

**WHATCOM COUNTY COUNCIL AGENDA BILL**

NO. 2008-303C

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Peter Gill	PG	1-30-09	<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: 0 auto;"> <p>RECEIVED</p> <p>FEB 03 2009</p> <p>WHATCOM COUNTY COUNCIL</p> </div>	2/10/09	NR/Introduce
Division Head: Oliver Grah				2/24/09	Hearing
Dept. Head: David Stalheim	DS	1-30-09		3/17/09	Council
Prosecutor: Royce Buckingham/ Karen Frakes	RK	1-30-09			
Purchasing/Budget:					
Executive: Pete Kremen	PK	2/3/09			

**TITLE OF DOCUMENT:**  
Resolution amending the Shoreline Management Program

**ATTACHMENTS:**  
Potential amendments to the Shoreline Management Program and cover letter to Natural Resource Committee.

SEPA review required?    ( ) Yes    ( x ) NO SEPA review completed?    ( ) Yes    ( x ) NO	Should Clerk schedule a hearing?    ( x ) Yes    ( ) NO Requested Date: 2-24-08
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**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

As requested at the January 27, 2009 Natural Resources Committee meeting, we will be presenting code modifications to the Shoreline Management Program (effective Aug. 8, 2008). The amendments are intended to address public concerns over damage to non-conforming structures, the 2500 sqft buildable area on non-conforming lots, and Department of Ecology changes to the Cherry Point Management Area and definitions. These issues were raised at the Natural Resource Committee on Oct. 21, 2008 through proposed resolution AB2008-381.

The proposed amendments have been posted to Shorelines web site for public review. The amendments have received input from the Citizens Advisory Committee and the Natural Resource Committee in January. Following Natural Resources Committee review and input, this resolution can be introduced at the February 10, 2009 Council meeting.

<p><b>COMMITTEE ACTION:</b></p> <p>September 9, 2008 – Further discussion of Ecology changes and hear public comment</p> <p>October 21, 2008 – Request for amendments pursuant to Ecology changes and public comment</p> <p>December 9, 2008 – Input on draft amendments</p> <p>January 27, 2009 – Input on draft amendments</p> <p>2/10/2009; Discussed and amended and recommended for introduction as amended.</p>	<p><b>COUNCIL ACTION:</b></p> <p>2/10/2009: Introduced substitute version</p> <p>2/24/2009: Action to be scheduled for a later date</p> <p>3/17/2009: Council Approved 7-0 Res. 2009-020</p>
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Related County Contract #:	Related File Numbers:	Ordinance or Resolution Number: Res. 2009-020
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**Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).**

Shoreline  
Management  
Program  
is pending  
Department of  
Ecology approval

**SPONSORED BY:** Consent

**PROPOSED BY:** PDS

**INTRODUCTION DATE:** 2/10/09

**Resolution NO.** 2009-020

**A WHATCOM COUNTY RESOLUTION, DECLARING THE COUNCIL'S APPROVAL AND INTENTION TO ADOPT THE FEBRUARY 10, 2009 AMENDMENTS TO WHATCOM COUNTY CODE, TITLE 23 – SHORELINE MANAGEMENT PROGRAM;**

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

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

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

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

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

**WHEREAS**, Whatcom County passed Ordinance #2007-017 adopting the Shoreline Management Program amendment on February 27, 2007; and

**WHEREAS**, on August 8, 2008 the State Department of Ecology approved the Whatcom County Shoreline Management Program with changes, per WAC 173-26-120; and,

**WHEREAS**, significant public comments were heard following Washington State Department of Ecology approval that resulted in the proposed amendments; and

**WHEREAS**, comments were solicited from federal, state, local, regional and tribal interests in accordance with Chapter 90.58.130 RCW; and

**WHEREAS**, on November 26, 2008, draft amendments to the County Shoreline Management Program were sent to the Department of Ecology for comment in accordance with WAC 173-26-100(5), a meeting was held on December 19, 2008 to discuss potential amendments, and on Dec. 18 and Jan.2, 2009, Ecology provided the County with comments; and,

**WHEREAS**, on December 3, 2008, draft amendments to the County Shoreline Management Program were sent to the Department of Community, Trade and Economic Development in accordance with WAC 173-26-100(5) and RCW 36.70A.106; and,

**WHEREAS**, the County Shoreline Citizens Advisory Committee provided input to the draft amendments at a public meeting on January 7, 2009; and,

**WHEREAS**, the Whatcom County Natural Resources Committee held public meetings on December 2, 2008, February 10, 2009, and January 27, 2009 to review the proposed shoreline master program amendments; and,

**WHEREAS**, as a result of these meetings, revisions recommended by the public, commenting agencies and the Department of Ecology were incorporated into the proposed shoreline master program amendments; and,

**WHEREAS**, the Whatcom County Natural Resource Committee recommended approval of the proposed amendments on Tuesday February 10, 2009; and

**WHEREAS**, the revised shoreline master program was formally considered by the County Council during a public hearing held on February 24, 2009, as advertised in accordance with WAC 173-26-100; and,

**WHEREAS**, pursuant to RCW 36.70.390, legal notice was published in the *Bellingham Herald* on February 14, 2009; and

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

**WHEREAS**, the County Council directed the Planning Department to send the proposed shoreline master program amendments and supporting materials, consistent with WAC 173-26-110 submittal requirements, to Ecology for its review and adoption.

**NOW THEREFORE, BE IT RESOLVED** by the Whatcom County Council as follows:


- 1) The Whatcom County Council approves the February 10, 2009 shoreline master program amendments that are attached to this resolution and incorporated herein by reference, with the understanding that in accordance with RCW 90.58.190(3), the proposed shoreline master program amendments will become effective locally immediately upon formal State Department of Ecology adoption; and,
- 2) If Ecology adopts the amendments, the Whatcom County Council intends to adopt (and codify), by ordinance, the subject shoreline master program amendments.

**APPROVED** this 17th day of March, 2009.

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

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
Seth Fleetwood, Council Chair

  
Civil Deputy Prosecutor

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 "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 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; provided further, that as a conditional use a non-conforming dock may be modified, reoriented or altered within the same general location to be more consistent with the provisions of this SMP.
- E. Non-conforming structures, other than single family residences and their appurtenances, 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 23.50.07.1 apply; and provided further, that~~ non-conforming structures with conforming uses within commercial or mixed-use developments may be expanded or enlarged within the existing building footprint as a conditional use pursuant to ~~Ch~~ SMP 23.100.05.B.1(e).
- F. Non-conforming structures, (including accessory structures) that are damaged or 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 of this Program; provided that, the following are met:~~
1. The single family residence or accessory structure to be restored or replaced, is not in a hazardous area, and the reconstruction permit process is commenced within eighteen (18) months of the date of such damage; and the reconstruction does not expand, enlarge, or otherwise increase the non-conformity, except as provided for in subsection (H) and (I) below; provided that, a structure can be replaced or restored in a coastal high hazard area subject to all applicable Whatcom County building and development codes.
  2. Non-conforming uses can be replaced in kind if there is no feasible alternative that allows for compliance with the provisions of this Program, and the permit process is commenced within (18) months of the date of such damage, and 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.
- 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 twenty percent (20%) 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 extend waterward of the existing primary residential foundation walls, further into a critical area (excluding the buffers of the critical areas), further into the minimum required side yard setback, or that increase the structure height above the limits established by this Program shall require a variance; provided that, expansion of non-conforming single family residences other than that specified in this section (I), may be expanded without a variance where the provisions of SMP 23.50.07(J) or (K) apply.

~~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 primary residential structure (not appurtenance), further into the minimum side yard setback, or further into any critical area established by WCC 16.16 than the existing structure. Encroachments that extend waterward of the existing residential foundation walls or further into a critical area, or the minimum required side yard setback require a variance.~~
- ~~3. The area between the non-conforming structure and the shoreline and/or critical area shall meet the vegetation conservation standards of SMP 23.90.06.~~
- ~~4. The remodel or expansion will not cause adverse impacts to shoreline ecological functions and/or processes.~~

- J. The enlargement or expansion of single family residences by the addition of space to the exterior of the main structure or normal appurtenances is permitted without a conditional use permit or variance once during the life of the structure. The structure shall be located landward of the ordinary high water mark, and any expansion of the footprint is landward of the existing building footprint, (not in the side yard) and any vertical expansion is within the existing building footprint; provided that the following conditions are met:

1. Enlargements, expansions or additions that increase the existing primary structure, or normal appurtenances by up to 250 square feet of gross floor area shall be allowed provided the expansion or addition will occur on a previously impacted impervious surface and the expansion is not waterward of the common-line setback as defined in appendix F.
2. Enlargements, expansions or additions that increase the total footprint of the existing primary structure, or normal appurtenances by 250 - 500 square feet of gross floor area shall be allowed provided that the addition will occur on a previously impacted impervious surface and the expansion is not waterward of

the common-line setback as defined in appendix F; further provided, that the shoreline is enhanced by the equivalent area of building footprint that is expanded. If enhanced through planting, the Administrator shall require a vegetation management plan consistent with 23.90.06.B(2).

K. The Administrator shall require a conditional use permit if the enlargement or expansion of single family residences by the addition of space to the exterior of the main structure, or normal appurtenances is in excess of those allowances provided in SMP 23.50.07.J.

L.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;
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.

M. Conforming lots have a building area of more than 2,500 square feet available for a single family residence and normal appurtenances and unrestricted by setbacks or buffers from shorelines shall comply with the provisions of this Program.

N. Where permitted according to shoreline area designations (SMP Table 23.100.01), new single family development on any legal lot in shoreline jurisdiction that is nonconforming with respect to the required shoreline buffer standards may be allowed without a shoreline variance when all of the following criteria are met:

1. The depth of the lot (the distance from the ordinary high water mark to the inside edge of the frontage setback) is equal to or less than the standard buffer as indicated in WCC 16.16; and,

2. The building area is twenty five hundred (2,500) square feet or less, provided that appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the residence in the least environmentally damaging location relative to the shoreline. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except on-site sewage systems), and landscaping. Building area does not include the sideyard and frontage setback provided that administrative reductions to sideyard and/or frontage setbacks shall be pursued when doing so will not create a hazardous condition or a condition that is inconsistent with this Program and Title 20; and,
3. All single family residences approved under this section shall not extend waterward of the common-line setback as measured in accordance with Appendix F; and,
4. The lot is 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; and,
5. The nonconforming lot was created prior to August 8, 2008; and,
6. There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity; and,
7. The area between the structure and the shoreline shall comply with the vegetation conservation standards of SMP 23.90.06.B.3; and,
8. Development may not take place waterward of the ordinary high water mark; and,
9. On-site sewage systems may be allowed within critical areas and their buffers, excluding actual water bodies such as wetlands, streams and lakes, outside of the building area specified above, subject to specific criteria in WCC 16.16.

~~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 of this Program. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), 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 not more than 2,500 square feet on the portion of the lot farthest from the required setback or buffer; provided that consideration shall be given to view impacts and all single family residences approved under this section shall not extend waterward of the common-line setback as measured in accordance with Appendix F.~~
- ~~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, except wetlands and buffers, outside of the building area specified above, subject to specific criteria in WCC 16.16.~~

- O. 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.

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

Shoreline Uses	Shoreline Area Designation										Cherry Point									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>											
<b>Agriculture</b>																				
	P <sup>(-)</sup>	X	P <sup>(-)</sup>	P <sup>(-)</sup>	P	P	P	P <sup>(+)</sup>	P	P	P	P <sup>(+)</sup>	P <sup>(+)</sup>	X						
<b>Aquaculture</b>																				
	P	P <sup>(+)</sup>	P	P <sup>(+)</sup>	P <sup>(+)</sup>	P	P	P <sup>(+)</sup>	P	P	P	P <sup>(+)</sup>	P	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>	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	P	P	P	P	P	P	X <sup>(*)</sup>	P					
Marinas	P	P	C	P	P	P	P	P	P	P	P	P	X	P						
Covered over-water structures	N/A	N/A	N/A	N/A	N/A	N/A	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>	P <sup>(-)</sup>	C <sup>(-)</sup>	C <sup>(-)</sup>	C <sup>(-)</sup>	C <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>	C <sup>(-)</sup>	C <sup>(-)</sup>	C <sup>(-)</sup>	C <sup>(-)</sup>	C <sup>(-)</sup>	X	X						
<b>Dredging</b>																				
	C	C	C	C	C	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	C	C	C	X	C						
<b>Flood Control and Instream Structures</b>																				
	P	P	P	P	P	P	P	P	P	P	P	P	X	P						
Channelization or dams for flood control	P	P	X	P	C	C	C	X	X	C	C	X	X	P						
<b>Forest Practices</b>																				
	X	X	X	X	P	P	P	P	P	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	X	P / C <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	C <sup>(-)</sup>	C <sup>(-)</sup>	X	X	X						X
Dams, diversion and	C	X	C	C	C	C	C	C	C	C	C	C	X	P						

- 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 ~~as a conditional use~~ 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.

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 assessed with the other long term statewide interests.—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 while permitting water-dependent uses, also protects shoreline resources, their ecological functions and processes, and that incorporates 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;
- 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.3 Critical Areas**

In addition to meeting the provisions of Ch 23.90.03 Ecological Protection and 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.
- c. 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.
- d. 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. Due to the environmental sensitivity of the area, Whatcom County shall limit the number of piers to one (1) pier, in addition to those in operation ~~or approved~~ as of January 1, 1998.
  - (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, 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

influenced geo-hydraulic processes, presence of a surface connection including through a culvert or tide gate, location in part or whole within the floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

25. "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 OHWM line of navigability of navigable ~~of~~ lakes and rivers. Where the line of navigability has not been established, bedlands would be those submerged lands below the OHWM in 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:
  - a. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;
  - b. 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;
  - c. 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. "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.
11. "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 to protect shorelines from wave caused erosion.
12. "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.
13. "Building" means any structure used or intended for supporting or sheltering any use or occupancy as defined in the International Building Code.
14. "Building Area" means the entire area that will be disturbed to construct the home, normal appurtenances (except on-site sewage systems), and landscaping.
14. "Building footprint" means for the purposes of this program, the ground area contained by the exterior walls of a building.
15. "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

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. "Development" means a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any state of water level. This term may include activities related to subdivision and short subdivisions; binding site plans; planned unit developments; clearing activity; fill and grade work; building or construction; and activities that are exempt from the substantial development permit process or that require a shoreline variance or conditional use..
4. "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.
5. "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.
6. "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.
7. "Dredge Spoil" means the material removed by dredging.
8. "Dredging" means the removal, displacement, and disposal of unconsolidated earth material such as silt, sand, gravel, or other submerged material from the bottom of water bodies or from wetlands; maintenance dredging and other support activities are included in this definition.
9. "Drift Sector" or "Drift 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.
10. "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.

6. ~~“Non-conforming lot” means, for the purposes of Ch 23.50.07.K and Ch 23.90.06.B.3, a vacant lot under contiguous ownership and with less than a total of 20,000 square feet, including within shoreline jurisdiction, that was lawfully established prior to the effective date of this Program (August 27, 1976) or amendments hereto, but which does not conform to the setback or buffer standards of this Program.~~
7. “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.
8. “Nonwater-oriented Use” means uses that are not water-dependent, water-related or water-enjoyment. Nonwater-oriented uses have little or no relationship to the shoreline and are not considered priority uses under the Shoreline Management Act except single-family residences. Any use that does not meet the definition of water-dependent, water-related or water-enjoyment is classified as nonwater-oriented.

O

1. “Off-premise Sign” means a sign situated on premises other than those premises to which the sign's message is related.
2. “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.
3. “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.
4. “On-premise Sign” means a sign situated on the premises to which the sign's message is related.
5. “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.