC 16.16 except where the site is approved for water-dependent use, and the following are met:

- a. [Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with SMP 23.90.03.](#)
- b. Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade the existing water quality within the wetland.
- bc. The minimum required setback from the OHWM for all industrial and port facilities, including development components, which do not require a water's edge or water surface location shall be 150 feet; provided that, bluffs and banks greater than 10 feet in height and sloping greater than thirty percent (30%) and wetland shorelines shall have such setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.
- ed. Development and alteration other than recreation development for public and quasi-public shoreline access is prohibited on the accretion shoreforms identified on the map in Appendix C, subject to the regulations in this section and consistent with the Conservancy and Aquatic Shoreline Area Designation policies and regulations of Chapters 9 and 10; provided that lawfully established uses or developments may be maintained subject to the provisions of SMP 23.50.07.

### 23.100.17.B.4 Location and Design

- a. Piers
- (1) Piers shall be designed to accommodate only the necessary and intrinsic activities associated with the movement of material and cargo from land to water and water to land. The length of piers shall not extend beyond that which is necessary to accommodate the draft of the vessels intending to use the facility.
  - (2) Piers shall be designed to minimize interference in the intertidal zone and adverse impacts to fish and wildlife habitats.
  - (3) Piers shall be designed to minimize impacts on steep shoreline bluffs.
  - (4) All pilings in contact with water shall be constructed of [materials such as concrete, or steel, or other materials that will not adversely affect water quality or aquatic plants or animals.](#) Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper

chromium arsenic or pentachlorophenol is prohibited; provided that, replacement of existing wood pilings with chemically treated wood is allowed for maintenance purposes where use of a different material such as steel or concrete would result in unreasonable or unsafe structural complications; further provided that, where such replacement exceeds  ~~fifty~~ twenty percent (50% 20%) of the existing pilings over a ten (10) year period, such pilings shall conform to the standard construction provisions of this section.

- (5) All piers on piling structures shall have a minimum vertical clearance of 1 foot above extreme high water.
- (6) Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers, except for temporary storage under emergency situations, including oil spill cleanup. Bulk storage means non-portable storage in fixed tanks. Secondary containment shall be provided for portable containers.
- (7) All piers shall be located and designed to avoid impediments to navigation and to avoid depriving other properties of reasonable access to navigable waters. All piers shall be marked with navigational aids and approved for compliance with U.S. Coast Guard regulations.

b. Dredging

- (1) Dredging to accommodate water access to, or construction of, new development is prohibited. New development shall be located and designed to avoid the need for dredging. Dredging for existing development shall be the minimum necessary and shall minimize interference in the intertidal zone and impacts to fish and wildlife habitats.
- (2) Dredging operations, including spoil disposal shall be conducted in accordance with policies and regulations in SMP 23.90.12 B.4 and 5, Dredging.
- (3) Dredging is prohibited in the accretion shoreform and backshore wetland areas described in Appendix C.

c. Landfill is prohibited, except for the minimum necessary to access piers or other structures that provide access to the water. Pier design should accommodate the connection between the pier and uplands by employing a pile supported structure to the point of intersection with stable upland soils. Limited landfill may be allowed for pier access that does not extend further toward the OHWM than existing topography.

d. Excavation/Stabilization

- (1) Excavation/stabilization of bluffs is prohibited, except for the minimum necessary to access piers or other structures that provide access to the water; provided that, active feeder bluffs shall not be altered if alteration will adversely affect the existing littoral drift process. New development shall avoid, rather than modify feeder bluffs.
- (2) Excavation/stabilization is prohibited on accretion shoreforms and in wetlands in the backshore area.

- e. Shore defense works shall be regulated in accordance with SMP 23.100.13, Shoreline Stabilization [and be consistent with the Conservancy and Aquatic shoreline area regulations of that section.](#)

**23.100.17.B.5 Adjacent Use**

- a. New or expanded port or industrial development adjacent to properties which are zoned for non-industrial purposes shall provide setbacks of adequate width, to attenuate proximity impacts such as noise, light and glare; and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.
- b. Exterior lighting shall be designed and operated to avoid illuminating nearby properties zoned for non-port or non-industrial purposes so as to not unreasonably infringe on the use and enjoyment of such property, and to prevent hazards for public traffic. Methods of controlling illumination of nearby properties include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields and screening.
- c. The minimum setback from side property lines which intersect the OHWM for industrial and port development shall be 60 feet; provided that:
- (1) The side yard setback shall not apply to utility or security structures such as poles, meters, fences, guard houses, power vaults or transformers; and
  - (2) The side yard setbacks for parcels adjoining the NW and SE boundaries of the Cherry Point Management Area shall be administered in accordance with WCC 20.68.550 (Buffer Area).
- d. Required setbacks shall not be used for storage of industrial equipment or materials, or for waste disposal, but may be used for public access or outdoor recreation.

**23.100.17.B.6 Oil and Hazardous Materials**

- a. Release of oil or hazardous materials on shorelines is prohibited.
- b. A management plan shall be developed for new permitted or conditionally permitted development for the safe handling of cargo, fuels, bilge water, and toxic or hazardous materials to prevent them from entering aquatic waters, surface or ground water. Specific provisions shall address prompt and effective clean up of spills that may occur. Management plans shall be coordinated with state or federal spill response plans. Where a spill management/response plan has been approved by the State, said plan may be used to satisfy the requirements of this section.
- c. [Necessary spill containment facilities associated with existing development may be permitted within shoreline jurisdiction where there are no feasible alternatives.](#)

**23.100.17.B.7 Recreational Development**

All recreational development shall comply with the policies and regulations of SMP 23.100.104 and be consistent with the Conservancy and Aquatic shoreline area regulations of that section.

**23.100.17.B.8 Archaeological, Historic and Cultural Resource Management**

All development associated with archaeological, historic or cultural site activities shall comply with the policies and regulations of SMP 23.90.07.

## Chapter 11 Definitions

The terms used throughout this Program shall be defined and interpreted as indicated below. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular.

### A

1. “Accessory Development” means any development incidental to and subordinate to a primary use of a shoreline site and located adjacent thereto.
2. “Accessory Structure” means a structure that is incidental and subordinate to a primary use and located on the same lot as the primary use, such as ~~B~~ barns, garages, storage sheds, and similar structures ~~are examples.~~
3. “Accessory Use” means a use customarily incidental to a permitted use; provided, that such use shall be located on the same lot as the permitted use except where specifically permitted elsewhere in zoning district regulations.
4. “Accretion Shoreform” means a shoreline with a relatively stable berm and backshore that has been built up by long term deposition of sand and gravel transported by wind and/or water from a feeder bluff or other material source. Such shoreforms are scarce locally and include but are not limited to, barrier beaches, points, spits, tombolas, pocket beaches, and point and channel bars on streams.
5. “Act” means the Shoreline Management Act of 1971 (RCW 90.58) as amended.
- ~~6.~~ ~~“Active Alluvial Fan” means a portion or all of a fan that has experienced channel changes, erosion, or deposition. Active fans can be identified based on determination by field geomorphic and topographic evidence, and by historical accounts.~~
- ~~7.~~ ~~“Actively Farmed” means land that has a documented history of ongoing agricultural use and that is currently used primarily for the production of crops and/or raising or keeping livestock.~~
- ~~68.~~ “Activity” means human activity associated with the use of land or resources.
- ~~789.~~ “Administrator” or “Shorelines Administrator” means the Director of the Department of Planning and Development Services who is to carry out the administrative duties enumerated in this Program, or his/her designated representative.
- ~~8910.~~ “Adverse Impact” means an impact that can be measured or is tangible and has a reasonable likelihood of causing moderate or greater harm to ecological functions or processes or other elements of the shoreline environment.
- ~~94011.~~ “Agricultural Activities” means agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is

plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities; and maintaining agricultural lands under production or cultivation.

~~41102~~ "Agricultural Equipment" and "Agricultural Facilities" include, but are not limited to:

- a. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; ~~upland finfish rearing facilities~~; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;
- b. Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
- c. Farm residences and associated equipment, lands, and facilities; and
- d. Roadside stands and on-farm markets for marketing fruit or vegetables.

~~42113~~ "Agricultural Land" means areas on which agricultural activities are conducted as of the date of adoption of this Program pursuant to the State Shoreline Guidelines as evidenced by aerial photography or other documentation. After the effective date of this Program, land converted to agricultural use is subject to compliance with the requirements herein.

~~43124~~ "Agricultural Products" includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty (20) years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, ~~upland finfish~~, poultry and poultry products, and dairy products.

~~44135~~ "Alluvial Fan" means a fan-shaped deposit of sediment and organic debris formed where a stream flows or has flowed out of a mountainous upland onto a level plain or valley floor because of a sudden change in sediment transport capacity (e.g. significant change in slope or confinement).

~~4516~~ ~~"Alluvium" means a general term for clay, silt, sand, gravel, or similar other unconsolidated detrital materials, deposited during comparatively recent geologic time by a stream or other body of running water, as a sorted or semi-sorted sediment in the bed of the stream or on its floodplain or delta.~~

~~46147~~ "Alteration" means any human induced change in an existing condition of a shoreline, critical area and/or its buffer. Alterations include, but are not limited to grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the area.

~~47158~~. "Anadromous Fish" means fish species that spend most of their lifecycle in saltwater, but return to freshwater to reproduce.

~~4819~~. ~~"Animal Unit" means 1,000 pounds of livestock live weight. Waste production from livestock is expressed in pounds per day per 1,000 pounds of livestock live weight (lb/d/1,000 lbs).~~

~~161920~~. "Appurtenance" means development that is necessarily connected to the use and enjoyment of a single family residence and is located landward of the OHWM and/or the perimeter of a wetland. Appurtenances include a garage, deck, driveway, utilities, fences and grading which does not exceed 250 cubic yards (except to construct a conventional drainfield).

~~172024~~. "Aquaculture" means the farming or culture of food fish, shellfish, or other aquatic plants or animals in freshwater or saltwater areas, and may require development such as fish hatcheries, rearing pens and structures, and shellfish rafts, as well as use of natural spawning and rearing areas. Aquaculture does not include the harvest of free-swimming fish or the harvest of shellfish not artificially planted or maintained, including the harvest of wild stock geoducks on DNR [managed lands lease tracts](#).

~~182122~~. "Aquaculture Practices" means any activity directly pertaining to growing, handling, or harvesting of aquaculture produce including, but not limited to, propagation, stocking, feeding, disease treatment, waste disposal, water use, development of habitat and structures. Excluded from this definition are related commercial or industrial uses such as wholesale and retail sales, or final processing and freezing.

~~192223~~. "Aquatic Shoreline Area" means an area designated pursuant to [Chapter 3 SMP 23.30](#).

~~23204~~. "Archaeological Object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains and technological byproducts.

~~24215~~. "Archaeological Resource/Site" means a geographic locality in Washington, including, but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects. "Significant" is that quality in American history, architecture, archaeology, engineering, and culture that is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- a. That are associated with events that have made a significant contribution to the broad patterns of our history; or
- b. That are associated with the lives of significant persons in our past; or
- c. That embody the distinctive characteristics of a type, period or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

- d. That have yielded or may be likely to yield, information important in history or prehistory.

~~25226~~ "Archaeologist" means a person who has designed and executed an archaeological study as evidenced by a thesis or dissertation and has been awarded an advanced degree such as an M.A., M.S. or Ph.D. from an accredited institution of higher education in archaeology, anthropology, or history or other germane discipline with a specialization in archaeology; has a minimum of one (1) year of field experience with at least twenty-four (24) weeks of field work under the supervision of a professional archaeologist, including no less than twelve (12) weeks of survey or reconnaissance work, and at least eight (8) weeks of supervised laboratory experience. Twenty (20) weeks of field work in a supervisory capacity must be documentable with a report produced by the individual on the field work.

~~26237~~ "Archaeology" means systematic, scientific study of the human past through material remains.

~~27248~~ "Associated Wetlands" means wetlands that are in proximity to tidal waters, lakes, rivers or streams that are subject to the Shoreline Management Act and either influence or are influenced by such waters. Factors used to determine proximity and influence include, but are not limited to: location contiguous to a shoreline waterbody, formation by tidally influenced geo-hydraulic processes, presence of a surface connection including through a culvert or tide gate, location in part or whole within the ~~100-year~~ floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

~~28259~~ "Average Grade Level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property on that part of the lot to be occupied by the building or structure as measured by averaging the elevations at the center of all exterior walls of the proposed structure.

## B

1. "Backshore" means a zone of accretion or erosion lying landward of the average high-tide mark, wetted by tides during storm events.
2. "Barrier Beach" means a linear accretion shoreform of sand and/or gravel berm(s) accreted waterward of bluffs, bays, marshes or estuaries by littoral drift; the berm acts as a natural dike and seawall to its backshore or marsh hinterland.
3. "Beach Nourishment" means a restoration or shoreline stabilization activity in which selected beach material is deposited at one or several locations in the updrift portion of a drift sector. The material is then naturally transported by waves or currents downdrift to stabilize or restore accretion shoreforms and other berms, which may be eroding due to artificial obstructions in the shore process corridor.
4. "Bedlands" means those submerged lands below the line of extreme low tide in marine waters and below the line of navigability of navigable lakes and rivers.
5. "Bedrock" means a general term for rock, typically hard, consolidated geologic material that underlies soil or other unconsolidated, superficial material or is exposed at the surface.

- 
6. "Berm" or "Protective Berm" means one or several accreted linear mounds of sand and gravel generally paralleling the shore at or landward of OHWM; berms are normally stable because of material size or vegetation, and are naturally formed by littoral drift.
7. "Best Management Practices" means conservation practices or systems of practices and management measures that:
- Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;
  - Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of waters, wetlands, and other fish and wildlife habitats;
  - Control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material.
8. "Bioengineered Shoreline Stabilization" means biostructural and biotechnical alternatives to hardened structures (bulkheads, walls) for protecting slopes or other erosive features. Bioengineered stabilization uses vegetation, geotextiles, geosynthetics and similar materials. An example is Vegetated Reinforced Soil Slopes (VRSS), which uses vegetation arranged and embedded in the ground to prevent shallow mass-movement and surficial erosion.
9. "Boat Lift" means an in-water structure used for the dry berthing of vessels above the water level and lowering of vessels into the water. A boat lift as herein defined is used to berth and launch a single vessel, suspended over the water's surface. A boat lift is generally a manufactured unit without a canopy cover and may be placed in the water adjacent to a dock or as stand-alone structure. A boat lift may be designed either for boats or personal watercraft. A boat lift is to be differentiated from a hoist or crane used for the launching of vessels. A boat lift with a canopy cover shall be considered a covered moorage for the purposes of this Program.
- ~~10. "Boathouse" means any roofed and enclosed structure built onshore or offshore for storage of water craft or float planes.~~
- ~~104.~~ "Bog" means a type of wetland dominated by mosses that form peat. Bogs are very acidic, nutrient poor systems, fed by precipitation rather than surface inflow, with specially adapted plant communities.
- ~~112.~~ "Breakwater" means an offshore structure that is generally built parallel to shore that may or may not be connected to land, and may be floating or stationary. Their primary purpose is to protect harbors, moorages and navigation activity from wave and wind action by creating stillwater areas along shore. A secondary purpose ~~is would be~~ to protect shorelines from wave caused erosion. ~~Most breakwaters in the Pacific Coast are riprap mound construction. Several include ancillary sand bypassing operations.~~
- ~~123.~~ "Buffer (buffer zone)" means the area adjacent to a shoreline and/or critical area that separates and protects the area from adverse impacts associated with adjacent land uses.

134. "Building" means any structure used or intended for supporting or sheltering any use or occupancy as defined in the International Building Code.
145. "Bulkhead" means a wall-like structure such as a revetment or seawall that is placed parallel to shore primarily for retaining uplands and fills prone to sliding or sheet erosion, and to protect uplands and fills from erosion by wave action.

C

1. "Channel Migration Zone" means the area along a river or stream within which the channel can reasonably be expected to migrate over time as a result of normally occurring processes. It encompasses that area of current and historic lateral stream channel movement that is subject to erosion, bank destabilization, rapid stream incision, and/or channel shifting, as well as adjacent areas that are susceptible to channel erosion. There are three components of the channel migration zone: (1) the Historical Migration Zone (HMZ)—the collective area the channel occupied in the historical record; (2) the Avulsion Hazard Zone (AHZ)—the area not included in the HMZ that is at risk of avulsion over the timeline of the CMZ; and (3) the Erosion Hazard Area (EHA)—the area not included in the HMZ or the AHZ that is at risk of bank erosion from stream flow or mass wasting over the timeline of the CMZ. The channel migration zone may not include the area behind a lawfully constructed flood protection device. Channel migration zones shall be identified in accordance with guidelines established by the Washington State Department of Ecology.
2. "Channelization" means the straightening, relocation, deepening or lining of stream channels, including construction of continuous revetments or levees for the purpose of preventing gradual, natural meander progression.
- ~~3. "Chemicals" means any synthetic substance or mixture of such substances used for a fertilizer, herbicide, pesticide, insecticide, or rodenticide.~~
34. "Cherry Point Management Area" means a geographic area defined as all the shoreline areas within the jurisdiction of the Whatcom County Shoreline Management Program lying between the eastern property boundary of Tax Lots 2.27 and 2.28 within the SE 1/4 of Section 11, Township 39 North, Range 1 West, as it exists on June 18, 1987, and the southern boundary of Section 32, Township 39 North, Range 1 East, extending waterward a distance of 5000' and extending landward for 200' as measured on a horizontal plane from the OHWM.
45. "Clearing" means the removal of vegetation or plant cover by manual, chemical, or mechanical means. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.
56. "Coastal High Hazard Area" means the area subject to high velocity waters, including but not limited to, storm surge or tsunamis. The area is designated on the [Flood Insurance Rate Map](#) as Zone V1-V30, VE or V.
67. "Commercial Development" means those [developments](#) whose primary use is for retail, service ~~or wholesale trade~~ or other commercial business activities. Included in this definition are [developments such as](#) hotels, motels, bed and breakfast establishments,

- shops, restaurants, banks, professional offices, grocery stores, laundromats, recreational vehicle parks, commercial rental campgrounds and cabins, whether public or private, and indoor or intensive outdoor commercial recreation facilities. Not included are private camping clubs, marinas, signs, utilities and other development.
- ~~78.~~ "Commercial Fish" means those species of fish that are classified under the Washington Department of Fish and Wildlife Food Fish Classification as commercial fish (WAC 220-12-010).
- ~~89.~~ "Compensatory Mitigation" means a ~~mitigation~~ project for the purpose of ~~mitigating~~ ~~replacing~~, at an equivalent or greater level, unavoidable impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented. Compensatory mitigation includes, but is not limited to, wetland creation, restoration, enhancement, and preservation; stream restoration and relocation, rehabilitation; and buffer enhancement.
- ~~940.~~ "Conditional Use" for the purposes of this Program means a use, development or substantial development listed in the regulations as being permitted only as a conditional use, or not classified in this Program. Conditional uses are subject to review and approval pursuant to the criteria in [Chapter 6 SMP 23-60](#) regardless of whether or not the proposal requires a substantial development permit.
- ~~104.~~ "Conservancy Shoreline Area" means an area so designated in [Chapter 3 SMP 23-30](#).
- ~~112.~~ "Conservation" means the prudent management of rivers, streams, wetlands, wildlife and other environmental resources in order to preserve and protect them. This includes the careful use of natural resources to prevent depletion or harm to the environment.
- ~~123.~~ "Conservation Easement" means a legal agreement that the property owner enters into to restrict uses of the land for purposes of natural resources conservation. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property.
- ~~134.~~ "Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in ground water, air, or soil or that occurs at concentrations greater than those in the natural levels (WAC 173-200).
- ~~145.~~ "County" means Whatcom County, Washington.
- ~~156.~~ "Covered Moorage" means a roofed floating or fixed offshore structure without walls, other than a minimal structural framework needed to support the roof, for moorage of water craft or float planes.
- ~~167.~~ "Critical Aquifer Recharge Area" means areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC 365-190-030(2).
- ~~18.~~ ~~"Critical Area Report" means a report prepared by a qualified professional or qualified consultant based on Best Available Science, and the specific methods and standards for technical study required for each applicable critical area. Geotechnical reports and~~

~~hydrogeological reports are critical area reports specific to geologically hazardous areas and critical aquifer recharge areas, respectively.~~

~~49. "Critical Area Tract" means land held in private ownership and retained in an open undeveloped condition (native vegetation is preserved) in perpetuity for the protection of critical areas.~~

1720. "Critical Areas" means the following areas as designated in WCC 16.16:

- a. Critical Aquifer Recharge Areas
- b. Wetlands
- c. Geologically Hazardous Areas
- d. Frequently Flooded Areas
- e. Fish and Wildlife Habitat Conservation Areas

~~218.~~ "Critical Habitat" means habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified ~~herein~~ WCC 16.16 with reference to lists, categories, and definitions promulgated by the Washington Department of Fish and Wildlife as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.

1922. "Current Deflector" means an angled "stub-dike", groin, or sheet-pile structure which projects into a stream channel to divert flood currents from specific areas, or to control downstream current alignment.

## D

1. "Dam" means a barrier across a stream or river to confine or regulate flow or raise water levels for purposes such as flood or irrigation water storage, erosion control, power generation, or collection of sediment or debris.

2. "Debris Flow" means a moving mass of rock fragments, soil, and mud; more than half of the particles being larger than sand size; a general term that describes a mass movement of sediment mixed with water and air that flows readily on low slopes.

~~3. "Debris Torrent" means a violent and rushing mass of water, logs, boulders and other debris.~~

~~4. "Deepwater Habitats" means permanently flooded lands. Deepwater habitats include environments where surface water is permanent and often deep, so that water, rather than air, is the principal medium in which the dominant organisms live. The boundary between wetland and deepwater habitat in the marine and estuarine systems coincides with the elevation of the extreme low water of spring tide; permanently flooded areas are considered deepwater habitats in these systems. The boundary between wetland~~

- ~~and deepwater habitat in the riverine and lacustrine systems lies at a depth of two meters (6.6 feet) below low water; however, if emergent vegetation, shrubs, or trees grow beyond this depth at any time, their deepwater edge is the boundary.~~
- ~~5. "Delineation" means the precise determination of wetland boundaries in the field according to the application of the specific method described in the 1997 Washington State Wetland Delineation manual and/or the, Corps of Engineers Wetlands Delineation Manual 1987 Edition, as amended.~~
- ~~6. "Developable Area" means the portion of a parcel devoted to construction of a building to accommodate an allowed use, together with access facilities, appurtenances, landscaping and other associated features.~~
37. "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 includes activities such as subdivision and short subdivisions; binding site plans; planned unit developments; variances; ~~shoreline substantial development~~; clearing activity; fill and grade work; activity conditionally allowed; building or construction; revocable encroachment permits; and septic approval; and both exempt and substantial developments.
- ~~48.~~ "Dike" means an artificial embankment placed at a stream mouth or delta area to hold back sea water for purposes of creating and/or protecting arable land from flooding; revetment normally set back from the bank or channel in the floodplain for the purpose of keeping floodwaters from inundating adjacent land.
59. "Dock" means all platform structures or anchored devices in or floating upon water bodies to provide moorage for pleasure craft or landing for water-dependent recreation including, but not limited to floats, swim floats, float plane moorages, and water ski jumps. Excluded are launch ramps.
640. "Drainage Ditch" means an artificially created watercourse constructed to drain surface or ground water. Ditches are graded (man-made), channels installed to collect and convey runoff from fields and roadways. Ditches may include irrigation ditches, waste ways, drains, outfalls, operational spillways, channels, stormwater runoff facilities or other wholly artificial watercourses, except those that directly result from the modification to a natural watercourse. Ditched channels that support fish are considered to be streams.
744. "Dredge Spoil" means the material removed by dredging.
842. "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; maintenance dredging and other support activities are included in this definition. ~~Dredging is commonly done in shallow accretional environments to deepen wet moorage marinas, harbors and their entrances, and navigational lanes and to obtain bottom materials for landfill or construction.~~

~~943.~~ "Drift Sector", or "Drift Cell" ~~or "Littoral Cell"~~ means a particular reach of marine shore in which littoral drift may occur without significant interruption, and which contains any and all natural sources of such drift, and also any accretion shoreform(s) accreted by such drift. Each normal drift sector contains these shore process elements: feeder bluff or estuary, driftway, littoral drift, and accretion shoreform.

~~104.~~ "Driftway" means that portion of the marine shore process corridor, primarily the upper foreshore, through which sand and gravel are transported by littoral drift. The driftway is the essential component between the feeder bluff(s) and accretion shoreform(s) of an integral drift sector. Driftways are also characterized by intermittent, narrow berm beaches.

**E**

1. "Ecological Functions" or "Shoreline Functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. See WAC 173-26-201(2)(c). Functions include, but are not limited to, habitat diversity and food chain support for fish and wildlife, ground water recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and flood water attenuation and flood peak desynchronization, and water quality enhancement through biofiltration and retention of sediments, nutrients, and toxicants. These beneficial roles are not listed in order of priority.

2. "Ecosystem Processes" or "Ecosystem-wide Processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

3. "Emergency Activities" means those activities that require immediate action within a time too short to allow full compliance with this Program due to an unanticipated and imminent threat to public health, safety or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed. All emergency construction shall be consistent with the policies of RCW 90.58 and this Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

~~4. "Emergent Wetland" means a wetland with at least thirty percent (30%) of the surface area covered by erect, rooted, herbaceous vegetation as the uppermost vegetative strata.~~

~~45.~~ "Enhancement" means actions performed within an existing degraded shoreline, critical area and/or buffer to intentionally increase or augment one or more functions or values of the existing area. Enhancement actions include, but are not limited to, increasing plant diversity and cover, increasing wildlife habitat and structural complexity (snags, woody debris), installing environmentally compatible erosion controls, or removing non-indigenous plant or animal species.

~~56.~~ "Erosion" means a process whereby wind, rain, water and other natural agents mobilize, and transport, and deposit soil particles.

- ~~67.~~ “Erosion Hazard Areas” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) as having “severe” or “very severe” erosion hazards and areas subject to impacts from lateral erosion related to moving water such as river channel migration and shoreline retreat.
- ~~78.~~ “Essential Public Facility” means those facilities that are typically difficult to site, such as airports, state education facilities, and state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, and group homes.
- ~~9.~~ ~~“Estuarine Wetland” means the zero gradient sector of a stream where it flows into a standing body of water together with associated wetlands; tidal flows reverse flow in the wetland twice daily, determining its upstream limit. It is characterized by low bank channels (distributaries) branching off the main stream to form a broad, near level delta; bank, bed and delta materials are silt and clay, banks are stable, vegetation ranges from marsh to forest, and water is usually brackish due to daily mixing and layering of fresh and saltwater.~~
- ~~840.~~ “Excavation” means the disturbance, displacement and/or disposal of unconsolidated earth material such as silt, sand, gravel, soil, rock or other material from all areas landward of OHWM.
- ~~944.~~ “Exempt Development” means a use or development activity that is not a substantial development and that is specifically listed as exempt from the substantial development permit requirement in WAC 173-27-040 and [Chapter 6 SMP 23-50](#).
- ~~12.~~ ~~“Existing and Ongoing Agricultural Activities” means those activities conducted on lands defined in RCW 36.70A.030 and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that result in the filling of an area or bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a non-agricultural use, or has lain idle for more than five (5) years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.~~
- ~~13.~~ ~~“Exotic” means any species of plants or animals that is not indigenous to the area.~~
- ~~104.~~ “Extreme Low Tide” means the lowest line on the land reached by a receding tide.

## F

1. “Fair Market Value” of a development means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

2. "Farm Pond" means an open water depression created from a non-wetland site in connection with agricultural activities.
3. "Feasible" means an action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:
  - a. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
  - b. The action provides a reasonable likelihood of achieving its intended purpose; and
  - c. The action does not physically preclude achieving the project's primary intended legal use.

In cases where this Program requires certain actions, unless they are infeasible, the burden of proving infeasibility is on the applicant/proponent. In determining an action's infeasibility, the County may weigh the action's relative costs and public benefits, considered in the short and long-term time frames.

4. "Feasible Alternative" means an action, such as development, mitigation, or restoration, that meets all of the following conditions: (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (b) The action provides a reasonable likelihood of achieving its intended purpose; and (c) The action does not physically preclude achieving the project's primary intended legal use. Feasibility shall take into account both short and long-term monetary and non-monetary costs and benefits substitute action that is available and reasonably capable of being carried out after taking into consideration, existing technology and logistics in light of overall project purposes, and that has less impact to critical areas. Cost shall not be the sole basis for determining feasibility.
5. "Feasible Location" means a location that accommodates a development in a manner that achieves its intended purpose consistent with the constraints of the applicable land use regulations and characteristics of the property, including but not limited to lot size, configuration, presence/absence of critical areas and compatibility with adjacent land use/development. Feasibility shall take into account both short and long-term monetary and non-monetary costs and benefits.
6. "Feeder Bluff" or "Erosional Bluff" means any bluff (or cliff) experiencing periodic erosion from waves, sliding or slumping, and/or whose eroded sand or gravel material is naturally transported (littoral drift) via a driftway to an accretion shoreform; these natural sources of beach material are limited and vital for the long term stability of driftways and accretion shoreforms.
76. "Feeder Bluff Exceptional" means relatively rapidly eroding bluff segments identified by the presence of landslide scarps, bluff toe erosion, and a general absence of vegetative cover and/or portions of bluff face fully exposed. Other indicators included the presence

- of colluvium (slide debris), boulder or cobble lag deposits, and fallen trees across the beachface. Feeder bluff exceptional segments lack a backshore, old or rotten logs, and coniferous bluff vegetation.
- ~~87~~. “Feedlot” means a concentrated, confined animal or poultry operation for production of meat, milk or eggs; or stabling in yards, barns, pens or houses wherein animals or poultry are fed at the place of confinement; and crop or forage growth or production is not sustained within the place of confinement.
- ~~98~~. “Fill Material” means any solid or semi-solid material, including rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure that, when placed, changes the grade or elevation of the receiving site.
- ~~109~~. “Filling” means the act of transporting or placing by any manual or mechanical means fill material from, to, or on any soil surface, including temporary stockpiling of fill material.
- ~~119~~. “Fish and Wildlife Habitat Conservation Areas” means areas important for maintaining species in suitable habitats within their natural geographic distribution so that isolated populations are not created, as designated in WCC 16.16.
- ~~124~~. “Fish Habitat” means a complex of physical, chemical, and biological conditions that provide the life supporting and reproductive needs of a species or life stage of fish. Although the habitat requirements of a species depend on its age and activity, the basic components of fish habitat in rivers, streams, ponds, lakes, estuaries, marine waters, and nearshore areas include, but are not limited to, the following:
- a. Clean water and appropriate temperatures for spawning, rearing, and holding.
  - b. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-channel habitat.
  - c. Abundance of bank and instream structures to provide hiding and resting areas and stabilize stream banks and beds.
  - d. Appropriate substrates for spawning and embryonic development. For stream and lake dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand.
  - e. Presence of riparian vegetation as defined in this Program. Riparian vegetation creates a transition zone, which provides shade, and food sources of aquatic and terrestrial insects for fish.
  - f. Unimpeded passage (i.e. due to suitable gradient and lack of barriers) for upstream and downstream migrating juveniles and adults.
- ~~132~~. “Fisheries” means all species of fish and shellfish commonly or regularly originating or harvested commercially or for sport in Puget Sound and its tributary freshwater bodies,

together with the aquatic plants and animals and habitat needed for continued propagation and growth of such species.

- ~~143.~~ “Fisheries Enhancement” means actions taken to rehabilitate, maintain or create fisheries habitat, including but not limited to hatcheries, spawning channels, lake rehabilitation, planting of fisheries stocks. Fisheries Enhancement differs from Aquaculture in that the increase in fisheries stocks eventually becomes available for public harvest.
- ~~154.~~ “Float” means a floating platform similar to a dock that is anchored or attached to pilings.
- ~~165.~~ “Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation of runoff of surface waters from any source.
- ~~176.~~ “Flood Control Works” means all development on rivers and streams designed to retard bank erosion, to reduce flooding of adjacent lands, to control or divert stream flow, or to create a reservoir, including but not limited to revetments, dikes, levees, channelization, dams, vegetative stabilization, weirs, flood and tidal gates. Excluded are water pump apparatus.
- ~~187.~~ ~~“Floodgate” means a closeable passageway placed in a river, stream or artificial channel to control flood waters or tidal flows.~~
18. “Floodplain, 100-year FEMA” means all lands along a river or stream that may be inundated by the base flood of such river or stream.
19. “Floodplain, Geomorphic” means the SMP floodplain used for determining shoreline jurisdiction as depicted on the Official Shoreline Map - Appendix E.
- ~~2049.~~ “Floodplain Management” means a long term program to reduce flood damages to life and property and to minimize public expenses due to floods through a comprehensive system of planning, development regulations, building standards, structural works, and monitoring and warning systems.
- ~~210.~~ “Flood-proofing” means structural provisions, changes, adjustments or a combination thereof, to buildings, structures, and works in areas subject to flooding in order to reduce or eliminate damages from flooding to such development and its contents, as well as related water supplies and utility facilities.
- ~~224.~~ “Floodway” means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually; said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetation ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the Federal government, the State, or the County. The limit of the floodway is that which has been established in the Program and approved by the Department of Ecology.

- ~~232~~. “Floodway Fringe” means that fringe of land in the floodplain outside the floodway, which is subject to inundation by the base flood. Flooding in the fringe is limited to flood surge storage of water currents moving at a negligible velocity of less than 0.5 miles per hour.
- ~~243~~. “Food Chain” means the hierarchy of feeding relationships between species in a biotic community. The food chain represents the transfer of material and energy from one species to another within an ecosystem.
- ~~254~~. “Foreshore” means the intertidal area between mean higher high water and mean low water.
- ~~265~~. “Forest Land” means all land that is capable of supporting a merchantable stand of timber and is not being actively used, developed, or converted in a manner that is incompatible with timber production.
- ~~276~~. “Forest Practices” means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing of timber; including, but not limited to: (1) road and trail construction, (2) fertilization, (3) prevention and suppression of diseases and insects; or other activities that qualify as a use or development subject to the Act.

Excluded from this definition is preparatory work such as tree marking, surveying and removal of incidental vegetation such as berries, greenery, or other natural products whose removal cannot normally be expected to result in damage to shoreline natural features. Also excluded from this definition is preparatory work associated with the conversion of land for non-forestry uses and developments. Log storage away from forest land is considered Industrial.

- ~~287~~. “Free-standing Sign” means a self-supporting sign placed off and away from the building to which it is related.
- ~~2928~~. “Frequently Flooded Areas” means lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the County in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain designations of the Federal Emergency Management Agency and the National Flood Insurance Program, as designated in WCC 16.16.
- ~~3120~~. “~~Function Assessment~~” or “~~Functions and Values Assessment~~” mean a set of procedures, applied by a qualified consultant, to identify the ecological functions being performed in a shoreline or critical area, usually by determining the presence of certain characteristics, and determining how well the area is performing those functions. ~~Function assessments can be qualitative or quantitative and may consider social values potentially provided by area. Function assessment methods must be consistent with Best Available Science.~~

## G

1. "Gabions" means works composed of masses of rock, rubble, or masonry tightly enclosed usually by wire mesh so as to form massive blocks. They are used to form walls on beaches to retard wave erosion or as foundations for breakwaters or jetties.
- ~~2.~~ ~~"Game Fish" means those species of fish that are classified by the Washington Department of Fish and Wildlife as game fish (WAC 232-12-019).~~
- ~~23.~~ "Geologically Hazardous Areas" means areas designated in WCC 16.16 that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose unacceptable risks to public health and safety and may not be suited to commercial, residential, or industrial development.
- ~~4.~~ ~~"Geologically Unstable" means the relative instability of a shoreform or land form for development purposes over the long term or the intended life of any proposed structure. Soil, slope, ground or surface water, other geologic conditions, vegetation and effects of development are common factors that contribute to instability. Areas characterized by banks or bluffs composed of unconsolidated alluvial or glacial deposits (till and drift material), severely fractured bedrock, active and substantial erosion, substantially deformed trees and shrubs, or active or inactive earth slides are likely to be considered geologically unstable. A determination by the County of geologically unstable shoreline areas shall be made using the best available information at the time.~~
- ~~35.~~ "Geotechnical Report" or "Geotechnical Analysis" means a scientific study or evaluation conducted by a qualified professional that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards.
- ~~46.~~ "Gradient" means a degree of inclination, or a rate of ascent or descent, of an inclined part of the earth's surface with respect to the horizontal; the steepness of a slope. It is expressed as a ratio (vertical to horizontal), a fraction (such as meters/ kilometers or feet/miles), a percentage (of horizontal distance), or an angle (in degrees).
- ~~57.~~ "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.
- ~~68.~~ "Groins" means wall-like structures extending on an angle waterward from the shore into the intertidal zone. Their purpose is to build or preserve an accretion shoreform or berm on their updrift side by trapping littoral drift. Groins are relatively narrow in width but vary greatly in length. Groins are sometimes built in series as a system, and may be permeable or impermeable, high or low, and fixed or adjustable.
- ~~79.~~ "Ground Water" means all water that exists beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the

boundaries of the state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves (RCW 90.44).

~~840.~~ “Growth Management Act” means RCW 36.70A and 36.70B, as amended.

## H

1. “Harbor Area” means the navigable waters between inner and outer harbor lines as established by the State Harbor Lines Commission waterward of and within one mile of an incorporated city. Harbor Areas have been established offshore of Bellingham and Blaine.
2. “Hazard Tree” means any tree that is susceptible to immediate fall due to its condition (damaged, diseased, or dead) or other factors, and which because of its location is at risk of damaging permanent physical improvements to property or causing personal injury.
3. “Hazardous Area” means any shoreline area which is hazardous for intensive human use or structural development due to inherent and/or predictable physical conditions; such as, but not limited to, geologically hazardous areas, frequently flooded areas, and coastal high hazard areas.
4. “Hazardous Materials” means any substance containing such elements or compounds which, when discharged in any quantity in shorelines, present an imminent and/or substantial danger to public health or welfare; including, but not limited to: fish, shellfish, wildlife, water quality, and other shoreline features and property.
5. “Hazardous Substance” means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.
6. “Hearings Board” means the State Shorelines Hearings Board referenced in RCW 90.58.170.
7. “Height (Building)” means the vertical dimension measured from average grade to the highest point of a structure; provided that, antennas, chimneys, and similar appurtenances shall not be used in calculating height, unless such appurtenance obstructs the view of a substantial number of adjacent residences.
8. “High Intensity Land Use” means land use that includes the following uses or activities: commercial, urban, industrial, institutional, retail sales, residential (more than 1 unit/acre), high intensity new agriculture (dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high intensity recreation (golf courses, ball fields), and hobby farms.
9. “Historic Preservation Professional” means those individuals who hold a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

- a. At least two (2) years of full time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
  - b. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.
10. "Historic Site" means those sites that are eligible or listed on the Washington Heritage Register, National Register of Historic Places, or any locally developed historic registry formally adopted by the Whatcom County Council.
11. "Hydraulic Project Approval (HPA)" means a permit issued by the State Department of Fish and Wildlife for modifications to waters of the state in accordance with RCW 77.55.
12. "Hydric Soil" means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the Washington State Wetland Identification and Delineation Manual (RCW 36.70A.175).
- ~~13. "Hydrologic Soil Groups" means soils grouped according to their runoff producing characteristics under similar storm and cover conditions. Properties that influence runoff potential are depth to seasonally high water table, intake rate and permeability after prolonged wetting, and depth to a low permeable layer. Hydrologic soil groups are normally used in equations that estimate runoff from rainfall, but can be used to estimate a rate of water transmission in soil. There are four hydrologic soil groups:~~
- ~~a. Low runoff potential and a high rate of infiltration potential;~~
  - ~~b. Moderate infiltration potential and a moderate rate of runoff potential;~~
  - ~~c. Slow infiltration potential and a moderate to high rate of runoff potential; and~~
  - ~~d. High runoff potential and very slow infiltration and water transmission rates.~~
134. "Hydrophytic Vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.
145. "Hyporheic Zone" means the saturated zone located beneath and adjacent to streams that contain some proportion of surface water from the surface channel mixed with shallow ground water. The hyporheic zone serves as a filter for nutrients, as a site for macroinvertebrate production important in fish nutrition, and provides other functions related to maintaining water quality.

I

1. "Impervious Surface" means a hard surface area which ~~that~~ either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which ~~that~~ causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under ~~compared to~~

natural conditions prior to development. Common impervious surfaces ~~may~~ include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, ~~packed earthen materials~~, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Natural surface water and open, uncovered detention/retention facilities shall not be calculated when determining total impervious surfaces. Impervious surfaces do not include surfaces s created through proven low impact development techniques.

2. "In Kind Compensation" means to replace critical areas with substitute areas whose characteristics and functions mirror those destroyed or degraded by a regulated activity.
3. "In-stream Structure" means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.
4. "Industrial Development" means facilities for processing, manufacturing, and storage of finished or semi-finished goods, including but not limited to oil, metal or mineral product refining, power generating facilities, including hydropower, ship building and major repair, storage and repair of large trucks and other large vehicles or heavy equipment, related storage of fuels, commercial storage and repair of fishing gear, warehousing construction contractors' offices and material/equipment storage yards, wholesale trade or storage, and log storage on land or water, together with necessary accessory uses such as parking, loading, and waste storage and treatment. Excluded from this definition are mining, including on-site processing of raw materials, and off-site utility, solid waste, road or railway development, and methane digesters that are accessory to an agricultural use.
5. "Infiltration" means the downward entry of water into the immediate surface of soil.
6. "Institutional Development" means those public and/or private facilities including, but not limited to, police and fire stations, libraries, activity centers, schools, educational and religious training centers, water-oriented research facilities, and similar non-commercial uses, excluding essential public facilities.
7. "Intertidal Zone" means the substratum from extreme low water of spring tides to the upper limit of spray or influence from ocean derived salts. It includes areas that are sometimes submerged and sometimes exposed to air, mud and sand flats, rocky shores, salt marshes, and some terrestrial areas where salt influences are present.
8. "Invasive Species" means a species that is 1) non-native (or alien) to Whatcom County and 2) whose introduction causes or is likely to cause economic or environmental harm, or harm to human health. Invasive species can be plants, animals, and other organisms (e.g., microbes). Human actions are the primary means of invasive species introductions.

J

1. “Jetties” means structures that are generally perpendicular to shore extending through or past the intertidal zone. They are built singly or in pairs at harbor entrances or river mouths mainly to prevent shoaling or accretion from littoral drift in entrance channels, which may or may not be dredged. Jetties also serve to protect channels from storm waves or cross currents, and stabilize inlets through barrier beaches. On the West Coast and in this region, most jetties are of riprap mound construction.

L

- ~~1.~~ ~~“Lahar” means a mudflow and debris flow originating from the slopes of a volcano.~~
- ~~2.~~ ~~“Lahar Inundation Zone” means areas that have been or potentially could be inundated by lahars or other types of debris flows, according to a map showing Volcano Hazards from Mount Baker, Washington.~~
13. “Lake” means a body of standing water in a depression of land or expanded part of a stream, of 20 acres or greater in total area. A lake is bounded by the OHWM or, where a stream enters the lake, the extension of the lake's OHWM within the stream. Wetland areas occurring within the standing water of a lake are to be included in the acreage calculation of a lake.
24. "Landslide" means a general term covering a wide variety of mass movement landforms and processes involving the downslope transport, under gravitational influence of soil and rock material en masse; included are debris flows, debris avalanches, earthflows, mudflows, slumps, mudslides, rock slides, and rock falls.
35. “Landslide Hazard Areas” means areas that, due to a combination of site conditions like slope inclination and relative soil permeability, are susceptible to mass wasting, as designated in WCC 16.16.
46. “Launch Ramp” means an inclined slab, set of pads, rails, planks, or graded slope used for launching boats with trailers or ~~occasionally~~ by hand.
57. “Levee” means a natural or artificial embankment on the bank of a stream for the purpose of keeping floodwaters from inundating adjacent land. Some levees have revetments on their sides.
68. “Liberal Construction” means an interpretation that applies in writing in light of the situation presented that tends to effectuate the spirit and purpose of the writing.
79. “Line of Navigability” means a horizontal line on the bed of a water body at a depth sufficient for navigation by watercraft commonly used on such water bodies; until such lines are finally established by the State Department of Natural Resources or court of law.
840. “Littoral Drift” ~~or “Littoral Transport”~~ means the natural movement of sediment, particularly sand and gravel, along shorelines by wave action in response to prevailing winds or by stream currents (see also “Drift Sector”, “Driftway”).
944. [“Live Aboard” means any noncommercial habitation of a vessel, as defined in SMP 23.110.V.3, when any one of the following applies:](#)

- a. Any person or succession of different persons resides on the vessel in a specific location, and/or in the same area on more than a total of thirty (30) days in any forty (40) day period or on more than a total of ninety (90) days in any three hundred sixty-five (365) day period. "In the same area" means within a radius of one mile of any location where the same vessel previously moored or anchored on state-owned aquatic lands. A vessel that is occupied and is moored or anchored in the same area, but not for the number of days described in this subsection, is considered used as a recreational or transient vessel;
- b. The city or county jurisdiction, through local ordinance or policy, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is moored;
- c. The operator of the facility where the vessel is moored, through the moorage agreement, billing statement, or facility rules, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility;  
or
- d. The occupant or occupants identify the vessel or the facility where it is moored as their residence for voting, mail, tax, or similar purposes.
- ~~44102.~~ "Log Booming" means assembling and disassembling rafts of logs for water-borne transportation.
- ~~42113.~~ "Log Storage" means the holding of logs in the water for more than sixty (60) days.
- ~~43124.~~ "Lot" means land described by final plat, short plat or metes and bounds description and is established pursuant to applicable state and local regulations in effect at the date a legal instrument creating the lot is recorded at the Whatcom County Auditor's office. A lot bisected by a public or private road, railroad, trail or other feature is considered a single building site unless the portion of the parcel on each side of the bisecting road or other feature separately meets all dimensional, buffer and other requirements established by local and state regulations.
- ~~44135.~~ "Lot Area" or "Lot Size" means the portion of a total parcel determined to be usable for the purpose of creating a building lot, pursuant to all applicable regulations. The area below the ordinary high water mark shall not be considered a part of the lot area. Lot area shall exclude any portion included within the lot description used as a public road or as an access easement for another parcel, provided that the area of parcels of 5 acres or greater may be regarded as nominal and may be measured to the center of bounding roads. Easements or restrictions that preclude use to the present or future surface owner of the parcel shall be excluded from lot area.
- ~~4516.~~ ~~"Lot Coverage" means the percent of a lot or parcel that is, or is proposed to be covered, by all structures locate thereon. Coverage is determined by measuring areas covered by a weather tight roof. The area below the ordinary high water mark shall not be considered a part of the lot area for calculation of lot coverage.~~

16. ~~“Low Intensity Land Use” means land use that includes the following uses or activities: forestry (cutting of trees only), low intensity open space (such as passive recreation and natural resources preservation), unpaved trails.~~

**M**

1. "Maintenance ~~or and~~ Repair" means those usual activities work required to prevent a decline, lapse or cessation from a lawfully established condition ~~keep existing improvements in their existing operational state or to restore the character, scope, size, and design of a serviceable area, structure, or land use to a state comparable to its previously authorized and undamaged condition~~. This does not include any activities modification that changes the character, scope, or size of the original structure, facility, utility or improved area beyond the original design.
2. "Major Development" means any project for which a major project permit is required pursuant to WCC 20.88. For the purposes of this Program, major development shall also mean any project associated with an existing development for which a major development permit has been required or other existing legal non-conforming development for which a major development permit would otherwise be required if developed under the current land use regulations outlined in WCC Title 20.
3. "Marina" means a wet moorage and/or dry storage facility for pleasure craft and/or commercial craft where goods or services related to boating may be sold commercially. 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.
4. "Marsh" means a low flat wetland area on which the vegetation consists mainly of herbaceous plants such as cattails, bulrushes, tules, sedges, skunk cabbage or other hydrophytic plants. Shallow water usually stands on a marsh at least during part of the year.
5. "Mass Wasting" means downslope movement of soil and rock material by gravity. This includes soil creep, erosion, and various types of landslides, not including bed load associated with natural stream sediment transport dynamics.
6. "May" means the action is allowable, provided it conforms to the provisions of this Program.
7. "Mean Annual Flow" means the average flow of a river, or stream (measured in cubic feet per second) from measurements taken throughout the year. If available, flow data for the previous ten (10) years should be used in determining mean annual flow.
8. "Mean Higher High Water" or "MHHW" means the mean elevation of all higher tides, generally occurring twice each day in Whatcom County at any given location on the marine shoreline.
9. "Mean Lower Low Water" or "MLLW" means the mean elevation of all lower tides, generally occurring twice each day in Whatcom County at any given location on the marine shoreline.

- 
10. "Mining" means the removal of naturally occurring metallic and non-metallic minerals or other materials from the earth for economic use.
11. "Mitigation" means individual actions that may include a combination of the following measures, listed in order of preference:
- a. Avoiding an impact altogether by not taking a certain action or parts of actions;
  - b. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
  - c. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
  - d. Reducing or eliminating an impact over time by preservation and maintenance operations during the life of the action;
  - e. Compensating for an impact by replacing or providing substitute resources or environments; and
  - f. Monitoring the mitigation and taking remedial action when necessary.
- ~~12. "Mitigation Bank" means a site where wetlands or similar habitats are restored, created, enhanced, or in exceptional circumstances, preserved, expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to aquatic resources.~~
- ~~123.~~ "Mitigation Plan" means a detailed plan indicating actions necessary to mitigate adverse impacts to critical areas.
- ~~134.~~ "Mixed Use" means a combination of uses within the same building or site as a part of an integrated development project with functional interrelationships and coherent physical design.
- ~~145.~~ "Moderate Intensity Land Use" means land use that includes the following uses or activities: residential (1 unit/acre or less), moderate intensity open space (parks), moderate intensity new agriculture (orchards and hay fields), plant nurseries, paved trails, building of logging roads.
- ~~146.~~ "Monitoring" means evaluating the impacts of development proposals over time on the biological, hydrological, pedological, and geological elements of ~~such~~ ecosystems functions and processes and/or assessing the performance of required mitigation measures throughout the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features compared to baseline or pre-project conditions and/or reference sites, and includes gathering baseline data.
- ~~157.~~ "Multifamily Dwelling" means a single building, or portion thereof, designed for or occupied by three (3) or more families living independently of each other in separate dwelling units on one lot of record and, for the purpose of this code, includes triplexes, fourplexes, apartment buildings, and residential condominiums.
-

168. "Must" means a mandate; the action is required.

N

1. "Native Vegetation" means plant species that are indigenous to the Whatcom County and the local area.
2. "Natural Shoreline Area" means an area designated pursuant to [Chapter 3 SMP-23.30](#).
3. "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 over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water.
4. "Nearshore Habitat" means the zone that extends waterward from the marine shoreline 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.
5. "No Net Loss" [as a public policy goal](#) means the maintenance of the aggregate total of the County's shoreline ecological functions [at its current level of environmental resource productivity](#). [As a development and/or mitigation](#) ~~The standard~~, no net loss ~~standard~~ requires that the impacts of [a particular](#) shoreline development and/or use, whether permitted or exempt, be identified and [prevented or](#) mitigated, such that [it has](#) ~~there are~~ no resulting [significant](#) adverse impacts on [shoreline](#) ecological functions or processes. Each project shall be evaluated based on its ability to meet the no net loss ~~standard~~ [goal commensurate with the its scale and character](#) ~~of the proposed development~~.
6. "Non-conforming Use", "Non-conforming Development" or "Non-conforming Structure" means a shoreline use, development or structure that was lawfully constructed or established prior to the effective date of this Program (August 27, 1976) or amendments hereto, but which does not conform to present regulations or standards of the Program.
7. "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. Any use that does not meet the definition of water-dependent, water-related or water-enjoyment is classified as nonwater-oriented.

O

1. "Off-premise Sign" means a sign situated on premises other than those premises to which the sign's message is related.
- ~~2. "Off-site Mitigation" means to replace shoreline resources away from the site that is impacted by development.~~

- ~~23~~. “Oil” means petroleum or any petroleum product in liquid, semi-liquid, or gaseous form including, but not limited to, crude oil, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredging spoil.
- ~~34~~. “Ongoing Agriculture” means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that bring an area into agricultural use are not part of an ongoing activity. An operation ceases to be ongoing when the area on which it was conducted has been converted to a non-agricultural use, or has lain idle for more than five (5) consecutive years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.
- ~~45~~. “On-premise Sign” means a sign situated on the premises to which the sign's message is related.
- ~~56~~. “Open Space” means any parcel or area of land or water not covered by structures, hard surfacing, parking areas and other impervious surfaces except for pedestrian or bicycle pathways, or where otherwise provided by this title or other county ordinance and set aside, dedicated, for active or passive recreation, visual enjoyment, or critical area development buffers as established in WCC 16.16. Submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in open space calculations. Required open space percentages, as applicable, are not to be used for purposes of calculating total impervious surface.
- ~~67~~. “Ordinary High Water Mark” or “OHWM” on all lakes, streams, and tidal water means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with approved development; provided that, in any area where the OHWM cannot be found, the OHWM adjoining saltwater shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water. For braided streams, the OHWM is found on the banks forming the outer limits of the depression within which the braiding occurs.

**P**

1. “Party of Record” means all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on an application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.
2. “Person” means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, State agency or local governmental unit, however designated, or Indian Nation or tribe.

3. "Pier" means any platform structure, fill, or anchored device in or floating upon water bodies to provide moorage for watercraft engaged in commerce; including, but not limited to: wharves, mono-buoys, sea islands, quays, ferry terminals, and fish weighing stations.
4. "Planned Unit Development (PUD)" means one or a group of specified uses, such as residential, resort, commercial or industrial, to be planned and constructed as a unit. Zoning or subdivision regulations with respect to lot size, building bulk, etc., may be varied to allow design innovations and special features in exchange for additional and/or superior site amenities or community benefits.
5. "Pocket Beach" means an isolated beach existing usually without benefit of littoral drift from sources elsewhere. Pocket beaches are produced by erosion of immediately adjacent bluffs or banks and are relatively scarce and therefore valuable shoreforms in Whatcom County; they are most common between rock headlands and may or may not have a backshore.
6. "Point" means a low profile shore promontory that may be either the wave-cut shelf remaining from an ancient bluff or the final accretional phase of a hooked spit that closed the leeward side gap. Points are accretion shoreforms characterized by converging berms accreted by storm waves that enclose a lagoon, marsh, or meadow, depending on the point's development stage.
7. "Point Bar" means an accretion shoreform created by deposition of sand and gravel on the inside, convex side of a meander bend. Most material is transported downstream as sediment and bedload at times of high current velocity, or flood stage, from eroding banks or other bars upstream.
8. "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.
9. "Port Development" means public or private facilities for transfer of cargo or passengers from water-born craft to land and vice versa; including, but not limited to: piers, wharves, sea islands, commercial float plane moorages, offshore loading or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas, boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat building or repair. The latter group is considered industrial or accessory to other uses.
10. "Potable" means water that is suitable for drinking by the public (WAC 246-290).
11. "Preservation" means actions taken to ensure the permanent protection of existing, ecologically important areas that the County has deemed worthy of long term protection.

- 
12. “Primary Association” means the use of a habitat area by a listed or priority species for breeding/spawning, rearing young, resting, roosting, feeding, foraging, and/or migrating on a frequent and/or regular basis during the appropriate season(s), as well as habitats that are used less frequently/regularly but which provide for essential life cycle functions such as breeding, nesting, or spawning.
  13. “Priority Habitat” means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; important marine mammal haulout; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife (WAC 173-26-020(24)).
  14. “Priority Species” means wildlife species of concern due to their population status and their sensitivity to habitat alteration, as defined by the Washington Department of Fish and Wildlife.
  15. “Private Dock” means a dock and/or float for pleasure craft moorage or water recreation for exclusive use by one waterfront lot owner.
  16. “Private Sign” means a sign used on a private residence to indicate only the owner’s name or address, that the premises are for rent or sale, or for other reasonable purposes related to residential use including permitted home occupations.
  17. “Project” means any proposed or existing activity regulated by Whatcom County.
  18. “Project Permit” or “Project Permit Application” means any land use or environmental permit or approval required by Whatcom County, including, but not limited to, building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, variances, lot consolidation relief, site plan review, permits or approvals authorized by a comprehensive plan or subarea plan.
  19. “Projecting Sign” means a sign that is attached to and projects at an angle from a building’s exterior wall.
  20. “Public Access” means the public’s right to get to and use the State’s public waters, both saltwater and freshwater, the water/land interface and associated shoreline area. It includes physical access that is either lateral (areas paralleling the shore) or perpendicular (an easement or public corridor to the shore), and/or visual access facilitated by means such as scenic roads and overlooks, viewing towers and other public sites or facilities.

21. “Public Interest” means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from adverse effects of a use or development.
22. “Public Utility” means a use owned or operated by a public or publicly licensed or franchised agency that provides essential public services such as telephone exchanges, electric substations, radio and television stations, wireless communications services, gas and water regulation stations, and other facilities of this nature.

**Q**

1. “Qualified Professional” or “Qualified Consultant” means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or related field, and related work experience and meet the following criteria:
  - a. A qualified professional for wetlands must have a degree in biology, ecology, soil science, botany, or a closely related field and a minimum of ~~five (5)~~ three (3) years of professional experience in wetland identification and assessment associated with wetland ecology in the Pacific Northwest or comparable systems.
  - b. A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or closely related field and a minimum of three (3) ~~five (5)~~ years professional experience related to the subject species/habitat type.
  - c. A qualified professional for geologically hazardous areas must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington.
  - d. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or engineer.

**R**

1. “Recharge” means the process involved in the absorption and addition of water from the unsaturated zone to ground water.
2. “Recreation” means an experience or activity in which an individual engages for personal enjoyment and satisfaction. Most shore-based recreation includes outdoor recreation such as: fishing, hunting, clamming, beach combing, and rock climbing; various forms of boating, swimming, hiking, bicycling, horseback riding, camping, picnicking, watching or recording activities such as photography, painting, bird watching or viewing of water or shorelines, nature study and related activities.
3. “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 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.
4. “Re-establishment” means measures taken to intentionally restore an altered or damaged natural feature or process including:
    - a. Active steps taken to restore damaged wetlands, streams, protected habitat, and/or their buffers to the functioning condition that existed prior to an unauthorized alteration;
    - b. Actions performed to re-establish structural and functional characteristics of a critical area that have been lost by alteration, past management activities, or other events; and
    - c. Restoration can include restoration of wetland functions and values on a site where wetlands previous existed, but are no longer present due to lack of water or hydric soils.
  5. “Rehabilitation” means a type of restoration action intended to repair natural or historic functions and processes. Activities could involve breaching a dike to reconnect wetlands to a floodplain or other activities that restore the natural water regime.
  6. “Renovation” means to restore to an earlier condition as by repairing or remodeling. Renovation shall include any interior changes to ~~the a~~ building and those exterior changes that do not substantially change the character of ~~the an~~ existing structure.
  - ~~7. “Repair or Maintenance” means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.~~
  - ~~78. “Resident Fish” means a fish species that completes all stages of its life cycle within freshwater and frequently within a local area.~~
  - ~~79.~~ “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, 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.
  - ~~840.~~ “Resource Shoreline Area” means an area designated pursuant to [Chapter 3 SMP 23.30](#).

- ~~944.~~ "Restore", "Restoration" or "Ecological Restoration" means the re-establishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.
102. "Revetment" means a sloped wall constructed of riprap or other suitable material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement from high velocity currents or waves respectively.
- ~~123.~~ ~~"Rills" means steep sided channels resulting from accelerated erosion. A rill is generally a few inches deep and not wide enough to be an obstacle to farm machinery. Rill erosion tends to occur on slopes, particularly steep slopes with poor vegetative cover.~~
114. "Riprap" means dense, hard, angular rock free from cracks or other defects conducive to weathering used for revetments or other flood control works.
125. ~~"Riparian Corridor" or~~ "Riparian Zone" means s the area adjacent to a water body (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production). Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian zones provide important wildlife habitat. They provide sites for foraging, breeding and nesting; cover to escape predators or weather; and corridors that connect different parts of a watershed for dispersal and migration.
136. "Riparian Vegetation" means vegetation that tolerates and/or requires moist conditions and periodic free flowing water thus creating a transitional zone between aquatic and terrestrial habitats which provides cover, shade and food sources for aquatic and terrestrial insects for fish species. Riparian vegetation and their root systems stabilizes stream banks, attenuates high water flows, provides wildlife habitat and travel corridors, and provides a source of limbs and other woody debris to terrestrial and aquatic ecosystems, which, in turn, stabilize stream beds.
147. "River Delta" means those lands formed as an aggradational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels.
158. "Rock Shore" means those shorelines whose bluffs and banks are typically composed of natural rock formations.
169. "Roof Sign" means a sign erected upon, against, or directly above a roof, or on top of or above the parapet of a building; signs on mansard roofs shall be considered wall signs.
- ~~1720.~~ "Rural Shoreline Area" means an area designated pursuant to Chapter 3 SMP 23-30.

## S

1. “Seismic Hazard Areas” means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.
2. “Sensitive Area” means any area that is naturally unsuitable or undesirable for intensive human use or development due to its higher development costs or its value to region or community in its natural or present condition.
- ~~3. “SEPA” is a commonly used acronym for the State Environmental Policy Act.~~
34. “Shall” means a mandate; the action must be done.
- ~~445.~~ 445. “Shared Moorage” means moorage for pleasure craft and/or landing for water sports for use in common by shoreline residents of a certain subdivision or community within shoreline jurisdiction or for use by patrons of a public park or quasi-public recreation area, including rental of non-powered craft. If a shared moorage provides commercial services or is of a large scale (more than four slips), it shall be considered a marina. Shared moorage proposed to be leased to upland property owners shall also be considered as a marina. If a proposal includes covered moorage, commercial sale of goods or services, or a means of launching other than a ramp, swinging boom, or davit style hoist, it shall be considered a marina.
- ~~556.~~ 556. “Shellfish” means invertebrates of the phyla Arthropoda (class Crustacea), Mollusca (class Pelecypoda) and Echinodermata.
- ~~667.~~ 667. “Shellfish Habitat Conservation Areas” means all public and private tidelands suitable for shellfish, as identified by the Washington Department of Health classification of commercial growing areas, and those recreational harvest areas as identified by the Washington Department of Ecology are designated as Shellfish Habitat Conservation Areas pursuant to WAC 365-190-80. Any area that is or has been designated as a Shellfish Protection District created under RCW 90.72 is also a Shellfish Habitat Conservation Area.
- ~~778.~~ 778. “Shellfish Protection District” means the Drayton Harbor Shellfish Protection District (DHSPD) (Ordinance 95-036) and the Portage Bay Shellfish Protection District (PBSPD) (Ordinance 98-069), or other area formed by the County based on the Revised Code of Washington (RCW) Chapter 90, in response to State Department of Health (DOH) closures or downgrades of a commercial shellfish growing area due to a degradation of water quality as a result of pollution. These areas include the watershed draining to the shellfish beds as part of the Shellfish Habitat Conservation Area.
- ~~89.~~ ~~“Shore dependent Use”, synonymous with “Water dependent Use”, means any reasonable use that requires a water’s edge or water surface location because of its intrinsic nature; including, but not limited to: navigation, ports, marinas, docks, piers, floats, boat fueling stations, shipyards, seafood harvest, aquaculture, recreation, public access, boating and swimming, and research and observation of natural shoreline phenomena.~~

~~910.~~ ~~“Shore related Use”, synonymous with “Water dependent Use”, means any use not intrinsically shoreline dependent but which:~~

- ~~a. cannot operate/occur successfully away from the shoreline or water surface under current physical or economic conditions; or~~
- ~~b. is essential support to a shore dependent primary use.~~

~~8110.~~ “Shorelands” or “Shoreland Areas” means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of RCW 90.58.

~~9421.~~ “Shorelines” means all of the water areas of the state as defined in RCW 90.58.030, including reservoirs and their associated shorelands, together with the lands underlying them except:

- a. Shorelines of statewide significance;
- b. Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
- c. Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

~~1032.~~ “Shoreline Administrator” means the Director of the Planning & Development Services Department or staff member designated by the Director to perform the review functions required in this Program.

~~1143.~~ “Shoreline Jurisdiction” means all “Shorelines of the State” and “Shorelands”.

~~1254.~~ “Shoreline Permit” means a shoreline substantial development permit, a shoreline conditional use, or a shoreline variance, or any combination thereof issued by Whatcom County pursuant to RCW 90.58.

~~1365.~~ “Shoreline Residential Area” means an area designated pursuant to [Chapter 3 SMP 23.30](#).

~~1476.~~ “Shoreline Stabilization” means structural or non-structural modifications to the existing shoreline intended to reduce or prevent erosion of uplands or beaches. They are generally located parallel to the shoreline at or near the OHWM. Other construction classified as shore defense works include groins, jetties and breakwaters, which are intended to influence wave action, currents and/or the natural transport of sediments along the shoreline.

~~1587.~~ “Shoreline View Area” means any area looking waterward within the jurisdiction of this Program between the OHWM and a public road, park, pathway, or other public area that is undeveloped or developed with accessory uses only; and that does not obstruct

the view of the shoreline or would not obstruct the view if natural vegetation, fences, walls, antennas or similar obstructions were removed.

~~1698~~. “Shorelines of Statewide Significance” means the following shorelines in Whatcom County:

- a. Those areas of Puget Sound and adjacent saltwaters between the ordinary high water mark and the line of extreme low tide as follows: Birch Bay from Point Whitehorn to Birch Point; and
- b. Those areas of Puget Sound and adjacent saltwaters north to the Canadian line and lying waterward from the line of extreme low tide; and
- c. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of 1,000 acres or more measured at the ordinary high water mark including Lakes Whatcom, Baker and Ross; and
- d. Those natural rivers or segments thereof as follows: Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at 1,000 cubic feet per second or more; including the Nooksack River's mainstream, the North Fork upstream to its confluence with Glacier Creek in Section 6, Township 39 North, Range 7 East, W.M.; and the South Fork upstream to its confluence with Hutchinson Creek in Section 9, Township 37 North, Range 5 East, W.M.
- e. Shoreline jurisdiction associated with (a), (c), and (d) above.

~~174920~~. “Shorelines of the State” means the total of all “Shorelines” and “Shorelines of Statewide Significance” within the state.

~~20~~. ~~“Shorelines of the state” means the total of all “shorelines,” as defined in RCW 90.58.030(2)(d), and “shorelines of statewide significance” within the state, as defined in RCW 90.58.030(2)(c).~~

~~1824~~. “Should” means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Act and this chapter, against taking the action.

~~1922~~. “Sign” means any placard, billboard, display, message, design, letters, symbol, light, figure, illustration, set of pennants, or other device intended to identify, inform, advertise, or attract attention to any private or public premises, and placed mainly outdoors so as to be seen from any public or quasi-public place. Double-faced signs are counted as two (2) signs. Excluded from this definition are official traffic, directional or warning devices, other official public notices, signs required by law, or flag of a government or other noncommercial institution.

~~203~~. “Significant Vegetation Removal” means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant impacts to ecological functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant

vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

~~214.~~ "Single Family Development" means the development of a single family residence permanently installed and served with utilities on a lot of record.

~~225.~~ "Site" means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way under the applicant's/proponent's ownership or control that is the subject of a development proposal or change in use ~~where the proposed project impacts an environmentally critical area.~~

~~236.~~ "Slope" means:

- a. Gradient.
- b. The inclined surface of any part of the earth's surface delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

~~247.~~ "Soil" means all unconsolidated materials above bedrock described in the Soil Conservation Service Classification System or by the Unified Soils Classification System.

~~258.~~ "Solid Waste" means all putrescible and non-putrescible solid and semi-solid waste including garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles and parts thereof, and any other discarded commodities.

~~29.~~ ~~"Sphagnum Bog" means a type of wetland dominated by mosses of the genus Sphagnum.~~

~~2630.~~ "Spit" means an accretion shoreform that is narrow in relation to length and extends parallel to or curves outward from shore; spits are also characterized by a substantial wave-built sand and gravel berm on the windward side, and a more gently sloping silt or marsh shore on the lagoon or leeward side; curved spits are called hooks.

~~2734.~~ "Statement of Exemption" means a written statement by the Administrator that a particular development proposal is exempt from the substantial development permit requirement and is generally consistent with this Program including the policy of the Act (RCW 90.58.020), pursuant to SMP 23.60.02.

~~2832.~~ "Streams" means those areas where surface waters produce a defined channel or bed. A defined channel or bed is an area that demonstrates clear evidence of the annual passage of water and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year round. This definition includes drainage ditches or other artificial water courses where natural streams existed prior to human alteration, and/or the waterway is used by anadromous or resident salmonid or other fish populations or flows directly into Shellfish Habitat Conservation Areas.

~~2933.~~ "Strict Construction" means an interpretation that considers only the literal words of a writing.

- ~~304~~. “Structure” means a permanent or temporary building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite matter whether installed on, above, or below the surface of the ground or water, except for vessels (after Uniform Building Code).
- ~~315~~. “Substantial Development” means any development of which the total cost or fair market value exceeds ~~two thousand five hundred~~ five-thousand dollars (\$5,000), 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 23.60.02.250.
- ~~326~~. “Substantially Degrade” means to cause significant ecological impact.
- ~~337~~. “Surface Mining” means all or any part of the processes involved in mining by removing the soil or rock overburden and mining directly from deposits thereby exposed, including also open pit mining, gravel bar scalping and mining of deposits naturally exposed at earth's surface, and including production of surface mining refuse.
- ~~348~~. “Sustained Yield” means the continuing yield of a biological resource, such as timber from a forest, by controlled and periodic harvesting.
- ~~359~~. “Swamp” means a wetland that is often inundated and composed of woody vegetation.

## T

1. “Tideland” means the land on the shore of marine water bodies between OHWM and the line of extreme low tide which is submerged daily by tides.
2. “Timber” means forest trees, standing or down, of a commercial species including Christmas trees.
3. “Toe” means the lowest part of a slope or cliff; the downslope end of an alluvial fan, landslide, etc.
4. “Tombolo” means an accretion shoreform that began as a spit and accreted into a causeway-like connection to an island or offshore rock; tombolas normally develop from offshore bars (submarine berms) that build up in a low energy “wave-shadow” zone between the offshore, waver barrier element and an active driftway.
5. “Top” means the top of a slope; or in this Program it may be used as the highest point of contact above a landslide hazard area.
6. “Transportation” means roads and railways, related bridges and culverts, fills, embankments, causeways, parking areas, truck terminals and rail switchyards, sidings, spurs, and air fields. Not included are recreational trails, highway rest areas, ship terminals, seaplane moorages, nor logging roads; they are included respectively under Recreation, Piers and Docks, Residential, and Forest Practices.

## U

1. "Unavoidable" means adverse impacts that remain after all appropriate avoidance and minimization measures have been implemented.
- ~~2. "Unbuildable Land" means land that is not suitable for use as building sites or for impervious road, parking or storage areas, because of inherent hazards to structures or human activity thereon. Such lands may include, but are not limited to, some geologically hazardous areas, critical aquifer recharge areas, and frequently flooded areas.~~
- ~~23.~~ "Upland" means dry lands landward of OHWM.
- ~~34.~~ "Urban Conservancy Shoreline Area" means an area designated pursuant to [Chapter 3 SMP 23.30](#).
- ~~45.~~ "Urban Resort Shoreline Area" means an area designated pursuant to [Chapter 3 SMP 23.30](#).
- ~~56.~~ "Urban Shoreline Area" means an area designated pursuant to [Chapter 3 SMP 23.30](#).
- ~~67.~~ "Utilities" means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.
- ~~78.~~ "Utility Development" means development including, but not limited to, facilities for distributing, processing, or storage of water, sewage, solid waste, storm drainage, electrical energy including electronic communications, and their administrative structures, as well as pipelines for petroleum products, and fire fighting facilities. Power plants are considered industrial.

V

1. "Variance" means an adjustment in the application of this Program's regulations to a particular site pursuant to [Chapter 6 SMP 23.60](#).
2. "Vegetative Stabilization" means planting of vegetation to retain soil and retard erosion, reduce wave action, and retain bottom materials. It also means utilization of temporary structures or netting to enable plants to establish themselves in unstable areas.
3. "Vessel" means [a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency, ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.](#)
- ~~4. "Volcanic Hazard Areas" means geologically hazardous areas that are subject to pyroclastic flows, lava flows, debris avalanche, or inundation by debris flows, mudflows, or related flooding resulting from volcanic activity, as designated in WCC 16.16.~~

W

- 
1. “Wall Sign” means a sign placed upon and parallel to the exterior of a building.
  2. “Water Body” means a body of still or flowing water, fresh or marine, bounded by the OHWM.
  3. “Water-dependent Use” means a use or portion of a use that requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations.
  4. “Water-enjoyment Use” means a recreational use, or other use facilitating public access to the shoreline as the primary character of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and that through the location, design and operation assure the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the water-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.
  5. “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 for priority uses under the Act.
  6. “Water Quality” means the characteristics of water, including flow or amount, and related physical, chemical, aesthetic, recreation-related, and biological characteristics.
  7. “Water-related Use” means a use or portion of a use that is not intrinsically dependent on a waterfront location but depends upon a waterfront location for economic viability. These uses have a functional relationship to the water, or the use provides a necessary support service for a water-dependent use and physical separation is not feasible.
  8. “Watershed” means a geographic region within which water drains into a particular river, stream or body of water. There are approximately 122 watersheds (e.g. Bertrand, Ten Mile, Dakota, Canyon Creek, Lake Whatcom, Lake Samish) identified in WRIA 1 and WRIA 3. These are nested within approximately 14 sub basins (e.g. North Fork Nooksack, Drayton Harbor, Sumas River, Friday Creek), which are nested within 4 basins (e.g. Nooksack River, Fraser River, Samish River, Coastal).
  - ~~9. “Watershed Improvement District” means a special district established pursuant to RCW 85.38 citation.~~
  940. “Watershed Restoration Plan” means a plan developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, recreation, or enhancement of the natural resource character and ecology of a stream, stream segment, drainage area or watershed for which agency and public review has been conducted pursuant to RCW 43.21C, the State Environmental Policy Act.

~~104.~~ 104. "Watershed Restoration Project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or part of the plan and consists of one or more of the following activities:

- a. A project that involves less than 10 miles of stream reach, in which less than 25 cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
- b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control erosive forces of flowing water; or
- c. A project primarily designated to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structures, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than 200 square feet in floor area and is located above the ordinary high water mark.

~~40112.~~ 40112. "Weir" means a structure in a stream or river for measuring or regulating stream flow.

~~4013.~~ 4013. ~~"Well Head Protection Area" means the area (surface and subsurface) managed to protect ground water based public water supplies.~~

~~42124.~~ 42124. "Wet Season" means the period generally between November 1 and March 30 of most years when soils are wet and prone to instability. The specific beginning and end of the wet season can vary from year to year depending on weather conditions.

~~43135.~~ 43135. "Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created for non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass lines swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities or those wetlands created after July 1, 1990 that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

~~4416.~~ 4416. ~~"Wetland Buffer" means a designated area contiguous or adjacent to a wetland that is required for the continued maintenance, function, and ecological stability of the wetland.~~

~~4517.~~ 4517. ~~"Wetland Class" means the general appearance of the wetland based on the dominant vegetative life form or the physiography and composition of the substrate. The uppermost layer of vegetation that possesses an aerial coverage of thirty percent (30%) or greater of the wetland constitutes a wetland class. Multiple classes can exist in a single wetland. Types of wetland classes include forest, scrub/shrub, emergent, and open water.~~

- 
- ~~1618.~~ "~~Wetland Delineation~~" means the precise determination of wetland boundaries in the field according to the application of specific methodology as described in the 1997 Washington State Wetland Delineation Manual or 1987 edition, as amended, Corps of Engineers Wetlands Delineation Manual and the mapping thereof.
- ~~171~~149. "Wetland Edge" means the boundary of a wetland as delineated based on the definitions contained in this chapter.
- ~~1820.~~ "~~Wetland Enhancement~~" See "~~Mitigation~~".
- ~~1921.~~ "~~Wetland Mitigation Bank~~" means a site where wetlands and buffers are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.
- ~~2022.~~ "~~Windthrow~~" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.
- ~~1521~~23. "Wood Waste" means solid waste consisting of wood pieces or particles generated as a byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel, and log sort yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

## Appendix A

### Shoreline Management Act - Permit Data Sheet and Transmittal Letter

**From:**  
Whatcom County Planning and Development Services

**To:**  
Department of Ecology - Bellingham Field Office

---

**Date of Transmittal:**

**Date of Receipt:**  
(provided by Ecology)

**Type of Permit:** (Indicate all that apply)

Substantial Development    Conditional Use    Variance    Revision    Other

**Local Government Decision:**    Approval    Conditional    Approval    Denial

**Applicant Information:**

Name:

**Applicant's Representative:** (if primary contact)

Name:

---

Address:

Address:

---

Phone(s):

Phone(s):

**Is the applicant the property owner?**    yes    no

**Location of the Property:** (Section Township and Range to the nearest 1/4, 1/4 Section or latitude and longitude, and a street address where available)

---

---

**Water Body Name:**

**Shoreline of Statewide Significance:**    yes    no

**Environment Designation:**

**Description of the Project:** (Summary of the intended use or project purpose)

---

---

**Notice of Application Date:**

**Final Decision Date:**

**By:**

(Local Government Primary Contact on this Application)

**Phone No:**

**APPENDIX B –****Acronym List**

AFO	Animal Feeding Operation
BMP	Best Management Practice
BOD	Biological Oxygen Demand
CAFO	Confined Animal Feeding Operation
CMZ	Channel Migration Zone
COD	Chemical Oxygen Demand
CPAL	Conservation Program on Agriculture Lands
CRMP	Cultural Resource Management Plan
DNR	Department of Natural Resources
DOE	Department of Ecology
ESA	Endangered Species Act
FDA	Food and Drug Administration
FEMA	Federal Emergency Management Agency
FERC	Federal Energy Regulatory Commission
GMA	Growth Management Act
HPA	Hydraulic Project Approval
IBC	International Building Code
LID	Low Impact Development
MLLW	Mean Lower Low Water
NMFS	National Marine Fisheries Service
NRCS	Natural Resource Conservation Service
OHWM	Ordinary High Water Mark
PSDDA	Puget Sound Dredged Disposal Analysis
PUD	Planned Unit Development
RCW	Revised Code of Washington
SEPA	State Environmental Policy Act
SMA	Shoreline Management Act
SMP	Shoreline Management Program
TESC	Temporary Erosion and Sediment Control
WAC	Washington Administrative Code
WCC	Whatcom County Code
WCPDS	Whatcom County Planning & Development Services
WDFW	Washington Department of Fish and Wildlife

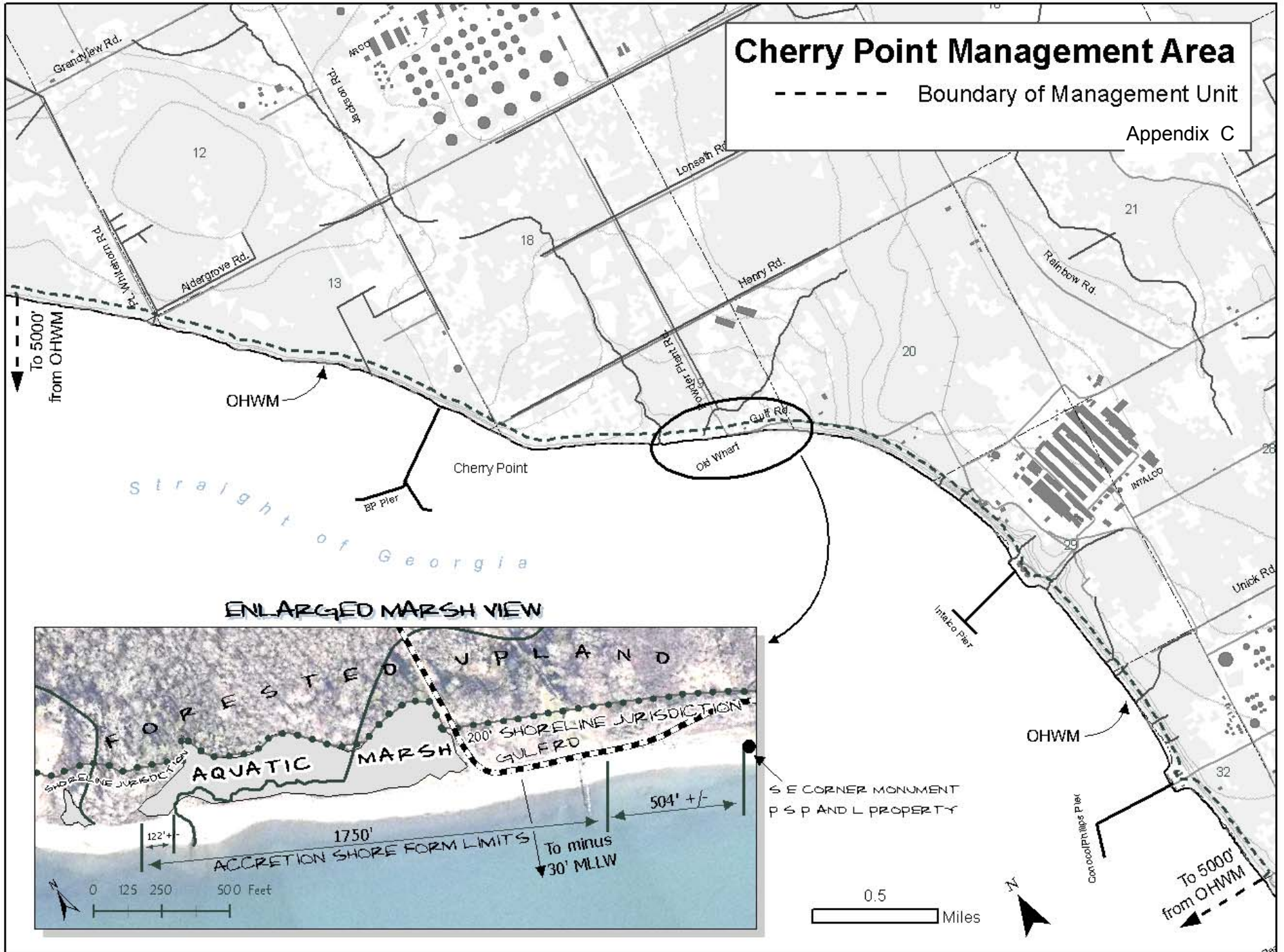
**APPENDIX C**

**CHERRY POINT MANAGEMENT AREA – Wetland Map**

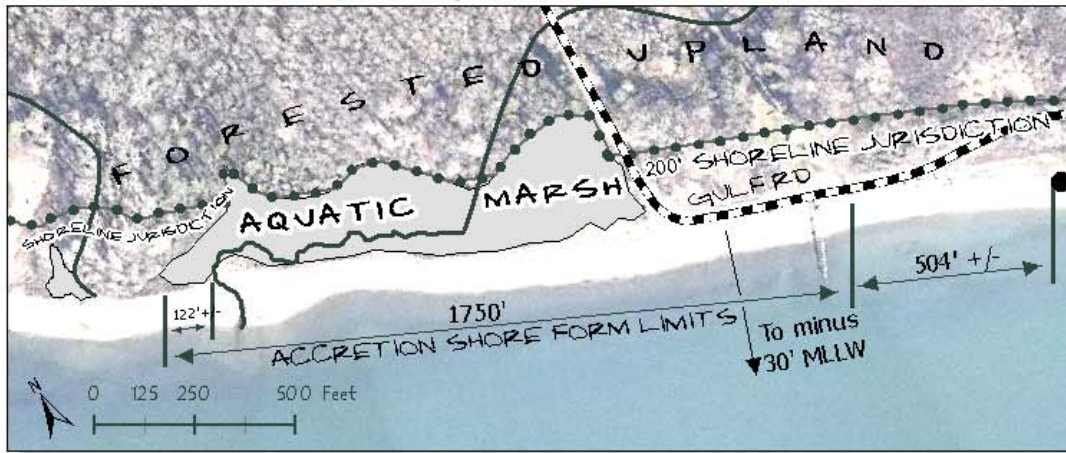
# Cherry Point Management Area

----- Boundary of Management Unit

Appendix C



## ENLARGED MARSH VIEW



S E CORNER MONUMENT  
P S P AND L PROPERTY

0.5 Miles

To 5000'  
from OHWM