

Ocean Shores Shoreline Master Program Update

# Shoreline Master Program

Environment Designations, Policies, & Regulations

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# TABLE OF CONTENTS

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<b>Table of Contents</b> .....	<b>i</b>
<b>List of Tables</b> .....	<b>iv</b>
<b>List of Abbreviations</b> .....	<b>v</b>
<b>1 Introduction</b> .....	<b>1</b>
1.01 REQUIREMENTS OF THE SHORELINE MANAGEMENT ACT.....	1
1.02 AUTHORITY.....	2
1.03 PURPOSE AND INTENT.....	2
1.04 APPLICABILITY.....	2
1.05 SHORELINE JURISDICTION.....	3
1.06 RELATIONSHIP TO OTHER CODES, ORDINANCES, AND PLANS.....	6
1.07 LIBERAL CONSTRUCTION.....	6
1.08 SEVERABILITY.....	6
1.09 TITLE.....	6
1.10 EFFECTIVE DATE.....	6
<b>2 Shoreline Management Goals</b> .....	<b>7</b>
2.01 SHORELINE MASTER PROGRAM GOALS.....	7
2.02 SHORELINE USE GOAL.....	7
2.03 CONSERVATION GOAL.....	8
2.04 ECONOMIC DEVELOPMENT GOAL.....	8
2.05 PUBLIC ACCESS GOAL.....	8
2.06 RECREATION GOAL.....	9
2.07 CIRCULATION GOAL.....	9
2.08 HISTORIC, CULTURAL, SCIENTIFIC, AND EDUCATIONAL GOAL.....	9
2.09 FLOOD HAZARD PREVENTION GOAL.....	9
2.10 RESTORATION GOAL.....	10
2.11 ESTUARY MANAGEMENT GOAL.....	10
<b>3 Shoreline Environment Designations</b> .....	<b>11</b>
3.01 SHORELINE ENVIRONMENT DESIGNATION SYSTEM.....	11
3.02 INTERPRETATION OF SHORELINE ENVIRONMENT DESIGNATION BOUNDARIES.....	17
<b>4 General Policies &amp; Regulations</b> .....	<b>19</b>
4.01 INTRODUCTION.....	19
4.02 ARCHAEOLOGICAL AND HISTORIC RESOURCES.....	19
4.03 CRITICAL AREAS.....	20
4.04 ENVIRONMENTAL IMPACTS.....	21
4.05 DUNE MANAGEMENT.....	22
4.06 FLOOD HAZARD MANAGEMENT.....	24
4.07 OCEAN MANAGEMENT.....	26

4.08	PUBLIC ACCESS .....	33
4.09	RESTORATION.....	36
4.10	VEGETATION CONSERVATION .....	38
4.11	WATER QUALITY.....	41
<b>5</b>	<b>Specific Shoreline Use Policies &amp; Regulations .....</b>	<b>43</b>
5.01	INTRODUCTION.....	43
5.02	GENERAL SHORELINE USE.....	43
5.03	ALLOWED SHORELINE USES.....	45
5.04	BASIC SHORELINE DEVELOPMENT STANDARDS .....	47
5.05	AGRICULTURE.....	57
5.06	AQUACULTURE .....	57
5.07	BOATING AND MOORAGE FACILITIES.....	61
5.08	COMMERCIAL DEVELOPMENT.....	73
5.09	FOREST PRACTICES .....	74
5.10	INDUSTRIAL DEVELOPMENT.....	74
5.11	MINING .....	75
5.12	PARKING .....	76
5.13	RECREATIONAL DEVELOPMENT .....	77
5.14	RESIDENTIAL DEVELOPMENT .....	79
5.15	TRANSPORTATION FACILITIES.....	81
5.16	UTILITIES.....	83
<b>6</b>	<b>Shoreline Modification Policies &amp; Regulations .....</b>	<b>87</b>
6.01	INTRODUCTION.....	87
6.02	GENERAL SHORELINE MODIFICATION PROVISIONS .....	88
6.03	BREAKWATERS, GROINS, JETTIES, AND WEIRS.....	89
6.04	CLEARING, GRADING, AND FILL.....	91
6.05	DREDGING AND DREDGE MATERIAL DISPOSAL.....	94
6.06	IN-WATER STRUCTURES .....	97
6.07	SHORELINE STABILIZATION .....	99
<b>7</b>	<b>Shoreline Administration.....</b>	<b>111</b>
7.01	INTRODUCTION.....	111
7.02	PERMIT PROCESSING - GENERAL .....	111
7.03	APPLICATION - NOTICES .....	115
7.04	SHORELINE PERMITS AND APPROVALS.....	115
7.05	PUBLIC HEARING AND DECISION.....	120
7.06	TIME REQUIREMENTS AND REVISIONS .....	121
7.07	NON-CONFORMING DEVELOPMENT .....	124
7.08	ENFORCEMENT AND PENALTIES.....	125
7.09	SHORELINE MASTER PROGRAM – ADMINISTRATION .....	127
<b>8</b>	<b>Definitions.....</b>	<b>129</b>
8.01	UNLISTED WORDS OR PHRASES .....	129
8.02	DEFINITIONS .....	129

# LIST OF APPENDIXES

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**Appendix 1: Shoreline Environment Designations Map**

**Appendix 2: Critical Areas Regulations**

# LIST OF TABLES

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Table 4-1: Allowed Ocean Uses .....	31
Table 5-1: Permitted, Conditional, and Prohibited Uses .....	45
Table 5-2: Shoreline Height Regulations.....	48
Table 5-3: Shoreline Buffers and Shoreline Structural Setbacks .....	52
Table 6-1: Shoreline Modifications.....	88

# LIST OF ABBREVIATIONS

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City –	City of Ocean Shores
DAHP –	Washington State Department of Archaeology and Historic Preservation
FEMA –	Federal Emergency Management Agency
GHEMP –	Grays Harbor Estuary Management Plan
GMA –	Washington State Growth Management Act (Chapter 36.70A RCW)
HPA –	Hydraulic Project Approval
LUPA –	Land Use Petition Act
OHWM –	Ordinary High Water Mark
OSMC –	Ocean Shores Municipal Code
RCW –	Revised Code of Washington
SEPA –	State Environmental Policy Act (Chapter 43.21C RCW)
SCA -	Seashore Conservation Area
SMA –	Shoreline Management Act (Chapter 90.58 RCW)
SMP –	Shoreline Master Program
USACE –	United States Army Corps of Engineers
USFWS -	United States Fish and Wildlife Service
WAC –	Washington Administrative Code
WDFW –	Washington State Department of Fish and Wildlife
WDNR –	Washington State Department of Natural Resources

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# 1 INTRODUCTION

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## 1.01 REQUIREMENTS OF THE SHORELINE MANAGEMENT ACT

The State Legislature passed the Shoreline Management Act (SMA) (Chapter 90.58 Revised Code of Washington [RCW]) in 1971 and citizens of the state approved the SMA through referendum in 1972 “...to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.” The SMA requires the City of Ocean Shores to plan for the use of shorelines of the state within its jurisdiction. The SMA and Chapter 173-26 Washington Administrative Code (WAC) established broad policies that give preference to shoreline uses that:

- **Encourage water-dependent uses:** “...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 states’ shorelines...”
- **Protect shoreline natural resources:** including “...the land and its vegetation and wildlife, and the water of the state and their aquatic life...”
- **Promote public access:** “...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 people generally.”

The SMA recognizes that “...shorelines are among the most valuable and fragile...” of the State's resources. The city recognizes and protects private property rights in shoreline jurisdiction, while aiming to preserve the quality of these unique resources for all state residents.

The primary purpose of the SMA is to manage and protect the state's shoreline resources by planning for reasonable and appropriate uses. In order to protect the public interest in preserving these shorelines, the SMA establishes a coordinated planning program between the city and the state to address development and uses occurring in the state's shorelines.

Under the SMA, a Shoreline Master Program (SMP) was created and implemented based on a cooperative program of shoreline management between the city and the state. With citizen contributions collected through the city’s shoreline planning process, the city developed this SMP, and will implement and administer it through shoreline permits and reviews. The Washington State Department of Ecology (Ecology) provided funding for the update, and reviews and approves the city’s SMP and certain local shoreline permit decisions.

## **1.02 AUTHORITY**

The Shoreline Management Act of 1971, Chapter 90.58 RCW, is the authority for the enactment and administration of the SMP. The city's Shoreline Administrator is appointed by the Mayor and is charged with the responsibility of administering the SMP.

## **1.03 PURPOSE AND INTENT**

The four purposes of the SMP are to:

- A. Carry out the responsibilities imposed on the city by the SMA;
- B. Promote the public health, safety, and general welfare, by providing a guide and regulation for the future development of the shoreline resources of the city;
- C. Further, by adoption, the policies of the SMA and the goals of the SMP; and
- D. Comply with the state SMP Guidelines (Chapter 173-26 WAC); including a particular focus on regulations and mitigation standards to ensure that development under the SMP will not cause a net loss of ecological functions.

## **1.04 APPLICABILITY**

- A. The SMP shall not apply retroactively to existing, legally established structures, uses, and developments in place at the time of Ecology adoption of the SMP.
- B. All proposed uses, activities, and development occurring within shoreline jurisdiction must conform to the SMA and the SMP whether or not a shoreline substantial development permit, conditional use permit, variance, statement of exemption, or other form of authorization is required, except when specifically exempted by statute.
- C. In addition to the requirements of the SMA, permit review, implementation, and enforcement procedures affecting private property must be conducted in a manner consistent with all relevant constitutional and other legal limitations on the regulation of the private property.
- D. Federal agencies are subject to this SMP and Chapter 90.58 RCW, as provided by the Coastal Zone Management Act (Title 16 United States Code §1451 et seq.) and WAC 173-27-060(1).
- E. Nothing in this master program shall affect any rights established by treaty to which the United States is a party (RCW 90.58.350).

## **1.05 SHORELINE JURISDICTION**

### **1.05.01 EXTENT OF SHORELINE JURISDICTION**

The SMA defines the extent of the geographic area in the city subject to the SMP, which is referred to as shoreline jurisdiction in the SMP. According to RCW 90.58.030, the SMP applies to the following shorelines of the state within the city:

- A. The area between the ordinary high water mark (OHWM) and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;
- B. Lakes and reservoirs 20 acres and greater in area, including those waters that have a contiguous and continuous surface water connection with such lakes and reservoirs, such as the canals in the city.
- C. Shorelands adjacent to these waterbodies. These include:
  1. Lands extending landward for 200 feet in all directions as measured on a horizontal plane from the OHWM;
  2. Adopted Federal Emergency Management Agency (FEMA) floodways, and contiguous floodplain areas landward 200 feet from such adopted FEMA floodways; and
  3. All wetlands and river deltas associated with the streams, lakes, and tidal waters subject to the SMA.

The following waterbodies are subject to the city's SMP: the Pacific Ocean, Grays Harbor, Duck Lake, the Grand Canal, and other connecting canals.

The city's shoreline jurisdiction extends out to three nautical miles (the extent of state waters) and based on RCW 35.21.160 – 'Jurisdiction over adjacent water' extends to the middle of the channel between the cities of Ocean Shores and Westport and extends to the middle of Grays Harbor. Damon Point is not within city limits and therefore is not part of the city's shoreline jurisdiction.

The city did not choose to include additional subareas in the shoreline jurisdiction during the SMP planning process. These additional areas included the following:

- The area beyond the minimum shorelands along stream corridors as defined in the SMA.
- The "...land necessary for buffers for critical areas as defined in Chapter 36.70A RCW that occur within shorelines of the state."

The extent of shoreline jurisdiction in the city is depicted on the official shoreline maps included in SMP Appendix 1: Shoreline Environment Designation Maps. The maps only approximately represent the lateral extent of shoreline jurisdiction. The actual lateral extent of shoreline jurisdiction shall be determined on a case-by-case basis established by the location of the OHWM, the floodway, which is defined as the adopted FEMA floodways and the presence of associated wetlands. In circumstances where the shoreline jurisdiction does not include an entire parcel, only that portion of the parcel and any use, activity or development on that portion of the parcel within shoreline jurisdiction is subject to the SMP.

The actual location of the OHWM, floodway, floodplain, and wetland boundaries shall be determined at the time a development is proposed.

### **1.05.02 SHORELINES OF STATEWIDE SIGNIFICANCE**

Specific waterbodies west of the Cascades crest are classified as shorelines of statewide significance in RCW 90.58.030(2)(f). Shorelines of statewide significance include:

- A. The area between the OHWM and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets; and
- B. Lakes, whether natural, artificial, or a combination thereof, with a surface acreage of 1,000 acres or more measured at the OHWM.

In the city, the Pacific Ocean and Grays Harbor and their associated shorelands are defined as shorelines of statewide significance, which are considered resources for all people of the state. Preference is given to uses that favor long-range goals and support the overall public interest.

In implementing the objectives for shorelines of statewide significance, the city based decisions in preparing the SMP on the following policies in order of priority, with A being the highest and G being the lowest.

- A. *Recognize and protect the statewide interest over local interest.*
  - 1. Solicited comments and opinions from groups and individuals representing statewide interests.
  - 2. Recognized and considered state agencies' policies, programs, and recommendations in developing policies.
  - 3. Solicited comments and opinion from individuals with expertise in ecology, oceanography, geology, aquaculture, and other pertinent scientific fields regarding development proposals that could affect resources of statewide importance.
- B. *Preserve the natural character of the shoreline jurisdiction.*

1. Designated shoreline environment designations and use regulations to protect the ecology and environment of the shoreline.
  2. Preserved resources and values of shorelines of statewide significance for future generations and restrict or prohibit development that would irretrievably damage shoreline resources.
  3. Protected existing diversity of vegetation and habitat values, wetlands, and riparian corridors associated with shoreline areas.
  4. Upgraded and redeveloped those areas where intensive development has already occurred, before extending high intensity uses to low intensity use or undeveloped areas.
- C. *Support actions that result in long-term benefits over short-term benefits.*
1. Evaluated the short-term economic gain or development convenience relative to the long-term impairments to the natural shoreline.
  2. Actively promoted aesthetic considerations when contemplating new development, redevelopment of existing facilities, or general enhancement of shoreline areas.
- D. *Protect the resources and ecology of the shoreline.*
1. Ensured the long-term protection of ecological resources of statewide importance, such as anadromous fish habitats, forage fish spawning and rearing areas, and unique environments.
- E. *Increase public access to publicly owned areas of the shoreline.*
1. Gave priority to developing public access opportunities in shoreline areas.
  2. Located development away from the shoreline edge so that access to the shoreline is enhanced and opportunities for public access are not precluded.
- F. *Increase recreational opportunities for the public in shoreline jurisdiction.*
1. Encouraged and planned for development of public recreational facilities in the shoreline.
- G. *Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.*

### **1.05.03 OFFICIAL SHORELINE MAP**

The city's Planning Department shall keep the Official Shoreline Map for the city. Unofficial copies of the official map may be included or distributed with copies of this SMP.

## **1.06 RELATIONSHIP TO OTHER CODES, ORDINANCES, AND PLANS**

All applicable municipal, state, and federal laws shall apply to properties in shoreline jurisdiction. Should a conflict occur between the provisions of the SMP or between the SMP and the laws, regulations, codes or rules promulgated by any other authority having jurisdiction within the city, the most restrictive requirement shall be applied, except when constrained by state or federal law, or where specifically provided otherwise in the SMP.

While the city is not subject to all of the requirements of the Growth Management Act (GMA), it will strive to ensure that there is consistency between the SMP's shoreline environment designation provisions, Comprehensive Plan elements, and development regulations.

## **1.07 LIBERAL CONSTRUCTION**

As provided for in RCW 90.58.900, the SMP is exempted from the rule of strict construction and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

## **1.08 SEVERABILITY**

As provided for in RCW 90.58.910, should any section or provision of the SMP be declared invalid, such decision shall not affect the validity of the SMP as a whole.

## **1.09 TITLE**

This document shall be known and may be cited as the *City of Ocean Shores Shoreline Master Program* or SMP.

## **1.10 EFFECTIVE DATE**

The SMP is hereby adopted on the 14th day of August, 2017. The SMP and all amendments thereto shall become effective 14 days from the date of Ecology's written notice of final action to the city.<sup>1</sup>

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<sup>1</sup> Effective date: December 11, 2018

# 2 SHORELINE MANAGEMENT GOALS

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## 2.01 SHORELINE MASTER PROGRAM GOALS

The state SMP Guidelines, found in WAC 173-26-186(3), require that all relevant policy goals must be addressed in the planning policies of the SMP. This section contains goals that express the long-term vision of the city's citizens for their shorelines. Goals provide the basis for the more detailed SMP shoreline use environments, policies, regulations, and administrative procedures in subsequent chapters.

Ten goals relating to shorelines management have been identified:

- A. Shoreline Use;
- B. Conservation;
- C. Economic Development;
- D. Public Access;
- E. Recreation;
- F. Circulation;
- G. Historic, Cultural, Scientific, and Educational;
- H. Flood Hazard Preservation
- I. Restoration; and
- J. Estuary Management.

Each of these is described below and then appropriate goals are drawn.

## 2.02 SHORELINE USE GOAL

**Goal SU-1.** Identify areas associated with the general distribution, location, and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land.

Promote the best feasible pattern of land and water uses, assure a minimum of conflict between uses, assure that individual uses are placed on sites appropriate to such uses, assure that lands and waters of specific natures are available to uses which need such

special types of lands and waters, see that all of the uses needed by the region have a place, and generally devise a pattern beneficial to the natural and human environments.

### **2.03 CONSERVATION GOAL**

**Goal CONS-1.** Preserve natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection.

Identify the resources of the region including fish, wildlife, timber, estuaries, shorelines, beaches, scenic areas, fragile ecological areas, land, water, and air. Further, identify standards that will guarantee a continuing supply of these resources in sufficient quality and quantity to meet all of the region's foreseeable needs with an excess to absorb accidental losses or economic downturns, which might occur.

### **2.04 ECONOMIC DEVELOPMENT GOAL**

**Goal ED-1.** Provide an area for the location and design of industries, projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce, and other developments that are particularly dependent on their location on or use of shorelines of the state.

Maintain and enhance our shoreline related industry by securing an adequate amount of shorelands of an appropriate nature for these industries while creating and maintaining an industrial and economic environment that can coexist harmoniously with the natural and human environments.

### **2.05 PUBLIC ACCESS GOAL**

**Goal PA-1.** Increase and enhance public access to publicly owned shoreline areas consistent with private rights, public safety, and the natural shoreline character.

Maintain and improve our existing public access facilities, seek more facilities and devices to increase opportunities for public access to our region's waters. Further, public access should be as safe as feasible, cause no ill effect on other shorelines uses or features, or ill effect on the water themselves, or infringement upon private property rights. Yet fragile areas should not be destroyed through over use, rather that the volume of access be only that which the waters and shorelines can withstand.



## **2.06 RECREATION GOAL**

**Goal REC-1.** Provide for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas.

Seek and provide proper recreational opportunities for the local citizenry, to see that the at-home recreational needs are met. Further, maintain and enhance our tourism resources, to stabilize these resources and to guide resource development such that the very development is not fatal to the original resource.

## **2.07 CIRCULATION GOAL**

**Goal CIR-1.** Provide for multi-modal circulation opportunities by planning for the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element.

Create and maintain a circulatory network capable of delivering people, goods, services, and emergency services at the highest level of convenience, safety, reliability, and economy. The secondary effects of circulatory system development must be accounted for in the planning of such systems to avoid undesirable side effects. Circulation planning must be compatible with land use planning.

## **2.08 HISTORIC, CULTURAL, SCIENTIFIC, AND EDUCATIONAL GOAL**

**Goal HCSE-1.** Provide for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values.

Within the limitations of feasibility and private property rights, areas and structures of historic, cultural, scientific, and educational value should be preserved and maintained. Minority and special interest viewpoints regarding such preservation may be entertained during the permit approval process.

## **2.09 FLOOD HAZARD PREVENTION GOAL**

**Goal FHP-1.** Recognize statewide interests over individual interests in the prevention and minimization of flood damages.

## **2.10 RESTORATION GOAL**

**Goal REST-1.** Encourage restoration of previously degraded areas so that they may be renewed or restored to a natural or useful condition.

Encourage development in areas that have been previously impacted with development so that such areas may be renewed, restored, and refurbished by compatible new development. Utilize governmental activity as a catalyst and stimulant to trigger the desired redevelopment of deteriorated public facilities within target areas.

## **2.11 ESTUARY MANAGEMENT GOAL**

Manage the Grays Harbor estuary for multiple uses.

# 3 SHORELINE ENVIRONMENT DESIGNATIONS

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## 3.01 SHORELINE ENVIRONMENT DESIGNATION SYSTEM

The city classified and mapped all areas within shoreline jurisdiction into shoreline environment designations based on the following four criteria found in the state SMP Guidelines (WAC 173-26-211(2)(a)):

- A. **Existing land use patterns.** What land uses have developed in each of the shoreline areas to date, as documented in the *Shoreline Inventory and Characterization Report* and the SMP map folio.
- B. **Biological and physical character of the shoreline.** The range of ecological characteristics and functions identified for each of the shoreline reaches documented in the *Shoreline Inventory and Characterization Report*.
- C. **The goals and aspirations of the city as expressed through the city's Comprehensive Plan.** The city's Comprehensive Plan provides guidance through its goals and policies, land use designations, various elements such as land use, housing, transportation, capital facilities, and economic development, as well as implementing development codes, parks and recreation plans, sub-area plans, and other plans.
- D. **Specific criteria for each shoreline environment designation.** The specific criteria for the Aquatic, High-intensity, Natural, Shoreline Residential, and Urban Conservancy shoreline environment designations are found in WAC 173-26-211(5). The city may establish different shoreline environment designations, provided they are consistent with the purposes and policies of the state SMP Guidelines.

Based on these four criteria, this chapter establishes the shoreline environment designations for the city. These designations are illustrated in SMP Appendix 1: Shoreline Environment Designation Maps.

### 3.01.01 AQUATIC

#### A. Purpose

The purpose of the Aquatic shoreline environment designation is to protect, restore, and manage the unique characteristics and resources of the shoreline jurisdiction waterward of the OHWM.

## **B. Designation Criteria**

Assign the Aquatic shoreline environment designation to lands waterward of the OHWM.

## **C. Management Policies**

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

1. Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.
2. Limit the size of new over-water structures to the minimum necessary to support the structure's intended use.
3. Encourage multiple uses of over-water facilities to reduce the impacts of development and increase effective use of water resources in shoreline jurisdiction.
4. Minimize interference with surface navigation, consider impacts to public views, and allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration in the location and design of all developments and uses.
5. Design and manage shoreline uses and modifications to prevent degradation of water quality and alteration of natural hydrographic conditions.
6. Prohibit uses that adversely affect the ecological functions of critical saltwater and freshwater habitats except where necessary to achieve the objectives of RCW 90.58.020, and then only when the impacts are mitigated.
7. Reserve space in shoreline jurisdiction for shoreline preferred uses, including existing shellfish protection districts if applicable, while considering upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing critical habitats, aesthetics, public access, and views.

### **3.01.02 HIGH INTENSITY**

#### **A. Purpose**

The purpose of the High Intensity shoreline environment designation is to provide for high intensity water-oriented commercial and transportation uses while protecting existing ecological functions and restoring ecological functions in shoreline jurisdiction that have been degraded.

## **B. Designation Criteria**

Assign the High Intensity shoreline environment designation to shoreline jurisdiction areas that currently support high intensity uses related to commerce, industry, public facilities, or transportation, or are suitable for high intensity water-oriented uses. The areas of shoreline jurisdiction assigned this designation should have the following characteristics:

1. Can support high-intensity uses without degradation to existing shoreline function;
2. Designated by the city's Comprehensive Plan and zoning for high intensity, commercial, industry, public, or mixed-use development; and
3. Have few biophysical limitations to development such as floodways, floodplains, steep slopes, or landslide hazard areas.

## **C. Management Policies**

Development within the High Intensity shoreline environment designation shall be consistent with the following policies:

1. Prioritize uses on sites with physical access to the water in the following order of preference:
  - a. Water-dependent
  - b. Water-related
  - c. Water-enjoyment
2. Allow for non-water-related uses within this designation where there is a developed roadway between the OHWM and the proposed use or this designation is used as a parallel designation that is not adjacent to the OHWM.
3. Allow the development of new non-water-oriented uses as either part of mixed-use development or where the applicant can demonstrate that the use will not conflict with or limit opportunities for other water-oriented uses.
4. Design new development located in shoreline jurisdiction to result in no net loss of ecological function.
5. Restore and remediate shoreline areas within new development sites consistent with state and federal laws.
6. Require visual and physical access where feasible with physical access prioritized over visual access.

7. Require full use of existing urban lands in shoreline jurisdiction before expanding intensive development.

### **3.01.03 NATURAL**

#### **A. Purpose**

The purpose of the Natural shoreline environment designation is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions. Only low-intensity uses should be allowed in order to maintain the ecological functions and ecosystem-wide processes.

#### **B. Designation Criteria**

Assign the Natural shoreline environment designation to shoreline areas that are:

1. Ecologically intact and currently perform an important function or ecosystem-wide process that would be damaged by human activity;
2. Ecosystems of particular scientific and educational interest; or
3. Unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas, wetlands, and ecologically intact shoreline habitats.

#### **C. Management Policies**

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

1. Any use that would substantially degrade the ecological functions or natural character of the shoreline area should be prohibited.
2. The following new uses should not be allowed in the Natural shoreline environment designation:
  - a. Residential development;
  - b. Commercial Forestry;
  - c. Agricultural uses;
  - d. Commercial uses;
  - e. Industrial uses;
  - f. Non-water-oriented recreation; and

- g. Roads, utility corridors, and parking areas that can be located outside of the Natural shoreline environment designation.
- 3. Scientific, historic, cultural, educational research uses, and low-intensity water-oriented recreational uses that do not affect ecological functions may be allowed.
- 4. New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should be prohibited.
- 5. Subdivision of property in a configuration that will require significant vegetation removal or shoreline modification that adversely affects ecological functions should be prohibited.

#### **3.01.04 SHORELINE RESIDENTIAL**

##### **A. Purpose**

The purpose of the Shoreline Residential shoreline environment designation is to accommodate residential development and to provide appropriate public access and recreational development.

##### **B. Designation Criteria**

Assign the Shoreline Residential shoreline environment designation to shoreline areas that are predominantly residential or are planned and platted for residential development. These areas contain the following characteristics:

- 1. They contain existing residential development or are proposed primarily for residential development in Comprehensive Plans and zoning codes; and
- 2. They do not contain significant environmental hazards or sensitive areas.

##### **C. Management Policies**

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

- 1. Preserve ecological functions by establishing development standards for height, buffers, shoreline stabilization, critical area protection, and water quality protection to assure no net loss of ecological functions in shoreline jurisdiction.
- 2. Provide public access and joint use for community recreational facilities, where feasible and applicable for multifamily developments, residential developments containing four or more lots, and recreational developments.

3. Ensure access, utilities, and public services are available and adequate to serve existing needs and or planned future development.
4. Limit commercial development to water-oriented uses.

### **3.01.05 URBAN CONSERVANCY**

#### **A. Purpose**

The Urban Conservancy shoreline environment designation is intended to provide for ecological protection and rehabilitation in relatively undeveloped areas in shoreline jurisdiction, while allowing water-oriented and non-water-oriented recreational development, low intensity residential development, and limited development suitable to lands characterized by ecological and flood hazard constraints.

#### **B. Designation Criteria**

Assign the Urban Conservancy shoreline environment designation to areas in shoreline jurisdiction that:

1. Are appropriate and planned for low-intensity recreational and residential development that is compatible with maintaining or restoring the ecological functions of the area in shoreline jurisdiction and that are not generally suitable for water-dependent uses;
2. Are suitable for water-related or water-enjoyment uses;
3. Possess development limitations, due to the presence of critical environmental features including:
  - a. Erosion hazard areas;
  - b. Wetlands;
  - c. Flood hazard areas; or
  - d. Habitat areas;
4. Have the potential for development that is compatible with ecological restoration;
5. Retain important ecological functions, even though partially developed; or
6. Are undesignated areas.

#### **C. Management Policies**

Development within the Urban Conservancy shoreline environment designation shall be consistent with the following policies:



1. Allow uses that preserve the natural character of the shoreline environment, promote preservation of open space, floodway, floodplain, or critical areas directly, or over the long-term as the primary allowed uses. Allow uses that result in restoration of ecological functions if the use is otherwise compatible with the purpose of the environment and setting.
2. Implement public access and public recreation objectives whenever feasible and significant ecological impacts can be mitigated.
3. Give preferred water-oriented uses priority over non-water-oriented uses. Water-dependent and recreational development should be given highest priority.
4. Ensure that standards for new development for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications do not result in a net loss of ecological functions or degrade other shoreline values.

## **3.02 INTERPRETATION OF SHORELINE ENVIRONMENT DESIGNATION BOUNDARIES**

### **3.02.01 SHORELINE ENVIRONMENT DESIGNATIONS MAP**

The shoreline environment designations map is found in SMP Appendix 1: Shoreline Environment Designations Map.

The map only approximately represents the lateral extent of shoreline jurisdiction. The actual lateral extent of shoreline jurisdiction shall be determined on a case-by-case basis established by the location of the OHWM, the floodway, which is defined as the adopted FEMA floodway, associated floodplains, and the presence of associated wetlands.

The designations are based upon the best data available at the time of the update. As shoreline areas change over time, the map may no longer clearly identify the location and boundaries of the city shoreline environment designations. If the need arises to determine the exact boundaries of a shoreline environment designation, the process outlined in SMP Section 3.02.02 should be used.

### **3.02.02 DETERMINING SHORELINE ENVIRONMENT DESIGNATION BOUNDARIES**

- A. If the exact location of a shoreline environment designation boundary line is unclear, the following rules shall apply:
  1. Boundaries that are shown as approximately following lot, tract, or section lines shall be so construed.

2. Boundaries that are shown as approximately following roads shall be respectively construed to follow the nearest right-of-way edge.
  3. Boundaries that are shown as approximately parallel to or extensions of features described in SMP Section 3.02.02(A)(1) or (2), shall be construed to be parallel to or extensions of features in SMP Section 3.02.02(A)(1) or (2) when determining boundaries.
  4. Where boundary line adjustments or other modifications not indicated on the official shoreline map involve two or more parcels with different shoreline environment designations, a designation of Urban Conservancy shall be assigned as the shoreline environment designation for the subject properties. These designations will remain until the shoreline environment designation can be re-designated through the SMP amendment process found in SMP Section 7.09.
- B. In the event of a shoreline environment designation mapping error, the Shoreline Administrator shall utilize the criteria contained in RCW 90.58.030(2), Chapter 173-22 WAC, and the shoreline environment designation boundary criteria contained in SMP Section 3.02.02(A) to establish the appropriate shoreline environment designation through the SMP amendment process found in SMP Section 7.09.
  - C. All shoreline areas waterward of the OHWM shall be designated Aquatic. All shoreline areas landward of the OHWM shall be designated a shoreline environment designation other than Aquatic.
  - D. Only one shoreline environment designation shall apply to a given shoreland area. In the case of parallel designations, designations shall be divided along an identified linear feature or clearly described boundary.
  - E. Unmapped portions of shoreline jurisdiction shall be assigned automatically an Urban Conservancy shoreline environment designation until that portion of shoreline jurisdiction can be re-designated through the SMP amendment process found in SMP Section 7.09.

# 4 GENERAL POLICIES & REGULATIONS

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## 4.01 INTRODUCTION

The General Policies and Regulations regulate all developments, uses, and activities in all shoreline environments.

The intent of the General Policies and Regulations is to:

- A. Protect environmental resources;
- B. Reduce the likelihood of harm to life or property from hazardous conditions; and
- C. Promote access to shorelines.

## 4.02 ARCHAEOLOGICAL AND HISTORIC RESOURCES

This section requires protection of irreplaceable archaeological or historic resources within shoreline jurisdiction. Policies and regulations apply to archaeological and historic resources recorded by the Washington State Department of Archaeology and Historic Preservation (DAHP), the city, Native American Indian tribes, or that are uncovered during site development.

### 4.02.01 POLICIES

- A. Prevent the destruction of or damage to a site that has been inadvertently uncovered or has historic, cultural, scientific, or educational value as identified by the appropriate authorities, including Native American Indian tribes and the DAHP.
- B. Encourage consultation with professional archaeologists and historians to identify areas containing potentially valuable archaeological or historic data, and to establish procedures for salvaging data. Appropriate agencies to consult may include the Grays Harbor County Historical Society, the DAHP, and the Confederated Tribes of the Chehalis Reservation and the Quinault Indian Tribe.
- C. Design and operate a proposed development to be compatible with continued protection of the archaeological or historic site, if development or demolition activity is proposed adjacent to an identified archaeological or historic site.

### 4.02.02 REGULATIONS

- A. Areas documented to contain archaeological resources must be inspected and evaluated by a professional archaeologist in coordination with Native American Indian

tribes and DAHP prior to construction. Failure to complete a site survey in accordance with state law shall be considered a violation of the shoreline permit.

- B. Where a professional archaeologist has identified an area or site as having significant value, or where an area or site is listed in federal, state, or local historical registers, the city may require an evaluation of the resource and establish appropriate conditions. These conditions may include the preservation or retrieval of data, proposal modifications to reduce impacts, or other mitigation authorized through the State Environmental Policy Act (SEPA), or other federal, state, or local laws.
- C. Developers and property owners shall stop work immediately and contact the city, the DAHP, and Native American Indian tribes if archaeological resources are discovered.

### **4.03 CRITICAL AREAS**

This section establishes policies and regulations that are implemented through the Critical Area Regulations adopted as SMP Appendix 2: Critical Areas Regulations. SMP Appendix 2: Critical Areas Regulations regulates critical areas in shoreline jurisdiction such as wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.

#### **4.03.01 POLICIES**

- A. Ensure that the level of protection for critical areas in shoreline jurisdiction satisfy the requirement for no net loss of ecological functions.
- B. Include critical areas objectives in the protection and restoration of degraded ecological functions and ecosystem-wide processes. Use regulatory provisions to protect existing ecological functions and ecosystem-wide processes.
- C. Promote human uses and values in critical area provisions, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.

#### **4.03.02 REGULATIONS**

- A. If there is a conflict between the provisions of SMP Appendix 2: Critical Area Regulations and other parts of the SMP, the provisions most protective of the city's shoreline jurisdiction shall apply, as determined by the city's Shoreline Administrator.
- B. The provisions of this section and SMP Appendix 2: Critical Areas Regulations shall apply to all uses, alterations, or developments within shoreline jurisdiction, whether or not a

shoreline substantial development permit, conditional use permit, variance, or written statement of exemption is required.

C. Docks, piers, bulkheads, bridges, fill, floats, jetties, utility crossing, and other structures shall not intrude into or over critical saltwater habitats except when the conditions below are met:

1. Public need is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;
2. Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable or disproportionate cost;
3. The project, and any required mitigation, would result in no net loss of ecological functions associated with critical saltwater habitat; and
4. The project is consistent with the state's interest in resource protection and species recovery.

#### **4.04 ENVIRONMENTAL IMPACTS**

This section addresses the requirements for no net loss of ecological functions in shoreline jurisdiction by requiring mitigation for development impacts to ecological functions.

##### **4.04.01 POLICIES**

A. Avoid or mitigate impacts to ensure that no net loss standards are met.

##### **4.04.02 REGULATIONS**

- A. The environmental impacts of development proposals shall be analyzed and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the SMP, SEPA, and other applicable regulations.
- B. Mitigation measures shall be applied in the following sequence of steps listed in order of priority:
  - a. Avoiding the impact altogether by not taking a certain action or parts of an action;
  - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

- c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
  - d. Reducing or eliminating the impact over time by preservation and maintenance operations;
  - e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
  - f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
- C. Lower priority measures should be applied only where higher priority measures are determined to be infeasible or inapplicable.
  - D. Mitigation shall not be required that exceeds what is necessary to assure the development will result in no net loss of shoreline ecological functions.
  - E. When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within a watershed that addresses limiting factors or other identified critical needs for resource conservation in shoreline jurisdiction based on watershed plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms, or conditions as necessary to ensure no net loss of ecological functions.
  - F. Mitigation efforts shall be consistent with the Restoration Plan, where applicable.

#### **4.05 DUNE MANAGEMENT**

This section regulates those areas of the ocean dunes on the outer coast of the Pacific Ocean, which are subject to regulation through the SMP.

Dune modification includes activities that reform or reconfigure a dune. Such activities typically include grading, filling, construction of structures, or vegetation alteration that impacts sediment migration. Some vegetation management, such as pruning, may not rise to the threshold of dune modification if it does not impact sediment migration or alter the dune shape.

This section regulates Pacific Ocean beach dune modification including:

- A. Removal or addition of material to a dune;
- B. Reforming or reconfiguration of a dune;
- C. Removal or addition of vegetation that alters a dune’s shape or sediment migration;
- D. Hazard reduction; and
- E. Construction of environmentally sensitive trails or boardwalks.

Ocean beach dunes in shoreline jurisdiction must be managed to conserve, protect, and restore beach resources and benefits.

All dune modifications must be designed to avoid and minimize impacts and to protect existing native vegetation and restore vegetation impacted by development activities.

**4.05.01 POLICIES**

- A. Protect the dunes, one of the most important natural resources in the city as they protect human life, infrastructure, and property during high-tide events and storms.
- B. Provide for diverse and appropriate use of dune areas consistent with their ecological, recreational, aesthetic, and economic values.
- C. Permit dune modification for protection of property, flood, storm, and fire hazard reduction, erosion prevention, or ecological restoration.
- D. Protect and preserve beach dunes while allowing for recreational activities and public safety.
- E. Recreational activities are important to the quality of life in the city.
- F. Develop an environmentally sensitive trail or boardwalk outside of the buffer zone that extends 200 feet east of the OHWM of the Pacific Ocean. The trail/boardwalk design should protect vegetation and wetlands.
- G. Improve access for fire response in the dunes through construction of an environmentally sensitive trail or boardwalk.
- H. Control non-native and invasive plants that out-compete more desirable native beach vegetation. Fire-prone vegetation, like the invasive Scotch broom (*Cytisus scoparius*) should be eliminated from the dunes.
- I. Develop and implement a comprehensive program that addresses multiple dune management issues, such as ocean view enhancement, vegetation management, fire

prevention, public safety and access, recreation, property protection, and critical area management. The goal of this dune management planning effort is to develop and implement an action plan that addresses dune issues in a comprehensive manner. It may result in the modification of the shoreline master program and critical area regulations, as well as other city plans, policies, and regulations. The city will work with interested stakeholders and agencies, at the local, state, tribal, and federal levels.

#### **4.05.02 REGULATIONS**

- A. Beach dunes shall be managed to conserve, protect, and restore beach resources and benefits.
- B. Development in dune areas shall be set back consistent with SMP Table 5-3: Shoreline Buffers and Shoreline Structural Setbacks to prevent impacts to natural, functional, ecological, and aesthetic qualities of the dunes.
- C. Dune modification shall be allowed for tsunami barrier enhancement consistent with state and federal flood protection standards and when it will not result in a net loss of shoreline ecological functions.
- D. Dune modification is permitted for recreational facilities and fire hazard reduction consistent with municipal, state, and federal habitat protection standards when it will not result in a net loss of ecological functions. Typical fire hazard reduction facilities include such things as water lines necessary to combat dunes fires and multi-purpose trails.

#### **4.06 FLOOD HAZARD MANAGEMENT**

This section regulates actions:

- A. Taken to reduce flood damage or hazards; and
- B. Uses, development, and shoreline modifications proposed in flood hazard areas.

##### **4.06.01 POLICIES**

- A. Achieve flood hazard management through a coordinated and integrated approach of plans, regulations, and programs.
- B. Prefer non-structural flood hazard management measures to structural measures where feasible. New structural flood hazard reduction measures should be allowed only where



demonstrated to be necessary, and when non-structural methods are infeasible and mitigation is accomplished.

- C. Limit development and shoreline modifications within the FEMA floodway, including the coastal high hazard areas designated as the velocity zone, which interfere with the natural flooding process.
- D. Assure flood hazard protection measures do not result in a net loss of ecological functions and ecosystem-wide processes.
- E. Require new publicly funded dike or levee projects to dedicate and improve public access, subject to exceptions.

#### **4.06.02 REGULATIONS**

- A. All proposed flood hazard management measures shall comply with the Grays Harbor County All Hazard Mitigation Plan, and the following where applicable:
  - 1. Ocean Shores Municipal Code (OSMC) Chapter 15.36 Flood Damage Prevention
- B. Development in floodplains and coastal high hazard areas shall not increase flood hazards and must comply with the flood management plans listed in SMP Section 4.06.02(A).
- C. New development or new uses in shoreline jurisdiction, including subdivision of land, shall not be established when it would be reasonably foreseeable that the use or development would require structural flood hazard reduction measures within the flood plain, floodway or coastal high hazard area.
- D. New structural flood hazard management measures may be permitted if:
  - 1. No net loss of ecological functions and values will occur;
  - 2. A scientific and engineering analysis confirms they are necessary to protect existing development; and
  - 3. Nonstructural flood hazard management measures are not feasible.
- E. If new structural flood hazard management measures are required as documented in a geotechnical analysis, they shall be placed landward of the associated wetlands and shoreline buffer areas except for actions that increase ecological functions, such as wetland restoration or if it is determined that no other alternative to reduce flood hazard to existing development is feasible.
- F. New structural publicly-funded flood hazard management measures, including dikes and levees, shall dedicate and improve public access except when those improvements would cause one or more of the following:

1. Health or safety hazards or security problems;
  2. Significant ecological impacts;
  3. Conflict of uses; or
  4. Cost a disproportionate or unreasonable amount relative to the total long-term cost of the development.
- G. New development within the floodway shall not cause a net loss of ecological functions. Allowable development and uses in the floodway are limited to:
1. Actions that protect or restore the ecosystem-wide process or ecological functions;
  2. Bridges, utility lines, and other public utility and transportation structures where no feasible alternative exists or the alternative would result in an unreasonable and disproportionate cost;
  3. Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes;
  4. Repair and maintenance of an existing legal use, provided that repair and maintenance do not cause significant ecological impacts or increase flood hazard other uses; or
  5. Modifications or additions to an existing nonagricultural legal use; provided that new development includes appropriate protection of ecological functions.

## **4.07 OCEAN MANAGEMENT**

This section implements the Ocean Resources Management Act (RCW 43.143.005 – RCW 43.143.030), enacted in 1989 by the Washington State Legislature, and further implemented by WAC 173-26-360.

These provisions apply to ocean and marine-based industries and activities within the city's marine shoreline jurisdiction.

### **4.07.01 POLICIES**

- A. Manage use of ocean resources to reduce hazards to human life and property from natural or human-induced actions.
- B. Provide for diverse and appropriate use of the ocean consistent with its ecological, recreational, aesthetic, and economic value.

- C. Coordinate management of ocean resources with local, state, and federal agencies, and Native American Indian tribes.
- D. The city will revisit policies and regulations to address new information and technology, including analyses and recommendations resulting from the marine spatial planning process per RCW 43.372, during scheduled periodic reviews of the city's SMP under RCW 90.58.080.

#### **4.07.02 REGULATIONS**

##### **A. Permit Criteria**

Ocean or coastal uses and activities may be permitted as a shoreline substantial development, variance, or conditional use only if the criteria of RCW 43.143.030(2) listed below are met or exceeded:

1. There is a demonstrated significant local, state, or national need for the proposed use or activity;
2. There is no reasonable alternative to meet the public need for the proposed use or activity;
3. There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;
4. All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the Grays Harbor estuary;
5. All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;
6. Compensation is provided to mitigate adverse impacts to coastal resources or uses;
7. Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed;
8. The use or activity complies with all applicable local, state, and federal laws and regulations; and
9. The procedures for project permit applications for all ocean resources development shall conform to SMP Chapter 7: Shoreline Administration.

## **B. General Ocean Uses Guidelines**

The following guidelines apply to all ocean uses, their service, distribution, and supply activities and their associated facilities that require shoreline permits.

1. Ocean uses and activities that will not adversely impact renewable resources shall be given priority over those that will. Correspondingly, ocean uses that will have less adverse impacts on renewable resources shall be given priority over uses that will have greater adverse impacts.
2. Ocean uses that will have less adverse social and economic impacts on coastal uses and communities shall be given priority over uses and activities that will have more such impacts.
3. When the adverse impacts are generally equal, the ocean use that has less probable occurrence of a disaster shall be given priority.
4. The alternatives considered to meet a public need for a proposed use shall be commensurate with the need for the proposed use. For example, if there is a demonstrated national need for a proposed use, then national alternatives shall be considered.
5. Chapter 197-11 WAC, the SEPA rules, provides guidance in the application of the permit criteria and guidelines of this section. The range of impacts to be considered shall be consistent with WAC 197-11-060(4)(e) and WAC 197-11-792(2)(c). The determination of significant adverse impacts shall be consistent with WAC 197-11-330(3) and WAC 197-11-794. The sequence of actions described in WAC 197-11-768 shall be used as an order of preference in evaluating steps to avoid and minimize adverse impacts.
6. Impacts on commercial resources, such as the crab fishery, on noncommercial resources, such as environmentally critical and sensitive habitats and on coastal uses, such as loss of equipment or loss of a fishing season, shall be considered in determining compensation to mitigate adverse environmental, social, and economic impacts to coastal resources and uses.
7. Allocation of compensation to mitigate adverse impacts to coastal resources or uses shall be based on the magnitude and/or degree of impact on the resource, jurisdiction, and use.
8. Rehabilitation plans and bonds prepared for ocean uses shall address the effects of planned and unanticipated closures, completion of the activity, reasonable anticipated disasters, inflation, new technology, and new information about the

environmental impacts to ensure that state of the art technology and methods are used.

9. Ocean uses and their associated coastal or upland facilities shall be located, designed, and operated to prevent, avoid, and minimize adverse impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats. Such areas may include breeding, spawning, nursery, foraging areas, in addition to shorelands and areas of high productivity for marine biota such as upwelling and estuaries.
10. Ocean uses shall be located to avoid adverse impacts on proposed or existing environmental and scientific preserves and sanctuaries, parks, designated recreation areas and the city primary dune system.
11. Ocean uses and their associated facilities shall be located and designed to avoid and minimize adverse impacts on historic or culturally significant sites in compliance with Chapter 27.34 RCW. Permits in general shall contain special provisions that require permittees to comply with Chapter 27.53 RCW if any archaeological sites or archaeological objects such as artifacts and shipwrecks are discovered.
12. Ocean uses and their distribution, service, and supply vessels and aircraft shall be located, designed, and operated in a manner that minimizes adverse impacts on fishing grounds, aquatic lands, or other renewable resource ocean use areas during the established, traditional, and recognized times they are used or when the resource could be adversely impacted.
13. Ocean use service, supply, and distribution vessels and aircraft shall be routed to avoid environmentally critical and sensitive habitats such as sea stacks and shorelands, preserves sanctuaries, bird colonies, and migration routes; during critical times that those areas or species could be affected.
14. In locating and designing associated onshore facilities, special attention shall be given to the environment, the characteristics of the use, and the impact of a probable disaster, in order to assure adjacent uses, habitats, and communities' adequate protection from explosions, spills, and other disasters.
15. Ocean use activities in accessory facilities shall be located so they do not obstruct views of navigational aids.
16. Ocean uses and their associated facilities shall be located and designed to minimize impacts on existing water-dependent businesses and existing land transportation routes to the maximum extent feasible.

17. Onshore facilities associated with ocean uses shall be located in communities where there is adequate sewer, water, power, and streets. Within those communities, if space is available at existing marine terminals, the onshore facilities shall be located there.
18. Attention shall be given to the scheduling and method of constructing ocean use facilities and the location of temporary construction facilities to minimize impacts on tourism, recreation, commercial fishing, local communities, and the environment.
19. Special attention shall be given to the effect that ocean use facilities will have on recreational activities and experiences such as public access, aesthetics, and views.
20. Detrimental effects on air and water quality, tourism, recreation, fishing, aquaculture, navigation, transportation, public infrastructure, public services, and community culture shall be considered in avoiding and minimizing adverse social and economic impacts.
21. Special attention shall be given to designs and methods that prevent, avoid, and minimize adverse impacts such as noise, light, temperature changes, turbidity, water pollution, and contaminated sediments on the marine, estuarine, or upland environment. Such attention shall be given particularly during critical migration periods and life stages of marine species and critical oceanographic processes.
22. Pre-project environmental baseline inventories, assessments, and monitoring of ocean uses shall be required when little is known about the effects on marine and estuarine ecosystems, renewable resource uses, and coastal communities, or in cases where the technology involved is likely to change.

### **C. *Allowed Ocean Uses***

1. SMP Table 4-1: Allowed Ocean Uses establishes the ocean management uses and development allowed within the aquatic shoreline environment designation. Where there is a conflict between the table and the written provisions in the SMP, the written provisions shall apply.
2. Authorized uses and development are subject to the policies and regulations of the SMP and are only allowed in shoreline jurisdiction where allowed by the underlying zoning.
3. Uses and development identified as “Permitted” require either a shoreline substantial development permit in accordance with SMP Section 7.04.01 or an exemption from the requirement to obtain such a permit in accordance with SMP Section 7.04.04. If any part of a proposed development is not eligible for an

exemption, then a shoreline substantial development permit is required for the entire proposed development.

4. Uses identified as “Conditional” require a shoreline conditional permit pursuant SMP Section 7.04.02. Any use not listed in SMP Table 4-1: Allowed Ocean Uses shall require a shoreline conditional use permit.
5. Uses identified as “Prohibited” are not allowed in shoreline jurisdiction.
6. Accessory uses and structures shall be subject to the same shoreline permit process and SMP provisions as their primary use. An accessory use shall not be established prior to the establishment of its primary use.

**Table 4-1: Allowed Ocean Uses**

Shoreline Uses (1)	Aquatic
<b><i>Key: P = Permitted Use, C = Conditional Use, X = Prohibited</i></b>	
<b>Oil and Gas Development</b>	X
<b>Ocean Energy Development</b>	X
<b>Ocean Mining</b>	X
<b>Ocean Disposal</b>	X (3)
<b>Ocean Transportation</b>	C
<b>Ocean Research (2)</b>	C
<b>Ocean Salvage</b>	C

**Notes:**

- (1) Any use that would substantially degrade the ecological functions of shoreline jurisdiction should not be allowed. In addition, development shall be subject to the allowed uses established by the OSMC.
- (2) Ocean research requiring the construction of permanent structures requires a conditional use permit.
- (3) Dredge material disposal is allowed consistent with the provisions of SMP Section 6.05 Dredging and Dredge Material Disposal.

#### ***D. Ocean Transportation***

Ocean transportation includes such uses as shipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports. The following guidelines address transportation activities that originate or conclude in the state's coastal waters or are transporting a nonrenewable resource extracted from the outer continental shelf off Washington.

1. An assessment shall be made of the impact transportation uses will have on renewable resource activities such as fishing and on environmentally critical and sensitive habitat areas, environmental and scientific preserves, and sanctuaries.
2. When feasible, hazardous materials such as oil, gas, explosives, and chemicals shall not be transported through highly productive commercial, tribal, or recreational fishing areas. If no such reasonable route exists, the routes used shall pose the least environmental risk.
3. Transportation uses shall be located or routed to avoid habitat areas of endangered or threatened species, environmentally critical and sensitive habitats, migration routes of marine species and birds, marine sanctuaries and environmental or scientific preserve to the maximum extent feasible.

#### ***E. Ocean Research***

Ocean research activities involve scientific investigation that further knowledge and understanding. Investigation activities involving necessary and functionally related precursor activities to an ocean use or development may be considered exploration or part of the use or development. Since ocean research often involves activities and equipment, such as drilling and vessels that occur in exploration and ocean uses or developments, a case-by-case determination of the applicable regulations may be necessary.

1. Ocean research shall be encouraged to coordinate with other ocean uses occurring in the same area to minimize potential conflicts.
2. Ocean research meeting the definition of "exploration activity" of WAC 173-15-020 shall comply with the requirements of Chapter 173-15 WAC – Permits for oil or natural gas exploration activities conducted from state marine waters.
3. Ocean research shall be located and operated in a manner that minimizes intrusion into or disturbance of the coastal waters environment consistent with the purposes of the research and the intent of the general ocean use guidelines.



4. Ocean research shall be completed or discontinued in a manner that restores the environment to its original condition to the maximum extent feasible, consistent with the purposes of the research.
5. Public dissemination of ocean research findings shall be encouraged.

#### ***F. Ocean Salvage***

Ocean salvage uses share characteristics of other ocean uses and involve relatively small sites occurring intermittently. Historic shipwreck salvage, which combines aspects of recreation, exploration, research, and mining, is an example of such a use.

1. Nonemergency marine salvage and historic shipwreck salvage activities shall be conducted in a manner that minimizes adverse impacts to the coastal waters environment and renewable resource uses such as fishing.
2. Nonemergency marine salvage and historic shipwreck salvage activities shall not be conducted in areas of cultural or historic significance unless part of a scientific effort sanctioned by appropriate governmental agencies.

## **4.08 PUBLIC ACCESS**

As provided for in WAC 173-26-221(4), public access to the shorelines of the state is the ability of the public “...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 from adjacent locations.” Allowing for appropriate public access to shorelines of the state is a key component of the SMA.

### ***4.08.01 POLICIES***

- A. Protect and enhance the public’s right to both visual and physical access to shorelines of the state in the city to the greatest extent feasible.
- B. Regulate design, construction, and operation of permitted uses in shoreline jurisdiction to minimize interference with the public’s use of the water. Provisions such as maximum height limits, shoreline buffers, and shoreline structural setbacks should be considered to preserve and enhance views from private or public property.
- C. Increase public access where appropriate. The city should seek to increase the amount and diversity of public access to shorelines consistent with the City of Ocean Shores

Comprehensive Park and Recreation Plan, the natural shoreline character, private property rights, public rights under the Public Trust Doctrine, and public safety.<sup>2</sup>

- D. Design public access to minimize potential impacts to private property and individual privacy, safeguard private property rights, and maintain public safety while meeting the intent of the SMA.
- E. Maintain, enhance, and increase public access in accordance with the following priorities unless found infeasible:
  - 1. Maintain existing public access sites and facilities, rights of way, and easements.
  - 2. Provide new or enhance existing public access opportunities on existing public lands and easements.
  - 3. Acquire property or easements to add public access opportunities to implement adopted public access plans or to recognize opportunities to protect areas that hold unique value for public enjoyment.
  - 4. Encourage public access to shorelines as part of shoreline development activities.
- F. Shoreline development plans by public entities, including the city, Grays Harbor County, port districts, state agencies, and public utility districts, should include public access measures unless it is unsafe, unsecure, or negatively affects the shoreline environment.

#### **4.08.02 REGULATIONS**

- A. Shoreline public access shall be required for the following shoreline uses and activities:
  - 1. Shoreline recreation in accordance with SMP Section 5.13;
  - 2. New structural public flood hazard reduction measures, such as dikes and levees;
  - 3. Shoreline development by public entities, including the city, Grays Harbor County, port districts, state agencies, and public utility districts; and
  - 4. New marinas when water-enjoyment uses are associated with the marina.
- B. Shoreline public access shall be required to the extent allowed by law for all water-enjoyment, water-related, and non-water-dependent developments and for the

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<sup>2</sup> The “public trust doctrine” is a common law principle holding that “the waters of the State are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation, and similar uses.” While the doctrine “protect(s) public use of navigable waterbodies below the OHWM,” the doctrine “does not allow the public to trespass over privately owned uplands to access the tidelands.” See:[http://www.ecy.wa.gov/programs/sea/sma/laws\\_rules/public\\_trust.html](http://www.ecy.wa.gov/programs/sea/sma/laws_rules/public_trust.html).

subdivision of land into more than four parcels except when any of the following conditions are present:

1. The development consists of less than five dwelling units;
  2. Significant undue and unavoidable conflict that cannot be mitigated exists between any access provisions and the proposed use or adjacent uses regarding public health and safety, security, adverse impact to natural systems;
  3. The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
  4. Legal limitations preclude public access;
  5. The subject site is separated from the shoreline waterbody by intervening public or private improvements such as highways, existing structures, or similar improvements, and public access is not desirable or feasible; or
  6. Adequate public access already exists along the subject shoreline or it is planned in adopted public plans and there are no gaps or enhancements required to be addressed.
- C. In addressing SMP Section 4.08.02(B), the applicant must first demonstrate and then the city must determine in its findings that all feasible alternatives have been exhausted, including:
1. Where physical access is not feasible, visual access is provided instead;
  2. Regulating access by such means as limiting hours of use to daylight hours;
  3. Separating uses and activities, by such means as fences, terracing, hedges, landscaping, signage, etc.; or
  4. Providing access that is physically separated from the proposal, such as a nearby street end, an offsite viewpoint, or a trail system.
- D. Public access facilities shall be compatible with adjacent private properties using vegetative buffering or other techniques to define the separation between public and private space.
- E. Required public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.
- F. Public access easements and permit conditions shall be recorded as a separate document or on the face of a plat or short plat. Recording with the Grays Harbor County Auditor's Office shall occur at the time of permit approval.

- G. The applicant shall construct, install, and maintain approved signs that indicate the public's right of access and hours of access in conspicuous locations at public access sites. Alternatively, where public access is prohibited, property owners may install signs indicating this, subject to size and location restrictions in a required permit.
- H. Physical public access shall be designed to connect to existing or future public access features on adjacent or abutting properties, or shall connect to existing public rights-of-way, consistent with design and safety standards.
- I. The city may not vacate any road, street, or alley abutting a body of water except as provided under RCW 35.79.035.
- J. Public access shall be designed to achieve no net loss of ecological functions. Where impacts are identified, mitigation shall be required.
- K. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

## **4.09 RESTORATION**

The Shoreline Restoration Plan identifies potential restoration priorities and projects in the city. The plan provides guidance for shoreline improvement over time when compared to the baseline condition at the time of the adoption of the SMP update.

Shoreline habitat and natural systems enhancement and restoration projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shoreline jurisdiction. Examples of shoreline habitat and natural systems enhancement projects include floodplain restoration projects, native vegetation restoration projects, and projects to increase shoreline habitat complexity, among others.

### **4.09.01 POLICIES**

- A. To the greatest extent feasible, reclaim and restore biologically and aesthetically degraded areas, while maintaining appropriate use of the shoreline jurisdiction.
- B. Work collaboratively with other jurisdictions and stakeholders to implement the Restoration Plan.

- C. Follow the Application for Relief option from expansion of the shoreline jurisdiction by restoration projects in shoreline jurisdiction set forth in RCW 90.58.580 when appropriate.
- D. Design the restoration and enhancement of shorelines using principles of landscape and conservation ecology and restore or enhance chemical, physical, and biological watershed processes that create and sustain shoreline habitat structures and functions.
- E. Improve shoreline ecological functions and processes through restoration and enhancement actions. Target the needs of sensitive plant, fish, and wildlife species as identified by the Washington State Department of Fish and Wildlife (WDFW), Washington State Department of Natural Resources (WDNR), National Marine Fisheries Service, or United States Fish and Wildlife Service (USFWS).
- F. Encourage the city and private entities to seek funding from state, federal, private, and other sources to implement restoration, enhancement, and acquisition projects, particularly those that are identified in the Restoration Plan or the local watershed plans.
- G. Develop permit application processing guidelines at the local level that will streamline the review of restoration-only projects.
- H. Coordinate restoration and enhancement projects with local public utility and conservation districts.
- I. Review shoreline habitat and natural systems enhancement projects to assure they address legitimate restoration needs and priorities and/or facilitate implementation of the shoreline restoration plan.
- J. Allow for the use of tax incentive programs, mitigation banking, grants, land swaps, or other programs, as they are developed, to encourage restoration and enhancement of shoreline ecological functions and to protect habitat for fish, wildlife, and plants.

**4.09.02 REGULATIONS**

- A. All shoreline restoration and enhancement projects shall protect the integrity of adjacent natural resources, including aquatic habitats and water quality.
- B. Long-term maintenance and monitoring (minimum of three years, but preferably longer) shall be arranged by the project applicant and included in restoration or enhancement proposals.
- C. Shoreline restoration and enhancement may be allowed if the project applicant demonstrates that the project:

1. Restores the natural character and ecological functions of the shoreline;
  2. Is designed using best available scientific and technical information and implemented using best management practices;
  3. Will not adversely affect ecological processes including sediment transport, properties, or habitat;
  4. Will not significantly interfere with the normal public use of the navigable waters of the state, as determined by the Shoreline Administrator, without appropriate mitigation; and
  5. Addresses legitimate restoration needs and priorities and/or facilitates implementation of the restoration plan.
- D. Projects taking place on lands that are brought into shoreline jurisdiction due to a shoreline restoration project that causes or would cause a landward shift of the OHWM may apply to the Shoreline Administrator for relief from the SMP development standards and use regulations under the provisions of RCW 90.58.580. Any relief granted shall be strictly in accordance with the limited provisions of RCW 90.58.580, including the specific approval of Ecology.
- E. Applicants seeking to perform restoration projects are advised to work with the city to assess whether and how the proposed project may affect adjoining property, in the event that the project shifts the OHWM landward.
- F. Applicants seeking to perform restoration projects are advised to work with Washington State Parks for those lands in the Seashore Conservation Area.

#### **4.10 VEGETATION CONSERVATION**

This section regulates:

- A. Tree pruning and removal;
- B. Invasive weed management;
- C. Vegetation clearing, grading and grubbing;
- D. Aquatic vegetation control;
- E. Revegetation; and
- F. Herbicides.

#### **4.10.01 POLICIES, VEGETATION CONSERVATION ALONG SHORELINES**

- A. Prohibit speculative vegetation removal within the shoreline jurisdiction.
- B. Promptly replant cleared and disturbed sites with native vegetation after completion of construction in those locations that where vegetated.
- C. Explore opportunities to eliminate non-native vegetation, particularly invasive species and encourage the planting and enhancement of native vegetation.
- D. Allow the selective pruning of trees for safety and view protection.
- E. Conduct removal or modification of aquatic vegetation in a manner that minimizes adverse impacts to native plant communities and wildlife habitats, and appropriately handles or disposes of weed materials and attached sediments.
- F. Permit clearing of vegetation associated with dike or levee maintenance as necessary to provide protection from flood and tsunami hazards.
- G. Develop and implement a comprehensive program that addresses vegetation management adjacent to the freshwater lakes and canals. The goal of this planning effort is to develop and implement an action plan that addresses vegetation management in a comprehensive manner. It may result in the modification of the shoreline master program and critical area regulations, as well as other city plans, policies, and regulations. The city will work with interested stakeholders and agencies, at the local, state, tribal, and federal levels.

#### **4.10.02 REGULATIONS**

##### **A. General Regulations**

- 1. Normal maintenance of vegetated areas, which are not critical area buffers, such as pruning and trimming of vegetation, is allowed in shoreline jurisdiction if in compliance with SMP Appendix 2: Critical Areas Regulations. No more than 20 percent of the limbs on any single tree may be removed and no more than 20 percent of the canopy cover in any single stand of trees may be removed in a given five-year period. Pruning shall comply with the National Arborist Association pruning standards.
- 2. Requests to conduct vegetation clearing or pruning in shoreline or critical area buffers shall be processed as a Shoreline Exemption. Shoreline exemptions must be consistent with the policies and regulations of the SMP and SMA.
- 3. Regulations addressing clearing, grading, and fill are found in SMP Section 6.04.

4. Vegetation conservation standards shall not apply retroactively to existing, legally established uses and developments. Existing, lawfully established landscaping and gardens within shoreline jurisdiction may be maintained in their existing condition.
  - a. In the context of this regulation, maintenance includes mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning, and replacement planting of ornamental vegetation or indigenous native species to maintain the condition and appearance of such areas.
5. Trees that are an immediate danger of collapse and represent a clear hazard to persons or property may be felled or topped without a permit. Immediate danger of collapse means that the tree is already leaning, surrounding soil is heaving, and there is significant likelihood that the tree or a portion of it will fall before a permit can be obtained. Trees that are felled in required shoreline buffers areas should be left in place.
6. Clearing of invasive, noxious, and non-native vegetation in shoreline jurisdiction is allowed. Native vegetation should be promptly reestablished in the disturbed area.
7. During construction, vegetation in shoreline jurisdiction shall be protected by installing temporary barriers to ensure construction activities do not encroach upon other areas or cause sediment to leave the site, or otherwise cause erosion.
8. In those instances where management of vegetation as required by the SMP conflicts with vegetation provisions included in state, federal, or other flood hazard agency documents governing licensed or certified flood or tsunami hazard reduction measures, the requirements of the SMP will not apply.
  - a. The applicant shall submit documentation of conflicting provisions with a shoreline permit application and shall comply with all other provisions of this section and the SMP that are not strictly prohibited by certifying or licensing agencies.

#### ***B. Revegetation***

1. Cleared land must be replanted within eighteen months of the disturbance or as conditioned in the permit. Replanted areas shall be planted and maintained such that within three years the vegetation cover is at least 90 percent reestablished.
2. In all cases where clearing is followed by revegetation, native plants shall be preferred. Native vegetation with similar species in quantities designed to achieve no net loss of ecological function shall be required for revegetation of cleared areas



that contain existing native vegetation. Existing ornamental landscapes, including grass, may be replaced with similar species unless mitigation is necessary to address project impacts but excluding invasive ornamentals or plants on the State or city noxious weed list.

### ***C. Aquatic Vegetation Control***

1. Aquatic vegetation control shall only occur when native plant communities and associated habitats are threatened or where an existing water dependent use is restricted by the presence of weeds. Aquatic vegetation control shall occur in compliance with all other applicable laws and standards, including WDFW requirements.
2. Control of aquatic vegetation by mechanical methods is exempt from the requirement to obtain a shoreline substantial development permit only if the bottom sediment or benthos is not disturbed in the process. It is assumed that mechanical removal of accumulated vegetation at a level closer than two feet to the root level will disturb the bottom sediment and benthos layer. The control of aquatic vegetation that disturbs the bottom sediment or benthos shall require a shoreline substantial development permit.
3. The application of herbicides or pesticides in lakes, canals, wetlands, or ditches requires a permit from Ecology.

## **4.11 WATER QUALITY**

Prevent impacts to water quality and stormwater quantity that would result in a loss of ecological functions, a significant impact to aesthetic qualities, or recreational opportunities.

### ***4.11.01 POLICIES***

- A. Protect shorelines by ensuring that surface water quality and quantity regulations are administered by the city.
- B. Prevent impacts to water quality and stormwater quantity that would result in net loss of shoreline ecological function, significant impacts to aesthetic qualities, or recreational opportunities.

#### **4.11.02 REGULATIONS**

- A. All development in shoreline jurisdiction shall comply with the SMP, the applicable city stormwater management programs and regulations, and the Stormwater Manual for Western Washington, current edition, prepared by Ecology.

# 5 SPECIFIC SHORELINE USE POLICIES & REGULATIONS

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## 5.01 INTRODUCTION

This Chapter regulates specific uses such as:

- A. Residential, commercial and industrial development;
- B. Boating facilities;
- C. Shoreline vegetation buffers and structural setbacks; and
- D. Parking and utilities.

## 5.02 GENERAL SHORELINE USE

These policies and regulations apply to all developments and uses within shoreline jurisdiction, whether or not shoreline permits or written letters of exemption are required.

### 5.02.01 POLICIES

- A. Prohibit the following uses within the city's shoreline jurisdiction: Agriculture and Forest Practices.
- B. Shorelines are a limited ecological and economic resource. Apply the following priorities in the order presented below when determining allowable uses or resolving use conflicts in shoreline jurisdiction:
  - 1. Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health;
  - 2. Reserve shoreline areas for water-dependent and associated water-related uses, which may include provisions to allow mixed-use developments that include water-dependent uses and address specific conditions that affect water-dependent uses;
  - 3. Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives;
  - 4. Locate single-family residential uses where they can be developed without significant impact to ecological functions or displacement of water-dependent uses; and

5. Limit non-water-oriented uses to those locations where the uses described above are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the SMA.
- C. Locate accessory uses within shoreline jurisdiction, such as parking, service buildings or areas, access roads, utilities, signs, and storage, landward of required shoreline vegetation buffers and water-oriented developments or other approved uses.
- D. Locate, design, and manage uses to minimize impacts through bulk and dimensional regulations, shoreline vegetation buffers, and other measures to ensure that the development will not result in a net loss of shoreline ecological functions. Any use that would substantially degrade the ecological functions of the shoreline jurisdiction should not be allowed.
- E. Include regulations for shoreline vegetation buffers consistent with protecting existing ecological functions, accommodating water-oriented and preferred uses, recognizing existing development patterns, and minimizing the creation of non-conforming uses and developments.
- F. Protect beneficial uses, including ecological functions and water-dependent uses and water-oriented uses. Design, locate, and operate shoreline uses in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes.
- G. Do not permit uses where they would result in a net loss of shoreline ecological functions, adversely affect the quality or extent of habitat for native species, adversely affect other habitat conservation areas, or interfere with other water-dependent uses.
- H. Avoid all significant adverse impacts to the shoreline or, if that is not feasible, minimize to the extent feasible and mitigate unavoidable impacts.

#### **5.02.02 REGULATIONS**

These regulations apply to all developments and uses taking place within shoreline jurisdiction, whether or not a shoreline permit or written letter of exemption is required.

- A. Shoreline developments shall locate their water-oriented portions along the shoreline and place other facilities landward or outside the shoreline jurisdiction.
- B. Shoreline uses and developments shall be designed to complement the setting of the property and minimize glare. Shoreline applicants shall demonstrate efforts to minimize potential impacts to the extent feasible.
- C. In the Shoreline Residential shoreline environment designation, commercial development is limited to water-oriented uses.

- D. Agriculture, Forest Practices, and parking as a primary use are prohibited in shoreline jurisdiction.

### 5.03 ALLOWED SHORELINE USES

- A. SMP Table 5-1: Permitted, Conditional, and Prohibited Uses establishes the uses and development allowed within the shoreline environment designations. Where there is a conflict between the table and the written provisions in the SMP, the written provisions shall apply.
- B. Authorized uses are subject to the policies and regulations of the SMP and are only allowed in shoreline jurisdiction where allowed by the underlying zoning.
- C. Uses and development identified as “Permitted” require either a shoreline substantial development permit in accordance with SMP Section 7.04.01 or an exemption from the requirement to obtain such a permit in accordance with SMP Section 7.04.04. If any part of a proposed development is not eligible for an exemption, then a shoreline substantial development permit is required for the entire proposed development.
- D. Uses identified as “Conditional” require a shoreline conditional use permit pursuant to SMP Section 7.04.02. Any use not listed in SMP Table 5-1: Permitted, Conditional, and Prohibited Uses shall require a shoreline conditional use permit.
- E. Uses identified as “Prohibited” are not allowed in shoreline jurisdiction.
- F. Accessory uses and structures shall be subject to the same shoreline permit process and SMP provisions as their primary use. An accessory use shall not be established prior to the establishment of its primary use.
- G. See SMP Table 4-1: Allowed Ocean Uses in SMP Section 4.07 for ocean management uses.

**Table 5-1: Permitted, Conditional, and Prohibited Uses**

Shoreline Uses	High Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
<i>Key: P = Permitted Use, C = Conditional Use, X = Prohibited</i>					
<b>Agriculture</b>	X	X	X	X	X
<b>Aquaculture</b>	C	C	C	X	C
<b>Boating and Moorage Facilities</b>					

<b>Shoreline Uses</b>	<b>High Intensity</b>	<b>Shoreline Residential</b>	<b>Urban Conservancy</b>	<b>Natural</b>	<b>Aquatic</b>
Recreational Float (1)	P	P	C	X	See adjacent upland shoreline environment designation
Private Single / Joint-Use Pier or Dock (1)	P	P	P	X	
Mooring Piles and Mooring Buoys	P	P	C	X	
Public Pier / Dock (1)	C	C	C	X	
Boat Launch	C	C	C	X	
Boat Lift and Boat Lift Canopies	C	C	C	X	
Covered Moorage	X	X	X	X	
Boathouse	X	X	X	X	
Marina	P	X	X	X	
<b>Commercial Development</b>	P	C	X	X	X
<b>Forest Practices</b>	X	X	X	X	X
<b>Industrial Development</b>	P	X	X	X	X
<b>Mining (2)</b>	X	X	X	X	X
<b>Parking (as primary use)</b>	X	X	X	X	X
<b>Parking (as accessory use)</b>	P	P	P	X	X
<b>Recreational Development</b>					
Water-oriented	P	P	P	C	X
Water dependent	P	P	P	C	P
Non-water-oriented	P	P	P	X	X
Paved trails	P	P	P	C	X
Unpaved trails	P	P	P	C	X
Concession stands, gift shops, and interpretive centers (as accessory use to recreational development)	P	P	P	X	X
<b>Residential Development</b>	P	P	P	X	X
<b>Signs</b>	P	P	P	C	X
<b>Transportation Facilities</b>					
New roads related to permitted shoreline uses	P	P	P	C	X
Bridges for motorized and non-motorized uses	C	C	C	C	C
Expansion or relocation of existing roads	P	C	C	X	X
<b>Utilities (Primary)</b>					
Solid waste disposal or transfer sites	X	X	X	X	X
Other	C	C	C	C	C
<b>Utilities (Accessory)</b>					
On-site utility features serving a primary	P	P	P	C	C

Shoreline Uses	High Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
use					

Notes:

(1) Recreational floats, docks and piers are prohibited on the Pacific Ocean shoreline. Residential docks and piers are prohibited on Grays Harbor.

(2) See exceptions in Section 5.11.

## 5.04 BASIC SHORELINE DEVELOPMENT STANDARDS

### 5.04.01 SHORELINE HEIGHT STANDARDS

- A. To limit the obstruction of views from public property or residences, SMP Table 5-2: Shoreline Height Regulations sets the maximum shoreline height for new or expanded buildings or structures above average grade level.
- B. The following structures are exempt from the shoreline height standard requirements: power or light poles, chimneys, tanks, towers, cupolas, steeples, flagpoles, smokestacks, silos, elevators, fire or parapet walls, open railings, and/or similar necessary building appurtenances may exceed the shoreline height limit, provided all structural or other requirements of the city are met and no usable floor space above the shoreline height limit is added.
- C. Development that does not comply with the standards in SMP Table 5-2: Shoreline Height Regulations requires the approval of a shoreline variance. A shoreline variance from the maximum shoreline height limit shall be subject to approval of a view corridor analysis under SMP Section 5.04.01(D) and demonstration that the proposal meets the shoreline variance criteria in SMP Section 7.04.03 provided:
  - 1. The increase does not obstruct the view of a substantial number of residences on areas adjoining the shoreline;
  - 2. Overriding considerations of the public interest will be served;
  - 3. Greater height is demonstrated to be needed for an essential element of an allowed use; and

4. The project may be required to include compensating elements that substantially enhance the visual and physical public access to the shoreline.

**Table 5-2: Shoreline Height Regulations**

<b>Standard</b>	<b>High Intensity</b>	<b>Shoreline Residential</b>	<b>Urban Conservancy</b>	<b>Natural</b>	<b>Aquatic</b>
Maximum Shoreline Height	35 feet	35 feet	35 feet	35 feet	35 feet

**D. View Corridor Review Process**

1. Applicants for new or expanded buildings or structures exceeding 35 feet in height above average grade level shall address impacts to views from substantial numbers of residences and public areas as follows:
  - a. Site design shall provide for view corridors between buildings using building separation, setbacks, upper story setbacks, pitched roofs, and other mitigation.
  - b. To determine appropriate view corridor location, applicants and the city shall review shoreline public access plans, location of federal- or state-designated scenic highways, government-prepared view studies, SEPA documents, or applicant-prepared studies.
  - c. The maximum width of a view corridor shall not exceed 25 percent of the lot width. Where vegetation removal is required for a view corridor, the view corridor shall be limited to 25 percent of the lot width or 25 feet, whichever is less.
2. For heights proposed above 35 feet, the following view analysis standards and procedures apply:
  - a. The applicant shall prepare a view analysis conducted consistent with the application requirements in SMP Section 7.02.03. The analysis shall address:
    - 1) The cumulative view obstruction created by the proposed development combined with other developments that exceed 35 feet in height within a 1,000-foot radius of the proposed development;
    - 2) Overall views that are lost, compromised, or retained;
    - 3) Available view corridors; and
    - 4) Surface water views lost, compromised, or retained.



- b. For phased developments, the view analysis shall be prepared in the first phase and include all proposed buildings.
- c. Applicants proposing building or structure heights above 35 feet that are consistent with the SMP and underlying zoning allowances may be approved as part of a shoreline variance if the following criteria are met:
  - 1) The development will not cause an obstruction of view from public properties or substantial number of residences. The applicant shall demonstrate through photographs, videos, photo-based simulations, or computer-generated simulations that the proposed development will obstruct less than 30 percent of the view of the shoreline enjoyed by a substantial number of residences on areas adjoining such shorelines.

#### **5.04.02 SHORELINE VEGETATION BUFFERS AND SHORELINE STRUCTURAL SETBACKS**

##### **A. General Shoreline Vegetation Buffers and Shoreline Structural Setback Requirements**

- 1. Shoreline vegetation buffers and shoreline structural setbacks are established in this section. The purpose of a buffer is to protect life, property, and resources from risks associated with development on shorelines and to protect the integrity, function, value, and resources of the shoreline.
- 2. Shoreline vegetation buffers and setbacks are located upland from the OHWM along regulated shorelines. Buffer and setback dimensional requirements are detailed in SMP Table 5-3: Shoreline Vegetation Buffers and Shoreline Structural Setbacks and Appendix 2: Critical Area Regulations regulates critical area buffers.
  - a. Overlapping Critical Area and/ or Shoreline Vegetation Buffers. If buffers for two contiguous critical areas (or shoreline vegetation buffers) overlap, such as buffers for a shoreline and a wetland, the wider buffer applies.
  - b. SMP Chapter 4: General Policies & Regulations and SMP Appendix 2: Critical Area Regulations contain policies and regulations concerning the protection of and impact mitigation for buffers.
  - c. Removal of native vegetation in the buffer to include trees, shrub and groundcover, must be compensated at no less than a 1:1 ratio with supplemental native tree, shrub and groundcover plantings in the shoreline vegetation buffer. The shoreline administrator may increase the ratio when necessary to ensure no net loss of shoreline ecological functions.
  - d. The area within the shoreline vegetation buffer shall be protected during construction by placement of a temporary barricade or fencing, on-site notice

for construction crews of the presence of the waterbody, and implementation of appropriate erosion and sedimentation controls.

- 1) When vegetation in the shoreline vegetation buffer is disturbed or removed, a mitigation plan must be reviewed, and implemented as approved. Requirements are found in SMP Section 5.04.02(E).

**B. Uses Permitted in Shoreline Vegetation Buffers**

1. All uses and developments located in the shoreline vegetation buffers shall implement the mitigation sequencing found in SMP Section 4.04.
2. New structures or developments, including accessory structures or residential appurtenances, are not permitted in shoreline vegetation buffers except as specifically allowed in this section.
3. The following uses are allowed within established shoreline vegetation buffers:
  - a. Existing residential development located inside the shoreline vegetation buffer may expand vertically or landward of the development, provided any impacts to vegetation are mitigated consistent with the shoreline vegetation buffer mitigation report required in SMP Section 5.04.02(E) and the vegetation conservation standards of SMP Section 4.10.
  - b. Expansions waterward or to the side shall require a shoreline variance consistent with SMP Section 7.04.03, if a shoreline vegetation buffer cannot be reduced per SMP Section 5.04.02(D).
  - c. Those portions of water-dependent or direct shoreline public access development that require improvements or uses adjacent to the OHWM, such as haul-out areas for retail establishments providing boat and motor repair and service, boat launch ramps for boat launches, swimming beaches or other similar uses are allowed within the shoreline vegetation buffer.
  - d. Water-dependent uses and development. Water-dependent uses and development may be located at the OHWM as allowed by SMP Section 5.03.
  - e. Accessory Uses. Uses and developments accessory to water-dependent uses should be located outside the shoreline vegetation buffer unless at least one of the following criteria is met:
    - 1) A location in the shoreline vegetation buffer is necessary for operation of the water-dependent use or development, such as a road to a boat launch facility; or

- 2) The use or development is located on public lands and provides access to, enjoyment, or use of the water. In these circumstances, uses and developments accessory to water-dependent uses must:
    - a) Be designed and located to minimize intrusion into the shoreline vegetation buffer;
    - b) Be consistent with SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations, and the vegetation conservation standards of SMP Section 4.10; and
    - c) Not conflict with or limit opportunities for other water-oriented uses.
  - 3) All other accessory uses and developments proposed to be located in a shoreline vegetation buffer must obtain a shoreline variance in accordance with SMP Section 7.04.03 unless otherwise allowed by the SMP. Applicants are encouraged to consider the options for a shoreline vegetation buffer reduction prior to applying for a shoreline variance.
- f. Essential Public Facilities. Essential public facilities as defined by RCW 36.70A.200 may be located and expanded in the shoreline vegetation buffer if the use cannot be reasonably accommodated or accomplished outside of the standard or reduced shoreline vegetation buffer.
- 1) Essential public facilities must demonstrate that alternative sites are not available.
  - 2) These uses must be designed and located to minimize intrusion into the shoreline vegetation buffer and should be consistent with SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.
  - 3) Impacts to the shoreline vegetation buffer must be fully mitigated.
- g. Education, Scientific Research, and Passive Recreational Uses. Such uses are allowed within established shoreline vegetation buffers; provided, the use does not include such elements as the construction of facilities to support such uses. These uses may include, but are not limited to fishing, bird watching, hiking, hunting, boating, horseback riding, skiing, swimming, canoeing, and bicycling.
- h. Site investigative work necessary for land use application submittals such as surveys, soil logs, drainage tests, and other related work. In every case, shoreline vegetation buffer impacts should be avoided or minimized and disturbed areas shall be immediately restored. A mitigation plan is not required for site investigative work.

- i. Development and maintenance of trails and associated facilities in conformance to design guidelines found in SMP Section 4.08.

**C. Shoreline Vegetation Buffers and Shoreline Structural Setbacks Table**

1. This section does not apply to critical area buffers, which are addressed in SMP Appendix 2: Critical Areas Regulations.
2. SMP Table 5-3: Shoreline Vegetation Buffers and Shoreline Structural Setbacks establishes shoreline vegetation buffers and shoreline structural setbacks by shoreline environment designation and waterbody.
  - a. Shoreline vegetation buffers and structural setbacks are measured landward from the OHWM in a horizontal direction perpendicular to the OHWM of the shoreline of the state.
3. Where shoreline environment designations are parallel, the shoreline vegetation buffer of the waterward shoreline environment designation extends only to the upland edge of that shoreline environment designation. The shoreline vegetation buffer for the landward shoreline environment designation would apply to uses and modifications in the upland shoreline environment designation.
4. For water-dependent structures and uses that cannot exist in any other location and are dependent on the water due to the intrinsic nature of its operations, such as a marina or sewer outfall, the shoreline vegetation buffer and/or shoreline structural setback shall be zero feet.
5. Decks, patios, retaining walls, and associated access paths can be placed in the shoreline structural setback provided that they are located landward of, and do not encroach on, the Shoreline Vegetation Buffer.
 

Fences can be placed in the shoreline structural setback provided that they comply with the requirements of 5.14.02.H, if they encroach on the Shoreline Vegetation Buffer.
6. Flag poles and radio towers can be placed in the shoreline structural setback provided that they are located landward of the Shoreline Vegetation Buffer.

**Table 5-3: Shoreline Vegetation Buffers and Shoreline Structural Setbacks**

Shoreline Environment Designation	Shoreline Vegetation Buffer Measured from OHWM	Structural Setback Measured from the landward edge of the buffer
High Intensity	25 feet	15 feet
Shoreline Residential by Specific Location		

<b>Shoreline Environment Designation</b>	<b>Shoreline Vegetation Buffer Measured from OHWM</b>	<b>Structural Setback Measured from the landward edge of the buffer</b>
Pacific Ocean	200 feet	N/A
Grays Harbor	50 feet	15 feet
Freshwater	10 feet	25 feet
<b>Urban Conservancy by Specific Location</b>		
Pacific Ocean	200 feet	N/A
Freshwater	25 feet	15 feet
Grays Harbor	150 feet	15 feet
Natural	200 feet	N/A
Aquatic	N/A	N/A

Note: For the purposes of implementing this table which specifies buffers by location, marine shoreline areas located east of a line drawn from the tip of the North Jetty to the South Jetty are considered in Grays Harbor. All shoreline areas located outside the mouth of the harbor are considered Pacific Ocean.

***D. Shoreline Vegetation Buffer Width Reduction Options***

1. Shoreline vegetation buffers along the fresh waterways and Grays Harbor Estuary may be reduced only when necessary and consistent with SMP Section 4.04: Environmental Impacts.
2. Shoreline vegetation buffer width reductions are listed in order of preference and a lower preference may only be used if the higher preference is shown to be infeasible.
3. Only one buffer width reduction option may be used for a proposal.
4. Shoreline vegetation buffer Averaging
  - a. The width of a shoreline vegetation buffer may be averaged, thereby reducing the width of a portion of the shoreline vegetation buffer and increasing the width of another portion of the shoreline vegetation buffer. Shoreline vegetation buffer averaging shall not be allowed in the shoreline environment designations adjacent to the Pacific Ocean.
  - b. A mitigation plan shall be prepared as outlined in SMP Section 5.04.02(E) and the applicant will need to demonstrate to the satisfaction of the Shoreline Administrator that the following criteria are addressed.
    - 1) The waterbody and associated shoreline vegetation buffer have unique characteristics that affect its habitat functions;

- 2) The shoreline vegetation buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the waterbody and decreased adjacent to the lower-functioning or less sensitive portion;
- 3) The shoreline vegetation buffer averaging does not reduce the ecological functions or values of the waterbody and associated shoreline vegetation buffer, or the shoreline vegetation buffer averaging, in conjunction with vegetation enhancement, increases ecological functions or values;
- 4) The total area of the shoreline vegetation buffer after averaging is equal to the area of the required shoreline vegetation buffer without averaging and all increases in shoreline vegetation buffer dimension for averaging are generally parallel to the OHWM;
- 5) The shoreline vegetation buffer at its narrowest point is never less than 75 percent of the required width;
- 6) The slopes within the shoreline vegetation buffer area are stable and the gradient does not exceed 30 percent; and
- 7) The applicant implements all feasible measures to reduce the adverse effects of adjacent land uses and ensure no net loss of ecological functions.

#### 5. Other Allowed Reductions in Shoreline Vegetation Buffer Width

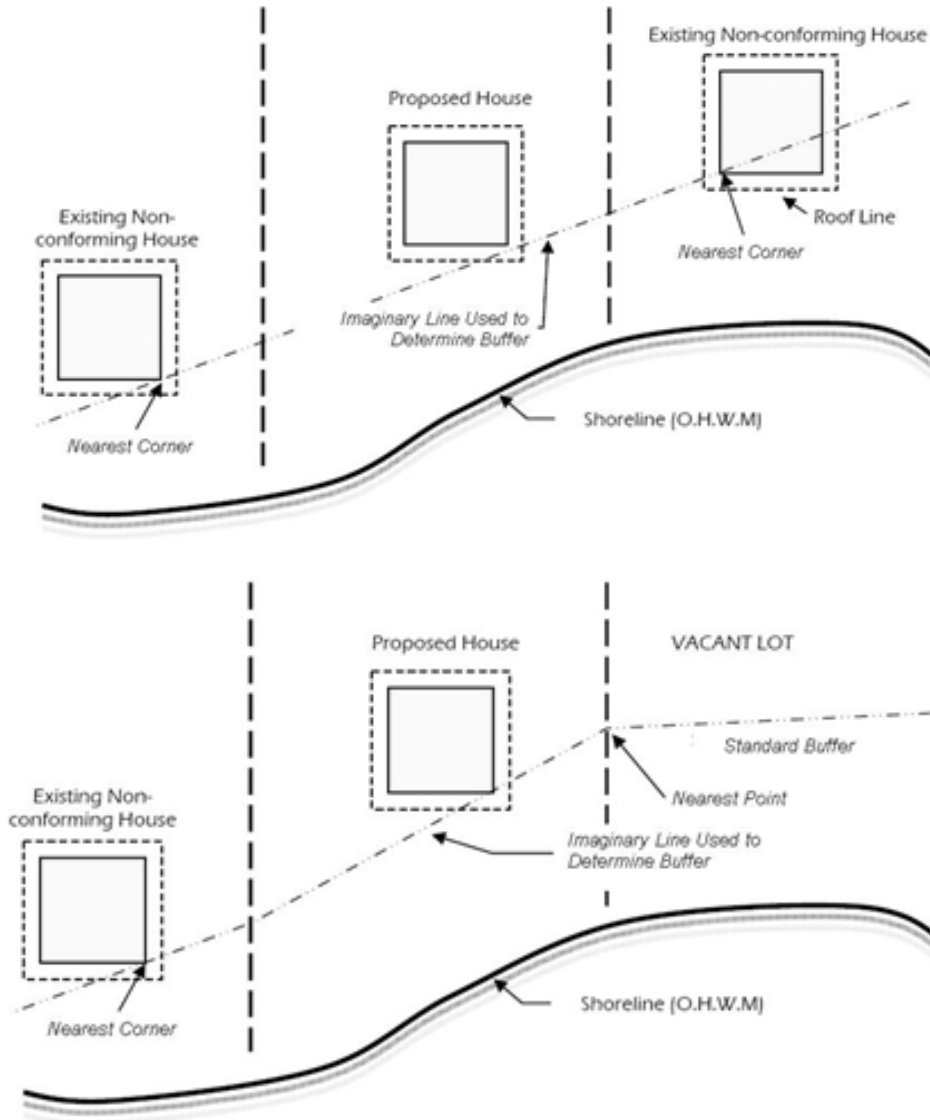
- a. Where a legally established road (excluding a private driveway) crosses a shoreline vegetation buffer, the Shoreline Administrator may reduce the standard shoreline vegetation buffer width to the waterward edge of the improved road if the part of the shoreline vegetation buffer on the upland side of the road:
  - 1) Does not provide additional protection for the waterbody; and
  - 2) Does not provide significant biological, geological, or hydrological functions for the waterward portion of the shoreline vegetation buffer adjacent to the OHWM of the waterbody.

#### 6. Common Line Buffers and Setbacks

This section, Common Line Buffers and Setbacks, does not apply in the shoreline environment designations adjacent to the Pacific Ocean.

The Shoreline Administrator may reduce the standard shoreline vegetation buffer for new single-family residences consistent with the following criteria:

- a. Within the Residential Shoreline environment adjacent to freshwater, the common line setback provisions cannot be used to reduce the combined buffer and setback to less than 25 feet from the OHWM. The shoreline vegetation buffer must be a minimum of 10 feet.
- b. Within the Residential shoreline environment adjacent to Grays Harbor, the common line setback provisions cannot be used to reduce the combined buffer and setback to less than 35 feet from the OHWM. The shoreline vegetation buffer must be a minimum of 20 feet.
- c. Accessory structures such as sheds or garages cannot be used to determine a common line buffer or setback.
- d. Existing Residences on Both Sides: Where there are existing residences adjacent on both sides of the proposed residence and when those residences are within 100 feet of the shared property lines and at least one encroaches on the standard buffer or setback, the buffer or setback shall be determined as:
  - 1) A common line drawn between the most waterward foundation corner which is closest to the side-yard property line of the proposed residence; or
  - 2) A common line calculated as the average of both adjacent residences' existing setbacks as measured at the most waterward foundation.



**E. Mitigation Plan**

1. The applicant must submit a mitigation plan for review by the Shoreline Administrator or Hearing Examiner, as appropriate. The plan must address the specific habitat or ecological functions that may be lost if the project includes:
  - a. Reduction of the standard shoreline vegetation buffer;
  - b. Construction, landscaping, activities or uses in the buffer; or
  - c. Removal of mature trees and shrubs in the buffer.
2. A qualified professional must prepare a mitigation plan that is consistent with the provisions of SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.



- a. Prior to issuance of a certificate of occupancy or final inspection, the applicant shall:
  - 1) Provide the Shoreline Administrator a final as-built plan of completed improvements authorized or required under this section; and
  - 2) Record the final approved mitigation plan and corresponding conditions with the Grays Harbor County Auditor's Office in a form acceptable to the city, including maintenance throughout the life of the development, unless otherwise approved by the Shoreline Administrator.
- b. Where opportunities to mitigate in-kind and on-site are not available or adequate, the mitigation plan may include off-site or out-of-kind mitigation, or contributions to a fee in lieu restoration program when established. When off-site mitigation is proposed, projects included in the Restoration Plan found in SMP Chapter 8: Restoration shall be considered first.
- c. The shoreline vegetation buffer mitigation plan shall identify where plantings should be located to mitigate for the specific impacts of the use or development.

## **5.05 AGRICULTURE**

New agriculture uses are prohibited in shoreline jurisdiction.

## **5.06 AQUACULTURE**

### **5.06.01 GOAL**

Protect and promote the viability of aquaculture in the city as an important economic resource that protects the resources and ecology of the shoreline environment.

### **5.06.02 POLICIES**

- A. Encourage the expansion of existing and new aquaculture practices in a manner that contributes to the city's economy while protecting shoreline ecological functions and values.
- B. Assist in sustaining aquaculture by incorporating provisions with this SMP and other development regulations to protect water quality from degradation by upland development.

- C. Design and locate aquacultural facilities to avoid the potential to spread diseases to native aquatic life, establish new non-native species that cause significant ecological impacts, or significantly affect the aesthetic qualities of the shoreline.
- D. Support preservation of tidelands acquired under the Bush and Callow Act of 1895 for aquacultural activities only.
- E. Encourage the location of commercial geoduck aquaculture in shoreline areas where sediments, topography, land, and water access supports growing and harvesting activities without significant clearing and grading.
- F. Manage the permitting process for new aquaculture activities to minimize redundancies in the application requirements with other state, county and federal provisions.
- G. Aquaculture should not be located in areas where it would result in a net loss of ecological function, adversely affect native eelgrass beds (*Zostera marina*) and macro algae, or significantly conflict with navigation and other water-dependent uses.

### **5.06.03 REGULATIONS**

- A. Aquaculture is a water-dependent activity that when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area.
- B. A shoreline substantial development permit is not required for aquaculture activities that are consistent with this Master Program and do not require development or structures; except as provided in SMP Section 5.06.03(E) – Commercial Geoduck Aquaculture, below. Examples of aquaculture that constitute development include finfish pens, mussel rafts, oyster rafts, and accessory structures such as docks.
- C. Aquaculture mussel rafts, oyster floats, new pens, and similar development may intrude into or over critical saltwater habitats when meeting the following criteria:
  - 1. The public’s need for such an action or structure is clearly demonstrated, and the proposal is consistent with the protection of the public trust.
  - 2. Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or it would result in unreasonable and disproportionate cost to accomplish the same general purpose. A cost analysis may be required to assist with the feasibility determination.
  - 3. The project, along with any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.
  - 4. The project is consistent with the state’s interest in resource protection and species recovery.

- D. The Shoreline Administrator shall issue a letter of exemption for new aquaculture that does not constitute development but requires the review and approval of federal agencies.
- E. Commercial geoduck aquaculture shall meet the following requirements:
1. The planting, growing and harvesting of farm-raised geoduck clams requires a substantial development permit if a specific project or practice causes substantial interference with normal public use of the surface waters.
  2. New commercial geoduck aquaculture shall require a conditional use permit, except where the applicant proposes to convert existing non-geoduck aquaculture to geoduck aquaculture.
  3. No subsequent cycles of planting and harvest shall require a new conditional use permit.
  4. Conditional use permits for geoduck aquaculture acknowledge operators have a right to harvest geoduck once legally planted.
  5. A single conditional use permit may be submitted for multiple sites within an inlet, bay, or other defined feature, provided the sites are all under control of the same applicant and within the same shoreline aquatic environment.
  6. Applications for a conditional use shall contain the following information:
    - a. A narrative description and timeline for all anticipated geoduck planting and harvesting activities if not already contained in the federal or state permit application or comparable information mentioned above.
    - b. A baseline ecological survey of the proposed site to allow consideration of the ecological effects if not already contained in the federal or state permit application; or comparable information mentioned above.
    - c. Measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in SMP Section 4.04.
    - d. Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.
  7. To avoid or minimize impacts from geoduck aquaculture siting and operations, and to achieve no net loss of ecological functions, a conditional use permit may place the following conditions or limitations on a project:

- a. Avoid the practice of placing nursery tanks or holding pools or other impervious materials directly on the intertidal sediments.
  - b. Prevent the use of motorized vehicles, such as trucks, tractors, and forklifts below the OHWM.
  - c. Limit activities to specific periods to protect priority habitats and associated species. The need for such measures should be identified in the baseline ecological survey conducted for the site.
  - d. Minimize alterations to the natural condition of the site, including significant removal of vegetation or rocks and regrading of the natural slope and sediments.
  - e. Install property corner markers that are visible at low tide and during planting and harvesting.
  - f. Require mitigation measures such as buffers, between commercial geoduck aquaculture and other fish and wildlife habitat conservation areas, to ensure no net loss of ecological functions.
  - g. Require removal of predator exclusion devices as soon as they are no longer necessary.
  - h. Use best available methods to minimize turbid runoff from the water jets when harvesting geoducks.
  - i. Limit the number and duration of moored or beached vessels at the site.
  - j. Ensure public rights to navigation over the surface of the water.
  - k. Institute good housekeeping practices at geoduck aquaculture sites, including worker training and regular removal of equipment, tools, extraneous materials and all wastes.
  - l. Consider recommendations from the WDNR or other landowning agencies regarding protection of existing public access to publically owned lands.
- F. New aquatic species not previously cultivated in the county require written approval of the WDFW Director before introduction to the Aquatic shoreline environment designation.
- G. The ongoing maintenance, harvest, replanting, changing culture techniques or species does not require a shoreline permit or exemption, if allowed by an existing shoreline permit, unless the proposal introduces a new species or culture technique into the city that has significant adverse environmental impacts. Aquaculture areas may lie dormant for multiple years due to a variety of reasons. Dormant areas of aquaculture farms are

considered ongoing and not discontinued, and the resumption of active cultivation in such areas shall not be considered an expansion, change, enlargement, or alteration.

1. Dormant areas include property that was acquired under the Bush and Callow Acts of 1895; areas undergoing crop rotation; and areas dormant due to market conditions, seed, or juvenile availability, past and current pest infestations or control issues, water quality issues, and other cultivation factors.

## **5.07 BOATING AND MOORAGE FACILITIES**

This section applies to all in-water and overwater structures and uses that facilitate water access or the launching or mooring of vessels, including all public and private docks, piers, marinas, mooring buoys, launch ramps, and recreational floats.

### **5.07.01 POLICIES**

- A. Recognize that boating and moorage facilities are water-dependent uses and should be given priority for shoreline location to facilitate public access.
- B. Minimize the amount of shoreline modification, in-water structure, and over-water cover for boating and moorage facilities. The length, width, and height of over-water structures should be no greater than that required for safety and practicality for the primary use.
- C. Protect other water-dependent uses, such as fishing, pleasure boating, swimming, beach walking, picnicking and shoreline viewing, navigation, and other recreation opportunities, when locating, designing, and operating boating and moorage facilities.
- D. Minimize impacts to adjacent uses and users by locating, designing, constructing, and maintaining boating and moorage facilities to avoid aesthetic impacts to adjacent land uses, and impacts to public visual access to the shoreline.
- E. Ensure no net loss of ecological functions or other significant adverse impacts when locating and designing boating and moorage facilities, and, where feasible, enhance degraded or scarce shoreline features.
- F. Limit accessory uses at boating facilities to water-oriented uses. Non-water-oriented accessory uses should be located outside of the shoreline vegetation buffer, or outside of shoreline jurisdiction whenever feasible.
- G. Plan and coordinate public boating and moorage facilities regionally. Shorelines particularly suitable for public boat launch facilities are limited and should be identified and reserved on a regional basis.

1. Public launch ramp facilities should be coordinated with park and recreation plans and, where feasible, shared with other compatible water-dependent uses.
  2. Review should be coordinated with recreation providers, the Washington State Parks and Recreation Commission, and WDNR, to provide recreational resources efficiently, avoid unnecessary duplication, and minimize adverse impacts to shoreline ecological functions and processes.
- H. Balance public access and ecological functions for new marinas. New marinas should provide public shoreline access, particularly where water-enjoyment uses are associated with the marina, to the extent compatible with shoreline ecological functions and processes and SMP Section 4.08.
- I. Allow new piers and docks only for public access or water-dependent uses.
- J. Encourage the multiple use and expansion of existing piers, docks, floats, and boat launches over new facilities. Joint use facilities are preferred over new single use piers, docks, floats, and boat launches.
- K. Design piers, docks, floats, and boat launches to minimize interference with navigable waters and the public's use of the shoreline.
- L. Site and design piers, docks, floats, and boat launches to minimize adverse environmental impacts, including water circulation and quality, and fish and wildlife habitat.
- M. Discourage piers, docks, floats, and boat launches where conflicts with recreational boaters and other recreational water activities would be created by pier and dock construction.
- N. Allow recreational floats where they are intended to support public or private recreational uses, or in lieu of fixed piers adjacent to residential land use.
- O. Prohibit new covered moorage.
- P. Limit lighting facilities to the minimum extent necessary to locate the pier or dock at night.

## **5.07.02 REGULATIONS**

### **A. Applicability**

1. This section applies to all in-water and overwater structures and uses that facilitate the launching or mooring of vessels, including all docks, piers, marinas, mooring buoys, launch ramps, and recreational floats.

2. This section does not apply to:
  - a. Long-term commercial boat storage located landward of the OHWM, which is regulated under SMP Section 5.08; or
  - b. Overwater homes and floating homes, which are prohibited.

**B. Location Standards**

1. The following are prohibited:
  - a. Docks and piers on the Pacific Ocean and the Grays Harbor shoreline in the city.
  - b. Floats on the Pacific Ocean.
  - c. Boathouses are prohibited on all shorelines.
2. New boating facilities shall not be permitted in areas where dredging will be required or where impacts to shoreline ecological functions and processes cannot be mitigated.
3. New boating and moorage facilities shall not significantly affect the rights of navigation on waters of the state.
4. Boating and moorage facilities shall not be located where their development would reduce the quantity or quality of critical fish and wildlife habitat areas or where significant ecological impacts would occur.
5. Boating and moorage facilities shall be located and designed with the minimum necessary shoreline stabilization to protect facilities, users, and watercraft from floods or destructive storms.
6. Boating and moorage facilities shall not be located where it would be incompatible with the need to protect the public health, safety, and welfare.
7. Boating and moorage facilities, such as marinas, shall be located only where adequate utility services are available, or where they can be provided concurrent with the development.

**C. Facility Design**

1. All boating and moorage facilities shall be designed to avoid and minimize impacts. All unavoidable impacts must be mitigated consistent with requirements for mitigation sequencing in SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.
2. All boating and moorage facilities shall be the minimum size necessary to accommodate the anticipated demand. Specifically, the amount of overwater cover,

the size, and number of in-water structures, the waterward length of the facility, and the extent of any necessary associated shoreline stabilization or modification shall be minimized.

3. Piers and docks shall meet all applicable Shoreline Modification regulations in SMP Chapter 6: Shoreline Modification Policies & Regulations.

***D. General Regulations for Moorage Structures and Launching Facilities***

1. The city will review all development proposals for moorage structures and launching facilities to determine if:
  - a. The proposal is or is not exempt from the requirement for a substantial development permit;
  - b. The proposal is suitably located and designed, that all potential impacts have been minimized and mitigated such that there is no net loss of shoreline ecological functions; and
  - c. The proposal is consistent with the intent, policies, and regulations of the SMA and SMP.
2. All new moorage structures and launching facilities, including modifications and/or additions, must comply with all applicable regulations contained in this SMP and all other regulations as stipulated by federal, state, and local agencies.
3. Mitigation shall be provided for all reconstructed, repaired, or modified moorage structures and launching facilities to ensure no net loss of ecological function.
4. Only joint-use moorage structures and launching facilities are allowed for new residential development of two or more waterfront dwelling units or subdivisions or other divisions of land occurring after the effective date of this SMP.
5. Moorage structures and launching facilities shall not significantly interfere with use of navigable waters.

***E. Site Design and Operation***

1. Boating and moorage facilities shall be designed so that lawfully existing or planned public shoreline access is not blocked, obstructed, nor made dangerous.
2. Boating and moorage facilities shall provide physical and/or visual public or community access for as many water-oriented recreational uses as feasible, commensurate with the scale of the proposal, including, but not limited to, physical and visual access to waterbodies, public piers or fishing platforms.



3. Upland boat storage may be allowed within shoreline jurisdiction provided impervious surface limitations and other standards are met, mitigation sequencing is followed, and impacts can be mitigated to achieve no net loss.
4. Accessory uses at boating and moorage facilities, such as parking, non-hazardous waste storage and treatment, stormwater management facilities, and utilities where necessary to support the water-oriented use, shall be located outside of shoreline jurisdiction where feasible and shall be limited to water-oriented uses or uses that support physical or visual shoreline access for substantial numbers of the general public.
5. The applicant shall comply with all state agency policies and regulations, including all applicable health, safety, and welfare requirements associated with the primary or accessory use.
6. All boating and moorage facilities that extend onto state-owned aquatic lands must comply with WDNR and WDFW standards and regulations including Hydraulic Code Rules (Chapter 220-660 WAC).
7. The streets serving the proposed facility must handle the traffic generated by such a facility safely and conveniently.
8. The facility must be limited to moorage only. No live-aboards or floating homes are allowed.
9. Covered moorage is prohibited.
10. The perimeter of parking, upland boat storage, and other storage areas shall be landscaped to provide a visual and noise buffer between adjoining dissimilar uses or scenic areas.
11. The facility must have provisions available for cleanup of accidental contaminant spills. 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, are required of new marinas and expansion or reconfiguration of existing marinas
12. The operator must provide and maintain garbage and recycling receptacles at locations convenient to users.
13. Adequate utility services must be provided concurrent with the development or be situated where they are already available. New marinas must provide adequate restroom and sewage disposal facilities, such as pump out, holding, and/or treatment facilities.

14. Marina operators must post all regulations pertaining to handling, disposal, and reporting of waste, sewage, fuel, oil, or toxic materials where all users may easily read them. Rules for spill prevention and response, including reporting requirements, must be posted on site.
15. Safety railings, if proposed, must meet International Building Code requirements and use an open framework that does not unreasonably interfere with shoreline views. Safety railings do not count toward the height limit.
16. Boating and moorage facilities must be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Ensure exterior finish of all structures shall be generally non-reflective to reduce glare.
17. All new overhead wiring or plumbing is prohibited.
18. Lighting associated with over-water structures shall be shielded to avoid causing glare on adjacent properties or waterbodies. Illumination levels shall be the minimum necessary for safety.

**F. Boat Launches**

1. Boat launches shall be sited so that they do not significantly damage fish and wildlife habitats and shall not occur in areas with native emergent vegetation. Native upland vegetation removal shall be minimized to the greatest extent feasible. All facilities shall be sited and designed per required mitigation sequencing.
2. Public boat launches shall be located where water depths are adequate to eliminate or minimize the need for dredging, filling, beach enhancement, or other maintenance activities.
3. The design shall comply with all regulations as stipulated by local, state, and federal agencies.
4. The applicant shall demonstrate that the proposed length of a boat launch is the minimum necessary to launch the intended craft safely. In no case shall the ramp extend beyond the point where the water depth is eight feet below the OHWM, unless the Shoreline Administrator determines that a greater depth is needed for a public boat launch facility.
5. Design Standards.
  - a. Boat launches shall be constructed in compliance with WDFW design standards.

6. Launch ramp designs should incorporate low impact design standards that reduce turbidity, minimize excavation of the lake or bay bed and be built of durable, non-toxic materials.
7. Launching rails may be permitted as a conditional use in any shoreline environment designation, except Natural, in lieu of a residential pier or dock. The applicant shall demonstrate that the proposed length of the rail is the minimum necessary to safely launch the intended craft and comply with all regulations as stipulated by local, state, and federal agencies. In no case shall the rail extend beyond the point where the water depth is eight feet below the OHWM.
8. Launching rails shall be anchored to the ground with the use of tie-type construction.
9. No more than one launching rail per single-family residence or duplex is permitted.

***G. Docks, Piers, and Floats***

1. New docks, piers, and floats shall be allowed only for water-dependent use, which includes a structure associated with a single-family residence that is designed and intended as a facility for access to watercraft and otherwise complies with the regulations contained in this section. Docks, piers, and floats of the minimum size necessary to accommodate the proposed water dependent use may be permitted accessory to a development provided:
  - a. A maximum of one pier or dock for each single-family residence is permitted. The piers, docks, and floats must not exceed eight feet in width.
  - b. Docks, piers, and floats serving four or fewer single family residences are accessory uses that must be associated with residential uses allowed in the underlying shoreline environment designation.
2. Only one dock, pier, or float shall be allowed for any parcel or adjacent parcels of land under single ownership
3. Property corners shall be located, staked, and flagged by a professional land surveyor licensed by the state for all dock, pier, or float applications.
4. A path with a maximum width of four feet leading to a dock, pier, or float may be constructed through the buffer.
5. An agreement for Temporary Use of City Real Property may be required if the development crosses city owned land. Clearing of city property is prohibited, except as authorized by the city.

6. Docks, piers, or floats shall be located at least five feet from adjacent side property lines.
7. Docks, piers, or floats may not extend beyond the existing OHWM by more than 30 feet on lakefront property and ten feet on canals.
8. Docks, piers, and floats shall not obstruct more than 50 percent of the shoreline of the parcel or parcels except for parcels that have a High Intensity or Shoreline Residential shoreline environment designation with an underlying R-5, R-9, or B-1 zoning designation, which may obstruct a maximum of 75 percent of the shoreline of the parcel or parcels.
9. Docks, piers, and floats must be stable when walked upon, and the deck may not be higher than three feet above the OHWM.
10. Docks, piers, and floats shall be consistent with WDFW requirements.
11. Boats may not be used for permanent living quarters.
12. Boathouses are not permitted on fresh waterways.
13. New piers and docks that are not accessory to single-family residences shall be permitted only when they are intended for public use or when the applicant demonstrates that a specific need exists to support the intended water-dependent use.
14. New residential development of more than two dwellings shall provide a joint use moorage structure, rather than individual piers or docks.
15. New covered moorage is prohibited.
16. New boat lifts and boat lift canopies are permitted subject to approval of a conditional use permit on freshwater in the High Intensity, Shoreline Residential, and Urban Conservancy shoreline environment designations. Development must comply with the following requirements:
  - a. Boat lifts shall be placed as far waterward of the OHWM as feasible and safe, within the limits of the dimension standards for piers and docks.
  - b. Bottom of a boat lift canopy shall be elevated above the boat lift to the maximum extent feasible, the lowest edge of the canopy must be at least four feet above the water surface, and the top of the canopy must not extend more than seven feet above an associated pier. If the canopy is not associated with a pier, the top of the canopy must not extend more than seven feet above the water's surface.

- c. A maximum of one boat lift and boat lift canopy, or two jet ski lifts, is allowed per dwelling unit.
  - d. The lift does not require the placement of pilings or permanent structures.
  - e. A maximum of two cubic yards of clean rock fill or pre-cast concrete blocks are permitted to anchor the boat lift. Helix or screw anchoring devices are also permitted.
  - f. No hydraulic fluid other than water shall be used in the boat lift system; backflow protection may be required.
17. A legally existing nonconforming residential pier or dock may be repaired or restored (including replacement) to its original pre-existing size, dimension and location without the need for a shoreline variance in compliance with SMP Section 7.07.
18. Floating docks are required to be designed to not ground during low water conditions.
19. All overwater structures shall be constructed and maintained in a safe condition. Abandoned or unsafe overwater structures shall be removed or repaired promptly by the owner.
20. Wooden components that will be in contact with water or over water shall not be treated or coated with herbicides, fungicides, paint, pentachlorophenol, arsenate, creosote, or similar toxic substances. Structures shall be made out of materials that have been approved by applicable state and federal agencies.
21. Non-water dependent elements and uses, such as decks and gazebos built on piers or docks, are not allowed.

#### ***H. Mooring Piles and Buoys***

- 1. Up to two mooring piles are allowed per dwelling unit, up to a maximum of six mooring piles for joint use docks.
- 2. One buoy is allowed per dwelling unit in lieu of a dock.
- 3. Buoys shall be anchored to the substrate in accordance with all state and federal requirements.

#### ***I. Preference for Joint Use***

For all new residential development of two or more waterfront dwelling units or subdivisions or other divisions of land occurring after the effective date of this SMP, only joint-use docks are allowed.

**J. Existing Uses and Structures - Nonresidential**

1. Replacement
  - a. If the replacement of 50 percent or more of the boating and moorage facility occurs as part of a project, it is considered a new facility and must be designed consistent with any applicable standards for new boating and moorage facilities.
  - b. The Shoreline Administrator may approve an alternative design without a shoreline variance if it meets all of the following criteria:
    - 1) All appropriate state and federal agencies have already approved the proposal;
    - 2) Any adverse ecological impacts are fully mitigated; and
    - 3) The total square footage of the replacement facility is no larger than the existing facility.
2. Modification or Enlargement
  - a. Applicants must demonstrate that there is a need for modification or enlargement due to increased or changed use or demand, safety concerns, or inadequate depth of water.
  - b. Enlarged portions of boating facilities must comply with any applicable design and mitigation standards for new boating facilities.
3. Repair
  - a. Repairs to existing legally established boating facilities that fall below the standards identified in SMP Section 5.07.02(G)(1) are permitted consistent with all other applicable codes and regulations.
  - b. All repairs must utilize any material standards specified for new facilities.

**K. Mitigation**

1. Consistent with the mitigation sequencing steps outlined in SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations, new or expanded boating facilities should be designed to avoid and then minimize impacts, prior to pursuing compensatory mitigation.
2. Compensatory mitigation proposals must provide mitigation at a minimum 1:1 ratio, by area, of new overwater cover to mitigation action using one or more of the potential mitigation measures listed under SMP Section 5.07.02(K)(4). The ratio should be increased if the measure will take more than one year to provide equivalent function or if the measure does not have a high success rate.

3. Applicants should consult with other permit agencies, such as WDFW and/or United States Army Corps of Engineers (USACE), for additional specific mitigation requirements.
4. For new development and expansion of existing structure footprints, appropriate compensatory mitigation may include one or more of the following measures:
  - a. Removal of any additional legal existing overwater or in-water structures that are not the subject of the application or are not otherwise required to be removed.
  - b. Planting of native vegetation along the shoreline immediately landward of the OHWM consisting of a density and composition of trees and shrubs typically found in undisturbed areas adjacent to the subject waterbody.
  - c. Removal or ecological improvement of hardened shoreline, including existing launch ramps or structural shoreline stabilization. Improvements may consist of softening the face and toe of the stabilization with soil, gravel and/or cobbles and incorporating vegetation or large woody debris.
  - d. Removal of man-made debris waterward of the OHWM, such as car bodies, oil drums, concrete or asphalt debris, remnant docks, or other material detrimental to ecological functions and ecosystem-wide processes.
  - e. Placement of large woody debris if consistent with city, state, and federal regulations.
  - f. Participation in an approved mitigation program.
5. In-kind measures are preferred over out-of-kind measures when consistent with the objective of compensating for adverse impacts to ecological function.

#### ***L. Application Requirements***

In addition to the general application requirements:

1. A mitigation plan for unavoidable adverse impacts to ecological functions or processes pursuant to SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations, if applicable.
2. The following studies, as applicable for all new or expanded boating facilities
  - a. Applicants must provide habitat surveys and critical area studies consistent with SMP Section 4.03, SMP Section 4.04, and SMP Appendix 2: Critical Areas Regulations.

- b. Applicants must provide an assessment of potential impacts to existing ecological processes, which may include sediment transport, hydrologic patterns, and vegetation disturbance.
  - c. A slope bathymetry map may be required when deemed beneficial by the Shoreline Administrator for the review of the project proposal.
  - d. An assessment of existing water-dependent uses in the vicinity and documentation of potential impacts to those uses and mitigating measures.
3. For all new or expanded boating facilities, applicants must provide an assessment of need and demand, which may include the following, as applicable:
- a. Existing approved facilities, or pending applications, within the service range of the proposed new facility.
  - b. The expected service population and boat ownership characteristics of the population, if that information supports justification for specific design elements related to facility length or width, or necessary water depth.
  - c. For new or expanded permanent or temporary moorage:
    - 1) The total amount of moorage proposed; and
    - 2) The existing supply of temporary or permanent moorage spaces within the service range of the proposed facility, including vacancies or waiting lists at existing facilities. The service range is a site-specific determination made by the applicant considering the proposed facility location and proximity to other locations within either boating or driving distance.
  - d. For new or expanded public boat launch ramps:
    - 1) Identification of the nearest existing boat launch facility, the expected or current level of use of the new or expanded boat launch ramp, and any other relevant factors related to the need for safe or efficient access to public waters, if that information supports justification for specific design elements.
    - 2) If boat launch facilities are proposed at a new location, documentation demonstrating that expansion of existing launch facilities is not adequate to meet demand.



## **5.08 COMMERCIAL DEVELOPMENT**

This section regulates water-dependent, water-oriented, and non-water-oriented commercial uses.

### **5.08.01 POLICIES**

- A. Give priority to water-oriented commercial developments, which are dependent on a shoreline location or provide an opportunity for substantial numbers of people to enjoy the shoreline. Encourage non-water-oriented commercial development to locate landward or outside of shoreline jurisdiction.
- B. Encourage new commercial development on shorelines to locate in areas where current commercial uses exist, provided these locations are suitable for such use.
- C. Design new commercial development to protect the public's health, safety, and welfare and shoreline ecological functions, and provide public access where feasible.
- D. Multiple use concepts, which include open space recreation, should be encouraged in commercial developments.

### **5.08.02 REGULATIONS**

- A. Water-dependent commercial uses shall be given preference over water-related and water-enjoyment uses. The applicant shall demonstrate that proposed uses meet the definitions of water-dependent, water-related or water-enjoyment.
- B. Non-water-oriented uses may be located with water-oriented commercial uses provided:
  - 1. The mixed-use project includes one or more water-dependent uses;
  - 2. Water-dependent commercial uses as well as other water-oriented commercial uses have preferential locations along the shoreline; and
  - 3. Public access is provided for a significant number of persons in accordance with SMP Section 4.08, or ecological restoration is provided as a public benefit;
- C. Public access and ecological restoration shall be considered as potential mitigation of impacts to shoreline resources and values for all commercial development unless such improvements are demonstrated to be infeasible and affect existing navigation, recreation, and public access.
- D. New non-water-oriented commercial development is prohibited in shoreline jurisdiction unless it meets the following criteria:

1. Commercial use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit such as providing public access or ecological restoration;
  2. Navigability is severely limited on the site and the commercial use provides a significant public benefit such as public access or ecological restoration; or
  3. The site is physically separated from the shoreline by another property or public right of way.
- E. Accessory commercial development that does not require a shoreline location shall be:
1. Located landward of the water-oriented portions of the development and comply with shoreline vegetation buffers.
  2. Allowed in existing structures or where necessary in support of water-oriented uses.
- F. Commercial development shall not result in a net loss of shoreline ecological functions or have significant negative impacts to shoreline uses, resources, and values such as navigation, recreation, and public access.

## **5.09 FOREST PRACTICES**

Forest practices are prohibited in shoreline jurisdiction.

## **5.10 INDUSTRIAL DEVELOPMENT**

This section applies to manufacturing, production, processing, and storage of raw materials and finished products.

### **5.10.01 POLICIES**

- A. Give preference, in order, to water-dependent uses, followed by water-related uses, and non-water-oriented industrial uses.
- B. Encourage new industrial development to locate where environmental cleanup and restoration can be incorporated.
- C. Locate, design, and construct industrial development in a manner that assures no net loss of shoreline ecological functions and does not have significant adverse impacts to other shoreline resources and values.

### **5.10.02 REGULATIONS**

- A. Water-dependent industrial uses shall be given preference over water-related uses. The applicant shall demonstrate to the satisfaction of the city that proposed uses meet the definitions of water-dependent or water-related.
- B. Public access should be incorporated when feasible. Public access should be required for new industrial development on publicly owned land.
- C. Non-water-oriented industrial uses are prohibited in shoreline jurisdiction unless it meets one of the following criteria:
  - 1. It is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit such as providing public access or ecological restoration;
  - 2. Navigability is severely limited on the site and the industrial use provides a significant public benefit of providing public access or ecological restoration; or
  - 3. The site is physically separated from the shoreline by another property or public right of way.
- D. Accessory industrial development that is not water-dependent and does not require a shoreline location shall be located upland of the water-dependent or water-related portions of the development.
- E. Accessory development, which may include parking, warehousing, open-air storage, waste storage and treatment, and transportation corridors.
- F. Industrial development shall not result in a net loss of shoreline ecological functions or have significant negative impacts to shoreline use, resources, and values such as navigation, recreation, and public access.
- G. Industrial development and redevelopment are encouraged to locate where state and federal requirements for environmental cleanup and restoration of the shoreline area can be incorporated.

## **5.11 MINING**

This section applies to the removal of sand, gravel, minerals, and other materials. Mining in the shoreline can alter the natural character, resources, and ecology of shorelines. The description of mining as typically seen throughout the state is not present in the city.

### **5.11.01 POLICIES**

- A. Design and conduct new mining and associated uses to result in no net loss of shoreline ecological functions and processes.
- B. Prefer mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.
- C. Prefer sand mining proposals that maintain public access to the ocean beaches.
- D. Do not locate new mining on shorelines where unavoidable adverse impacts on other users or resources taken together, equal or outweigh the benefits from mining.

### **5.11.02 REGULATIONS**

- A. Any sand removal within the Seashore Conservation Area (SCA) may be subject to Washington State Parks review.
- B. Sand removal necessary to maintain ocean beach approaches is allowed.
- C. The removal and sale of sand to supply the needs of cranberry growers, as provided under RCW 79A.05.630, is allowed provided it does not result in a net loss of shoreline ecological functions.
- D. Ocean beach mineral prospecting conducted under a valid Hydraulic Project Approval (HPA) issued by the WDFW is permitted.

## **5.12 PARKING**

This section applies to parking.

### **5.12.01 POLICIES**

- A. Plan, locate, and design parking facilities where they will have the least impact on fragile shoreline features, will not result in a net loss of shoreline ecological functions, and do not affect existing or planned water-dependent uses.
- B. Locate and design parking facilities in shoreline jurisdiction to minimize adverse impacts including those related to stormwater run-off, water quality, visual qualities, public access, and vegetation and habitat.
- C. Minimize parking in shoreline jurisdiction.

### **5.12.02 REGULATIONS**

- A. Parking facilities are allowed only as accessories to authorized shoreline uses. Parking as a primary use is prohibited.
- B. Parking facilities serving individual buildings in shoreline jurisdiction shall be located upland from the principal structure being served, except in one of the following cases:
  - 1. When parking facilities are within or beneath the structure and adequately screened;
  - 2. In cases when an alternate orientation would have less adverse impact on shoreline jurisdiction; or
  - 3. When parking to address specific Americans with Disabilities Act (ADA) requirements is required.
- C. Exterior parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent and abutting properties in shoreline jurisdiction.
- D. Existing parking areas that are of a non-paved surface, such as gravel, may be paved provided such facilities comply with all applicable water quality, stormwater, landscaping, and other applicable requirements of the SMP. Paved parking areas shall be designed to incorporate low impact development practices, such as permeable surfaces and bioswales, to the extent feasible.

## **5.13 RECREATIONAL DEVELOPMENT**

This section applies to private and public recreational facilities.

### **5.13.01 POLICIES**

- A. Prefer recreational development as a shoreline use to support access to, enjoyment of, and use of the water and shorelines of the state.
- B. Locate, design, and operate recreational development in a manner consistent with the purpose of the shoreline environment designation in which it is located.
- C. Prevent recreational development from resulting in a net loss of shoreline ecological functions.
- D. Encourage the use of publicly owned lands for public access and development of recreational opportunities.

- E. Protect private property rights. Minimize and mitigate negative impacts on adjoining properties.

### **5.13.02 REGULATIONS**

- A. Development of new private and public recreation areas shall protect existing native vegetation in the city's shoreline jurisdiction and restore vegetation impacted by development activities per SMP Section 4.10.
- B. Recreational development shall result in no net loss of ecological functions in shoreline jurisdiction.
- C. Water-dependent or water-related activities such as swimming, boating, and fishing, and water-enjoyment activities that benefit from waterfront scenery such as picnicking, hiking, golfing, and bicycling shall be emphasized in planning public and private recreation sites in the city's shoreline jurisdiction.
- D. The location, design, and operation of recreational development shall be consistent with the purpose of the environmental designation in which they are allowed.
- E. All recreational developments shall make adequate provisions for the following:
  - 1. Public access to the shoreline edge;
  - 2. Non-motorized and pedestrian access;
  - 3. Protection and restoration of environmentally sensitive areas and ecological processes and functions in shoreline jurisdiction;
  - 4. The prevention of trespass onto adjacent properties, by using measures such as landscaping and fencing;
  - 5. Signs indicating the public's right of access in shoreline jurisdiction, installed and maintained in conspicuous locations at the point of access and the entrance; and
  - 6. Buffering such development from adjacent private property or natural areas.
- F. In approving recreational developments in shoreline jurisdiction, the Shoreline Administrator shall ensure that the development will maintain, enhance, or restore desirable ecological features in shoreline jurisdiction.
- G. Fragile and unique areas with valuable ecological functions in shoreline jurisdiction, such as wildlife habitats, shall be used only for non-intensive recreation activities that do not involve the construction of structures.
- H. Swimming areas shall be separated from boat launch areas.

- I. Public boat launching facilities shall be governed by the regulations found in SMP Section 5.07.
- J. The streets serving the proposed facility shall safely handle the traffic generated by recreational activities.

## **5.14 RESIDENTIAL DEVELOPMENT**

This section applies to single-family and multifamily development, the creation of new lots through land division, and appurtenant structures and uses, including garages, sheds, and fences.

### **5.14.01 POLICIES**

- A. Single-family residences are a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.
- B. Set back residential development and accessory structures and uses from steep slopes and shorelines vulnerable to erosion so that structural improvements are not required to protect such structures for the expected life of the structure and considering sea level rise, increased storm intensity, and changes to coastal erosion and sediment supply.
- C. Develop residential uses in a manner that ensures no net loss of shoreline ecological functions and in consideration of shoreline vegetation buffer areas, shoreline armoring, vegetation conservation requirements, on-site sewage system standards, and aesthetic enhancement.
- D. Prohibit new over-water residential development.
- E. Protect in a manner consistent with control of pollution and prevention of damage to the natural environment legally established residential structures and appurtenant structures and uses that are used for a conforming use, but that do not meet the standards of the SMP.
- F. Subdivisions greater than four parcels and multi-residential developments should provide dedicated and improved public access to the shoreline in a manner that is appropriate to the site and the nature of the development.

### **5.14.02 REGULATIONS**

- A. Residential uses shall be allowed in conformance with the development requirements of the city and the provisions of the SMP.
- B. Residential subdivisions shall:

1. Be designed to prevent the need for new hard or soft shoreline stabilization or flood hazard reduction measures per SMP Section 4.06. A note limiting shoreline stabilization shall be placed on the face of the plat at the time of subdivision.
  2. Be designed, configured and developed in a manner that assures that no net loss of ecological functions results from division of land at full build-out of all the lots and throughout all phases of development.
  3. Be required to cluster residential units and structures where necessary and when allowed by the city to avoid critical areas and to preserve natural features and minimize physical impacts.
  4. Configure lots in a way so as not to require a shoreline variance in the future for residential development. Lot configurations shall plan for building sites behind the required shoreline vegetation buffer.
- C. Residential development including appurtenant and accessory structures and uses shall meet the following requirements for environmental protection:
1. Be sufficiently set back from steep slopes and shorelines vulnerable to erosion by establishing critical area and shoreline vegetation buffers so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses.
  2. Be located, designed, and constructed in a manner that assures no net loss of shoreline ecological functions.
  3. Prevent the need for new flood hazard management measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.
- D. The primary use shall be established prior to the appurtenant and accessory uses. Accessory uses and structures not specifically addressed in the SMP shall be subject to the same regulations as the primary residence.
- E. Minimum lot size shall meet the requirements of the Grays Harbor County Public Health and Social Services Department rules and regulations for septic tanks, if applicable.
- F. New over-water and floating residences are prohibited.
- G. An appurtenant structure is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the OHWM and the perimeter of a wetland. Within the city, normal appurtenances include:
1. Accessory structures such as a garden shed or gazebo, limited to a maximum of 200 square feet and 14 feet in height;



2. A ramp, path, or stairs that is located in the Shoreline Residential environment designation adjacent to Grays Harbor and the freshwater lakes and canals and that provides access to the OHWM through the buffer. Such ramp/path/stairs must not exceed four feet in width;
  3. Garage;
  4. Deck;
  5. Driveway;
  6. Utilities;
  7. Fences;
  8. Installation of a septic tank and drainfield; and
  9. Grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the OHWM.
- H. The following appurtenant structures are allowed within the shoreline vegetation buffer subject to review and approval of a buffer mitigation plan in compliance with SMP Section 5.04.02(E): ramps / paths / stairs, utilities, and fences.

## **5.15 TRANSPORTATION FACILITIES**

This section applies to transportation facilities such as roads, highways, bridges, bikeways, and airports.

### **5.15.01 POLICIES**

- A. Plan, locate, and design transportation facilities where routes will have the least adverse effect on shoreline features, will not result in a net loss of shoreline ecological functions, or adversely affect existing or planned water-dependent uses.
- B. Allow road maintenance and reconstruction in accordance with the Best Management Practices adopted by the city and the Washington State Department of Transportation.
- C. Encourage multi-use trails in shoreline jurisdiction consistent with public access policies and regulations in SMP Section 4.08 and recreational development policies and regulations in SMP Section 5.13.

### **5.15.02 REGULATIONS**

- A. Transportation facilities shall only be built or expanded within shoreline jurisdiction when no other option for the location of the facility is feasible and subject to the following:
  - 1. New crossings shall occur as near to perpendicular with the waterbody as feasible, unless an alternate path would minimize disturbance of native vegetation or result in avoidance of critical areas.
  - 2. If no alternative exists to placing a new transportation facility in shoreline jurisdiction, a mitigation plan prepared by a qualified professional must be prepared consistent with the provisions of with SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.
- B. When transportation facilities are unavoidable in shoreline jurisdiction, the proposed facilities shall be located and designed to:
  - 1. Minimize adverse effects on unique or fragile shoreline features;
  - 2. Maintain no net loss of shoreline ecological functions and implement mitigation standards of SMP Section 4.04 and vegetation conservation standards in SMP Section 4.10;
  - 3. Avoid adverse impacts on existing or planned water-dependent uses; and
  - 4. Set back from the OHWM to the maximum extent feasible.
- C. Transportation and primary utility facilities shall be required to make joint use of rights-of-way, and to consolidate crossings of waterbodies to minimize adverse impacts to shoreline jurisdiction, where feasible.
- D. Road designs must provide safe pedestrian and non-motorized vehicular crossings where public access to shorelines is intended.
- E. Streets within shoreline jurisdiction shall be designed to minimize the amount and extent of paving.
- F. Public roads, within shoreline jurisdiction, shall, where feasible, provide and maintain visual access to scenic vistas. Visual access may include turnouts, rest areas, and picnic areas.
- G. Streets that cross waterways shall be designed to minimize impact to aquatic habitat and allow for fish passage.

- H. Shoreline crossings shall be designed, located, and constructed to provide access to more than one lot or parcel of property, where feasible, to minimize the number of crossings.
- I. City, state, and federal agencies may impose seasonal work windows.
- J. Existing roads that are of a non-paved surface, such as gravel, may be paved provided such facilities comply with all applicable water quality, stormwater, landscaping, and other applicable requirements of the SMP and local regulations.
- K. Private driveways or private roads serving more than one home are subject to the standards of this section. A driveway for an individual single-family home is considered part of the primary use and subject to SMP Section 5.14.

## **5.16 UTILITIES**

This section applies to facilities that produce, convey, store, or process power, gas, sewage, communications, oil, or waste. Utilities serving an individual use (or on-site utility features serving a primary use, such as an electrical line or water, sewer or gas lines) are considered accessory utilities and shall be considered under the standards for the primary use of the property.

### **5.16.01 POLICIES**

- A. Locate utilities so as not to obstruct or destroy scenic views, whenever these facilities must be placed in a shoreline area. Whenever feasible, these facilities should be placed underground or designed to minimize damage to the shoreline aesthetic quality.
- B. Locate and design utilities to accommodate future growth and development adequately.
- C. Locate utilities in existing rights of way and corridors whenever feasible.

### **5.16.02 REGULATIONS**

- A. Utilities shall be allowed in shoreline jurisdiction if alternate non-shoreline routes are proven infeasible. If required, a mitigation plan prepared by a qualified professional must be prepared consistent with the provisions of SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.
- B. Existing primary utilities shall not be allowed to justify more intense development where not otherwise allowed by the SMP and the city's Comprehensive Plan.
- C. On-site utility features serving a primary use, such as water, sewer or gas lines to a residence, are accessory utilities and shall be considered a part of the primary use.

Consult standards of the primary use of the property for the standards relevant to the placement of accessory utilities.

- D. Water intake and water or fish conveyances between a waterbody and an aquaculture facility are not considered utilities under this section; consult SMP Section 5.06.
- E. Utilities are permitted provided such systems:
  - 1. Are designed and constructed to meet all adopted engineering standards;
  - 2. Provide for compatible, multiple use sites, and rights of way whenever feasible. Compatible uses include shoreline access points, trail system, and other forms of recreation and transportation, providing these uses do not interfere with utility operation, endanger public health and safety, or cause a significant and disproportionate liability for the owner;
  - 3. Avoid paralleling the shoreline except where located in an existing road or easement footprint; and
  - 4. Do not alter processes affecting the rate of shoreline erosion; the Shoreline Administrator may require a monitoring plan and adaptive management measures prepared by a qualified professional as appropriate.
- F. Preference shall be given to utility systems contained within the footprint of an existing right-of-way or utility easement over new locations for utility systems.
- G. All new permanent utility systems shall be underground except where technical, environmental, or geological conditions makes undergrounding prohibitive.
- H. Where utility systems must be located in shoreline jurisdiction, clearing necessary for installation or maintenance shall be kept to the minimum width necessary to prevent interference by vegetation with proposed transmission facilities. Impacts associated with removal of vegetation or clearing shall be mitigated on the property.
- I. When utility systems must cross shoreline jurisdiction, preference shall be given to perpendicular crossings.
- J. After the installation of a utility system or the completion of a maintenance project, the disturbed area shall be regraded to match the natural terrain and replanted to prevent erosion and provide appropriate vegetative cover, including meeting the vegetation conservation standards of SMP Section 4.10.
- K. If an underwater location is necessary, the following performance standards apply:
  - 1. The design, installation, and operation shall minimize impacts to the waterway or the resident aquatic ecosystems;

2. Seasonal work windows may be made a condition of approval;
  3. All state and federal permits must be obtained; and
  4. A maintenance schedule and emergency repair protocol shall be prepared and recorded.
- L. Non-water-oriented utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are non-water-oriented, shall not be allowed in shoreline jurisdiction unless it can be demonstrated that no other feasible option is available.
- M. Where no other feasible alternative exists to the excavation for and placement of utilities in a shoreline vegetation buffer, a mitigation plan must be prepared by a qualified professional consistent with the provisions of SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.
- N. All utility system projects and maintenance shall be designed, located, and installed in a manner that results in no net loss of ecological function.

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# 6 SHORELINE MODIFICATION POLICIES & REGULATIONS

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## 6.01 INTRODUCTION

This Chapter applies to those activities that modify the physical form of the shoreline in any shoreline environment designation.

Shoreline modification activities include the construction of breakwaters, jetties, groins, and weirs; in-water structures, overwater structures; and shoreline stabilization measures, as well as actions such as dredging and dredge material disposal; and clearing, grading, and fill.

At a minimum, shoreline modification policies and regulations are intended to assure no net loss of the ecological functions necessary to sustain shoreline natural resources. They are also intended to prevent, reduce, and mitigate the negative environmental impacts of proposed shoreline modification activities consistent with the goals of the SMA.

### **6.01.01 SHORELINE MODIFICATION TABLE**

SMP Table 6-1: Shoreline Modifications establishes which specific shoreline modification activities are allowed within each of the shoreline environment designations. In the event of a conflict between the table and the text, the text holds.

**Table 6-1: Shoreline Modifications**

Shoreline Modifications	High Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
<i>Key: P = Permitted Use, C = Conditional Use, X = Prohibited</i>					
<b>Shoreline Stabilization</b>					See adjacent upland shoreline environment designation
Beach Restoration and Enhancement	P	P	C	C	
Soil Bio-engineering	P	P	C	C	
Structural Stabilization	P	P	C	X	
Groins	C	C	C	C	
<b>Clearing and Grading</b>					
Clearing and Grading	P	P	P	C	
<b>Dredging and Disposal</b>					
Dredging and Disposal	C	C	C	C	
<b>Fill</b>					
Fill Landward of OHWM	P	P	C	X	
Fill Waterward of OHWM	C	C	X	X	
<b>In-Water Structures</b>					
Breakwaters, Dams, Jetties, and Weirs	C	C	C	C	

## 6.02 GENERAL SHORELINE MODIFICATION PROVISIONS

The following provisions apply to all shoreline modification activities, whether shoreline modifications address a single or multiple properties. Where other requirements may conflict with the provisions contained in this chapter, the more restrictive standard shall apply.

### 6.02.01 POLICIES

- A. Ensure shoreline modifications individually and cumulatively do not result in a net loss of ecological functions.
- B. Limit the number and extent of shoreline modification activities to reduce the negative effects of shoreline modifications to the greatest extent feasible.
- C. Plan for enhancement of impaired ecological functions where it is feasible, appropriate, and accommodates permitted uses.
- D. Allow only shoreline modifications that are appropriate to the specific environmental designation in which they are located.



- E. Prefer those types of shoreline modifications that have a lesser impact on ecological functions. Promote soft over hard shoreline modification measures.

#### **6.02.02 REGULATIONS**

- A. Structural shoreline modifications shall be allowed if they are necessary to support or protect a legally permitted shoreline structure or use that is in danger of loss or substantial damage or are necessary for mitigation or enhancement.
- B. The Shoreline Administrator shall base all decisions regarding shoreline modification on available scientific and technical information and a comprehensive analysis of site-specific conditions provided by the applicant.
- C. Shoreline modifications must be designed and located to ensure that they will not result in a net loss of shoreline ecological functions or that they will not have significant adverse impacts to shoreline uses, resources, and values provided for in RCW 90.58.020.
- D. Shoreline modifications and uses shall be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
- E. Shoreline modifications standards shall not apply retroactively to existing, legally established shoreline modifications. Existing structures may be maintained, repaired, and operated. Repair and replacement provisions in later sections of this chapter may apply to specific modifications.
- F. All disturbed areas shall be restored and protected from erosion. Native vegetation planting is the preferred stabilization technique.
- G. All shoreline modifications are subject to the mitigation sequencing requirements in SMP Section 4.04, with appropriate mitigation required for unavoidable impacts to ecological functions. If critical areas in shoreline jurisdiction are impacted, the project is also subject to relevant requirements of SMP Appendix 2: Critical Areas Regulations.

### **6.03 BREAKWATERS, GROINS, JETTIES, AND WEIRS**

Breakwaters, jetties, groins, and weirs and similar structures are intended to protect moorages, navigation activity, or banks from wave and wind action by creating slow- or still-water areas along shore. A secondary purpose of breakwaters, groins, jetties, and weirs is to protect shorelines from wave- or flow-caused erosion.

Breakwaters are protective structures usually built offshore to protect navigation, beaches, and bluffs from wave action. Groins are wall-like structures built seaward perpendicular to the shore for the purpose of building or preserving an accretion beach by trapping littoral sand drift

on the updrift side. Jetties are structures generally built singly or in pairs perpendicular to the shore at harbor mouths to prevent the shoaling or accretion of littoral sand drift. Weirs are low dams built across a water body to raise its level, divert its flow, or measure its flow.

In addition to this section, development of breakwaters, jetties, groins, and weirs is also subject to provisions in SMP Section 6.06 and SMP Section 6.07.

#### **6.03.01 POLICIES**

- A. Allow breakwaters, jetties, groins, and weirs to be located waterward of the OHWM only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
- B. Permit breakwaters, jetties, groins, and weirs only for water-dependent uses when the benefits to the region outweigh short-term resource losses from such works, and only where mitigation provides no net loss of shoreline ecological functions and processes.
- C. Consider alternative structures, including floating, portable, or submerged breakwater structures, or several smaller discontinuous structures, where physical conditions make such alternatives with less impact feasible.
- D. Require a shoreline conditional use permit for breakwaters, jetties, weirs, and similar structures, except for those structures installed to protect or restore ecological functions, such as woody debris, engineered logjams, or habitat-forming rock weirs.

#### **6.03.02 REGULATIONS**

- A. New, expanded or replacement structures shall only be permitted if it can be demonstrated that the proposed development will not result in a net loss of shoreline ecological functions and that it supports water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
- B. Breakwaters, jetties, weirs, and similar structures shall require a shoreline conditional use permit, except for those structures installed to protect or restore ecological functions.
- C. Structures shall be designed to protect critical areas and shall provide for mitigation consistent with the provisions of with SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.
- D. The size of breakwaters, jetties, groins, and weirs shall be limited to the minimum necessary as determined by a qualified professional to provide protection for the structure or use it is intended to protect.

- E. A qualified professional, including an engineer, hydrologist, or geomorphologist shall design and certify proposed designs for new or expanded structures.
- F. Proposals for breakwaters shall be consistent with the WDNR Aquatic Land Management standards

## **6.04 CLEARING, GRADING, AND FILL**

Clearing, grading, and fill are the activities associated with preparing a site for development, as well as physically altering topography. The clearing, grading and fill regulations in this section apply to clearing, grading and fill activity in shoreline jurisdiction in the upland environments and the fill regulations also apply to fill activity in the aquatic environment.

Clearing is the removal of vegetative ground cover or trees including root material removal or topsoil removal. Grading is the movement or redistribution of soil, sand, gravel, soil, rock, sediment, or other material on a site in a manner that alters the natural contour of the land. Fill is the addition of soil, sand, rock, gravel, sediment, earth-retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

In addition to upland clearing, grading, and fill, this section is intended to cover fill waterward of the OHWM that is incidental to construction of an otherwise authorized use or modification, such as bulkhead replacements, large woody debris installations, boat launch ramp installation, and pile placement.

See SMP Section 6.05 for dredging for purposes of flood control, navigation, primary utility installation, the construction of water-dependent portions of essential public facilities, or restoration.

### **6.04.01 POLICIES**

- A. Protect shoreline ecological functions by regulating location, design, and construction of all fill.
- B. Prohibit speculative clearing, grading, and fill within shoreline jurisdiction.
- C. Allow clearing, grading, and fill only in concert with permitted development in shoreline jurisdiction.
- D. Permit clearing, grading, and fill only 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.

- E. Require that best management practices be utilized during clearing, grading, and fill activity consistent with the city's stormwater management program and the provisions of the SMP.
- F. Permit clearing, grading, and fill associated with dike or levee maintenance as necessary to provide protection from flood hazards when consistent with the flood hazard management provisions in SMP Section 4.06.
- G. Ensure that the placement of fill does not result in a loss of flood storage.

#### **6.04.02 REGULATIONS**

- A. Speculative clearing, grading, and fill are prohibited.
- B. All clearing, grading, and fill shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes. Clearing, grading, and fill shall be minimized to that necessary to accommodate approved shoreline uses and developments that are consistent with the SMP.
- C. When clearing, grading, and fill will cause adverse impacts to ecological functions, a mitigation plan must be prepared by a qualified professional consistent with the provisions of SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.
- D. Clearing, grading, and fill within wetlands or floodways, or fill waterward of the OHWM shall only be permitted in limited instances. In these cases, clearing, grading, and fill are only allowed when other required state or federal permits have been obtained, with due consideration given to specific site conditions, when all impacts have been mitigated, and only along with approved shoreline use and developments that are consistent with the SMP. Fill waterward of the OHWM shall be allowed only when necessary to support:
  - 1. Water-dependent uses and water-oriented uses, public access, and cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
  - 2. Disposal of dredged material considered suitable under, and conducted in accordance with, the WDNR's Dredged Material Management Program and USACE's Dredged Material Management Office. See also SMP Section 6.05;
  - 3. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible;
  - 4. Mitigation action;
  - 5. Beach nourishment or enhancement project;

6. Ecological restoration or enhancement when consistent with an approved restoration plan; or
  7. Protection of historic or cultural resources when fill is the most feasible method to avoid continued degradation, disturbance, or erosion of a site. Such fill must be coordinated with affected Native American Indian tribes and comply with applicable provisions of SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.
- E. All fill waterward of the OHWM that is not associated with ecological restoration shall require a shoreline conditional use permit.
- F. Upland fill outside of wetlands or floodways is permitted provided it:
1. Is conducted outside required shoreline buffers and as part of an approved shoreline use or modification or are necessary to provide protection to historic or cultural resources;
  2. Is the minimum necessary to implement the approved use or modification; and
  3. Does not significantly change the topography of the landscape in a manner that affects the hydrology or increases the risk of slope failure and are consistent with applicable provisions of SMP Section 4.04, SMP Section 4.06, and SMP Appendix 2: Critical Areas Regulations.
- G. Clearing, grading, and fill shall not be located where shoreline stabilization will be necessary to protect materials placed or removed, except when part of an approved plan for protection of historic or cultural resources.
- H. Fill, beach nourishment, and grading shall be designed to blend physically and visually with existing topography whenever feasible, so as not to interfere with long-term appropriate use including lawful access and enjoyment of scenery.
- I. Cut and fill slopes shall generally be sloped no steeper than one foot vertical for every two feet horizontal (1:2) unless a specific engineering analysis has been provided.
- J. A temporary erosion and sediment control plan, including best management practices, consistent with the most recent Ecology revised stormwater manual, shall be provided for all proposed clearing, grading, and fill activities, and approved by the Shoreline Administrator prior to commencement of such work.
- K. All fill on state-owned aquatic lands must comply with WDNR standards and regulations.

## **6.05 DREDGING AND DREDGE MATERIAL DISPOSAL**

Dredging is the excavation or displacement of the bottom or shoreline of a waterbody waterward of the OHWM for purposes of flood control, navigation, utility installation, construction or modification of essential public facilities, or restoration by means of sediment or soil removal.

This section is not intended to cover other excavations waterward of the OHWM that are incidental to construction of an authorized use or modification such as bulkhead replacements, large woody debris installations, boat launch ramp installation, or pile placement. These in-water substrate modifications should be conducted in accordance with all applicable regulations found in the SMP.

### **6.05.01 POLICIES**

- A. Conduct dredging in a manner that minimizes significant ecological impacts. Impacts that cannot be avoided should be mitigated to ensure no net loss of ecological function.
- B. Permit dredging as part of restoration or enhancement, public access if deemed consistent with the SMP.
- C. Prohibit dredging waterward of the OHWM to obtain fill material except when dredge material is necessary for restoration of shoreline ecological functions.
- D. Site and design new development to avoid or minimize the need for new and maintenance dredging, where avoidance is not feasible.
- E. Prefer the disposal of dredged material on land outside of shoreline jurisdiction to open water disposal.
- F. Allow dredging for navigation channels where necessary to assure safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and mitigation is provided. Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged or existing authorized locations, depths, and widths.

### **6.05.02 REGULATIONS**

#### **A. Dredging**

- 1. New development shall be sited and designed to avoid or to minimize the need for new dredging and maintenance dredging.

2. If applicable, the use of dredge material to benefit shoreline resources shall be addressed through implementation of a regional interagency dredge material management plan or watershed plan.
3. Dredging shall only be permitted for the following activities:
  - a. Development of new or expanded moorages or water-dependent industrial uses when there are no feasible alternatives, significant ecological impacts are minimized, and mitigation is provided.
  - b. Development of essential public facilities when there are no feasible alternatives.
  - c. Restoration or enhancement of shoreline ecological functions and processes benefiting water quality or fish and wildlife habitat.
  - d. Trenching to allow the installation of underground utilities, if no feasible alternative exists, and:
    - (1) Impacts to fish and wildlife habitat are minimized to the maximum extent feasible, which may require mitigation sequencing and implementation of a mitigation management plan;
    - (2) The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration; and
    - (3) Appropriate best management practices are employed to prevent water quality impacts or other environmental degradation.
  - e. Establishing, expanding, relocating, or reconfiguring navigation channels where necessary to assure safe and efficient accommodation of existing navigational uses.
  - f. Maintenance dredging of established navigation channels and basins, which shall be restricted to maintaining previously dredged or existing authorized location, depth, and width.
4. All dredging on state-owned aquatic lands must comply with WDNR and WDFW standards and regulations. Dredging that affects fish life on either public or private lands requires WDFW Hydraulic Project Approval (HPA).
5. Dredging shall be prohibited for the primary purpose of obtaining fill material, except when necessary for restoration of ecological functions. In the latter case, the dredge material must be placed waterward of the OHWM. The project must be either associated with a Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act habitat restoration project or, if approved

through a shoreline conditional use permit, other significant habitat enhancement project.

6. Consistent with the mitigation sequencing steps defined in SMP Section 4.04, dredging and dredge disposal proposals should be first designed to avoid and then minimize potential adverse impacts. Where adverse impacts are unavoidable, a mitigation plan shall be prepared by a qualified professional consistent with the provisions of SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.

### ***B. Dredge Material Disposal***

1. Dredge material disposal within shoreline jurisdiction is permitted under the following conditions:
  - a. Shoreline ecological functions and processes will be preserved, restored or enhanced, including protection of surface and groundwater; and
  - b. Erosion, sedimentation, floodwaters, or runoff will not increase adverse impacts to shoreline ecological functions and processes or property.
2. Dredge material disposal in open waters may be approved only when authorized by applicable agencies, which may include the USACE in accordance with Section 10 (Rivers and Harbors Act) and Section 404 (Clean Water Act) permits, and WDFW Hydraulic Project Approval (HPA); and when one of the following conditions apply:
  - a. Land disposal is infeasible, inconsistent with the SMP, or prohibited by law; or
  - b. Nearshore disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible.
3. If applicable, the use of dredge material to benefit shoreline resources shall be addressed through implementation of a regional interagency dredge material management plan or watershed plan.
4. All dredge material disposal on state-owned aquatic lands must comply with WDNR and WDFW standards and regulations.

### ***C. Submittal Requirements***

A detailed description of the purpose of the proposed dredging and an analysis of compliance with the policies and regulations of the SMP shall be required for all dredging applications. Materials prepared for state or federal permits such as an HPA may be used to support the analysis.



## **6.06 IN-WATER STRUCTURES**

In-water structures are built by humans and located waterward of the OHWM. They may cause water impoundment or the diversion, obstruction, or modification of water flow. In-water structures may include those for hydroelectric generation, irrigation, flood control, water supply, transportation, utility service transmission, fish habitat enhancement, or other purposes.

### **6.06.01 POLICIES**

- A. Design in-water structures to be compatible with the long-term use of resources, such as public access, recreation, and fish migration.
- B. Locate, design, construct, and maintain in-water structures to give due consideration to:
  - 1. The full range of public interests;
  - 2. Watershed processes, including prevention of damage to other properties and other shoreline resources from alterations to geologic and hydrologic processes;
  - 3. Scenic vistas;
  - 4. Historic and cultural resources; and
  - 5. Ecological functions, with special emphasis on protecting and restoring priority habitats and species.
- C. Site and design in-water structures to be consistent with appropriate engineering principles, including guidelines of the WDFW, Natural Resources Conservation Service, and the USACE. Planning and design of in-water structures should be consistent with and incorporate elements from applicable watershed management and restoration plans or surface water management plans.
- D. Encourage non-structural and non-regulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources as an alternative to in-water structures.
- E. Incorporate native vegetation as part of in-water structure proposals to enhance ecological functions, create a more natural appearance, improve ecological processes, and provide more flexibility for long-term shoreline management.

### **6.06.02 REGULATIONS**

- A. In-water structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters.

- B. Projects involving in-water work may not commence without having obtained all applicable municipal, state, and federal permits and approvals, including an HPA from WDFW.
- C. In-water structures and uses shall be sited and designed to avoid the need for future shoreline stabilization and dredging.
- D. Waste material resulting from in-water structure installation and removal shall be deposited outside of shoreline jurisdiction in an approved upland disposal site.
- E. Alteration or disturbance of the bank and bank vegetation shall be limited to that necessary to perform in-water work. All disturbed areas shall be restored and protected from erosion using vegetation or other means.
- F. If at any time, because of in-water work, fish are observed to be in distress or water quality problems develop, immediate notification shall be made to the appropriate state or federal agencies, including Ecology, WDFW, National Marine Fisheries Service (NMFS), or USFWS.
- G. Natural in-water features such as snags, uprooted trees, or stumps should be left in place unless removal is approved by WDFW.
- H. Use of tires for floatation or fenders or as part of above- or below-water structures is prohibited. Existing tires used for floatation shall be replaced with inert or encapsulated materials during maintenance or repair of the structure.
- I. All aquatic shoreline uses are subject to the mitigation sequencing requirements in SMP Section 4.04, with appropriate mitigation required for unavoidable impacts to ecological functions. If critical areas in shoreline jurisdiction are impacted, the project is also subject to SMP Appendix 2: Critical Areas Regulations.
- J. The use of motor vehicles, appliances, other similar items or parts thereof, and demolition debris is prohibited for use as in-water structures.
- K. The design of all in-water structures shall be certified by a professional engineer licensed in the state. The professional design shall include a maintenance schedule.
- L. Design of in-water structures by public entities shall include access to public shorelines whenever feasible, unless it is demonstrated that it is infeasible under SMP Section 4.08. At a minimum, in-water structures should not decrease public access or use potential of shorelines.

## **6.07 SHORELINE STABILIZATION**

Shoreline stabilization includes actions taken to address erosion impacts to property and structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods. This section applies to both kinds of methods.

Hard structural stabilization measures refer to those with solid surfaces, such as groins, retaining walls, and bulkheads, while soft structural stabilization measures rely on less rigid materials, such as vegetation design or beach enhancement. Nonstructural methods include shoreline buffers, relocation of structures, upland drainage control, and planning and regulatory measures to avoid the need for structural stabilization.

Generally, the harder the stabilization measure, the greater the impact on shoreline processes. In order to implement RCW 90.58.100(6) and meet no net loss requirements, the SMP includes standards under which alteration of the shoreline is permitted and for the design and type of protective measures and devices.

### **6.07.01 POLICIES**

- A. Locate, design, and maintain shoreline stabilization measures to protect shoreline ecological functions, ongoing shoreline processes, and the integrity of shoreline features, and assure no net loss of ecological functions. Consider the probable effects of proposed shoreline stabilization measures on other properties.
- B. Coordinate the development of shoreline stabilization among affected property owners and public agencies, particularly those that cross boundaries between jurisdictions.
- C. Shoreline stabilization measures should not be installed to create additional property.
- D. New development that requires shoreline stabilization that causes adverse impacts to adjacent or down-current properties and shoreline areas is prohibited.
- E. Locate and design structures to avoid the need for future shoreline stabilization where feasible. Land subdivisions should be designed to assure that future development of the created lots does not require shoreline stabilization for reasonable development to occur.
- F. A geotechnical analysis is required to demonstrate that new development on steep slopes or bluffs or unstable ocean beaches is set back so that shoreline stabilization is unlikely during the life of the structure.
- G. Locate and design shoreline stabilization to fit the physical character of a specific shoreline reach, which may differ substantially from adjacent reaches.

- H. Incorporate multiple use, restoration, and public shoreline access provisions into the location, design, and maintenance of shoreline stabilization for public or quasi-public developments whenever compatible with the primary purpose.
- I. Use structural shoreline stabilization measures only when non-structural methods have been determined infeasible. Alternatives for shoreline stabilization should be based on the following hierarchy of preference:
  - 1. Take no action. Allow the shoreline to retreat naturally, increase shoreline buffers, and relocate structures.
  - 2. Use flexible, bioengineered works constructed of natural materials such as protective berms, large woody debris, or vegetative stabilization.
  - 3. Employ rigid works constructed of artificial materials such as riprap or concrete.
- J. Restrict the size of new shoreline stabilization measures to the minimum size necessary.
- K. Permit new or expanded structural shoreline stabilization only where demonstrated to be necessary to protect an existing primary structure, including residences, that is in danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.
- L. Allow new or expanded structural shoreline stabilization for enhancement, restoration, or hazardous substance remediation projects only when non-structural measures would be insufficient to achieve enhancement, restoration, or remediation objectives.

## **6.07.02 REGULATIONS**

### **A. Design and Location of New Development**

- 1. New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible.
- 2. Land subdivisions shall be designed to assure that future development of the created lots will not require shoreline stabilization for reasonable development to occur, using a geotechnical analysis of the site and shoreline conditions.
- 3. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.
- 4. New development that requires shoreline stabilization that causes significant impacts to adjacent or down-current properties and shorelines shall not be allowed.

5. In all cases, the feasibility of soft structural shoreline stabilization shall be evaluated prior to hard structural stabilization.
6. Shoreline stabilization shall be designed to prevent the net loss of ecological functions.

**B. *Enlargement of Existing Structural Stabilization Measures***

1. Enlargement of an existing structural shoreline stabilization measure shall be considered a new structural stabilization measure.

**C. *New Structural Stabilization Measures***

New or enlarged structural stabilization measures shall not be allowed, except as follows:

1. To protect an existing primary structure, including residences, if there is conclusive evidence that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a geotechnical analysis, is not demonstration of need.
  - a. The geotechnical analysis should evaluate on-site drainage issues and address such problems away from the shoreline edge before considering hard or soft structural shoreline stabilization.
2. In support of new non-water-dependent development, including residences, when all of the conditions below apply:
  - a. The erosion is not being caused by upland conditions, such as drainage and the loss of vegetation;
  - b. Nonstructural measures, such as placing the proposed development farther from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient to address erosion impacts adequately; and
  - c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical analysis. Natural processes, such as currents or waves, must cause the damage.
3. In support of water-dependent development when all of the conditions below apply:
  - a. The erosion is not being caused by upland conditions, such as drainage and the loss of vegetation;

- b. Nonstructural measures, such as planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient to address erosion causes or impacts adequately; and
  - c. The need to protect primary structures or uses from damage due to erosion is demonstrated through a geotechnical analysis.
4. To protect restoration or hazardous substance remediation projects in accordance with Chapter 70.105D RCW when nonstructural measures, such as planting vegetation or installing on-site drainage improvements, are not feasible or not sufficient to adequately address erosion causes or impacts.
  5. To protect historic or cultural resources when nonstructural measures, such as planting vegetation or installing on-site drainage improvements are not feasible or not sufficient to avoid continued degradation, disturbance or erosion of a site.

***D. Repair and Maintenance of Existing Shoreline Stabilization Measures***

The repair and maintenance of existing legally established shoreline stabilization measures are subject to all the following standards. The repair of shoreline stabilization structures meeting the criteria for exemption from a shoreline substantial development permit are not exempt from this section or the SMP.

1. Maintenance and repair shall include modifications to an existing shoreline stabilization measure that are designed to ensure the continued function of the stabilization measure by preventing failure of part of the stabilization measure.
2. Modifications that increase the size of existing shoreline stabilization measures shall be considered new structures, not maintenance or repair.
3. Replacement of greater than 50 percent or 35 feet, whichever is smaller as measured on a cumulative basis, of linear length of existing shoreline stabilization is not considered a repair or maintenance for purposes of these regulations, and must be designed and reviewed as a replacement subject to the provisions contained in SMP Section 6.07.02(E).
4. For shoreline stabilization projects, replacement occurs when the existing structure, including its footing or bottom course of rock, is removed prior to placement of new shoreline stabilization materials. Removal of material above the footing or bottom course of rock is repair and replacement.
5. The placement of a new shoreline stabilization structure landward of a failing shoreline stabilization structure shall be considered a new structure, not maintenance or repair.

6. Areas of temporary disturbance within the shoreline buffer must be re-vegetated with native plants during the next planting season.

***E. Replacement of Existing Structural Stabilization Measures.***

The following standards apply to replacement of existing hard and soft shoreline structural stabilization measures.

1. For purposes of this section, replacement means the construction of a new structure to perform a shoreline stabilization function of an existing structure that can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall also be considered new structures.
2. Replacement shall be treated as a new shoreline stabilization measure subject to the restrictions of SMP Section 6.07.02(C), as well as the submittal requirements of SMP Section 6.07.02(I), except for the requirement to prepare a geotechnical analysis.
3. A geotechnical analysis is required for replacements of existing hard or soft structural shoreline stabilization measures.
4. Replacement of hard structural shoreline stabilization measures shall not encroach waterward of the OHWM or waterward of the existing shoreline stabilization measure unless the primary residence was constructed prior to January 1, 1992, and there is overriding safety or environmental concerns.
  - a. In such cases, the replacement structure shall be attached to and waterward of the existing shoreline stabilization structure. All other replacement hard structural shoreline stabilization measures shall be located at or landward of the existing shoreline stabilization structure.

***F. General Design Standards***

When a hard or soft structural shoreline stabilization measure is demonstrated to be necessary, the following design standards shall be part of the stabilization design:

1. Impacts to sediment transport shall be avoided or minimized.
2. Soft structural shoreline stabilization measures shall be used to the maximum extent feasible for new, enlarged, or replacement shoreline stabilization measures. Soft structural shoreline stabilization shall be used unless demonstrated in a geotechnical analysis not to be sufficient to protect primary structures.
3. Hard structural shoreline stabilization shall be limited to measures to protect the portion or portions of the site where demonstrated necessary to protect primary

structures or necessary to connect to existing shoreline stabilization measures on adjacent properties.

4. If necessary to transition between an applicant's soft shoreline measure and adjacent hardened shoreline, hard structural shoreline stabilization shall be minimized.
5. For enlarged or replacement soft and hard structural shoreline stabilization measures, the following location and design standards are preferred in descending order:
  - a. Conduct clearing, grading, and fill activities associated with the soft or hard structural shoreline stabilization landward of the existing OHWM to the maximum extent feasible.
  - b. Where SMP Section 6.07.02(F)(5)(a) is not feasible because of overriding safety or environmental concerns, conduct necessary clearing, grading, and fill activities waterward of the existing OHWM consistent with a geotechnical report to implement a soft structural shoreline stabilization technique such as beach nourishment or to mitigate the impacts of hard structural shoreline stabilization.
6. Fill associated with soft or hard structural shoreline stabilization measures shall be placed landward of the OHWM to the maximum extent feasible unless it is infeasible due to safety or environmental concerns.
7. All approved new, enlarged, repaired, or replacement shoreline stabilization measures must minimize and mitigate adverse impacts to ecological functions resulting from short-term construction, consistent with SMP Section 4.04 and SMP Appendix 2: Critical Areas Regulations.
8. Approved new, enlarged, repaired, and replacement shoreline stabilization measures shall mitigate adverse impacts to ecological functions by incorporating the following measures at a minimum into the design if appropriate for local conditions:
  - a. Restoration of appropriate substrate conditions waterward of the OHWM, to include substrate composition and gradient as determined by scientific study.
  - b. Plant native vegetation, as necessary, along at least 75 percent of the shoreline linear frontage affected by the new or enlarged stabilization, located along the OHWM.
    - 1) The vegetated portion of the shoreline buffer shall average ten feet in width from the OHWM, but may be a minimum of five feet wide to allow for variation in landscape area shape and plant placement.



- 2) Restoration of native vegetation shall consist of a mixture of trees, shrubs, and groundcover and be designed to improve habitat functions.
  - 3) At least three trees per 100 linear feet of shoreline must be included in the plan.
  - 4) Plant materials must be native to the ecosystem of the project area.
  - 5) An alternative planting plan or mitigation measure in lieu of meeting these requirements may be allowed if approved by other state and federal agencies.
- c. Additional mitigation measures may be required by the city, or state or federal agencies, depending on the level of impact.
9. The shoreline stabilization measure shall be designed not to interfere significantly with normal surface or subsurface drainage into the adjacent waterbody.
  10. The shoreline stabilization measure shall be designed so as not to constitute a hazard to navigation.
  11. Stairs or other water access measures may be incorporated into the shoreline stabilization, but they shall not extend waterward of the shoreline stabilization measure or the OHWM.
  12. The shoreline stabilization measure shall be designed to ensure that it does not restrict appropriate public access to the shoreline. When a structural shoreline stabilization measure is required at a public access site, provisions for safe access to the water shall be incorporated into the shoreline stabilization structure design.
  13. Shoreline stabilization measures shall not extend waterward more than the minimum amount necessary to achieve effective stabilization, except for those elements that enhance shoreline ecological functions and minimize impacts.

#### ***G. Specific Hard Structural Stabilization Design Standards***

In those limited instances when hard structural shoreline stabilization measures are demonstrated to be necessary, the following standards shall be incorporated into the design:

1. All new, enlarged, or replacement hard structural shoreline stabilization measures shall minimize long-term adverse impacts to ecological functions by incorporating the following measures into the design:
  - a. Limiting the size of hard structural shoreline stabilization measures to the minimum necessary, including height, depth, and mass.

- b. Shifting the hard structural shoreline stabilization landward or sloping the hard structural shoreline stabilization landward to provide some dissipation of wave energy and increase the quality or quantity of water habitat.
2. In cases when hard structural shoreline stabilization is proposed on a site where hard structural shoreline stabilization is not located on adjacent properties, the construction of hard structural shoreline stabilization shall tie in with the existing contours of the adjoining properties, as feasible, such that the proposed stabilization would not cause erosion of the adjoining properties.
3. When hard structural shoreline stabilization is proposed on a site where hard structural shoreline stabilization is located on adjacent properties, the proposed stabilization may tie in flush with existing stabilization measures on adjoining properties, provided that the new stabilization does not extend waterward of the OHWM, except as necessary to make the connection to the adjoining stabilization.
  - a. In such circumstances, the remaining portion of the stabilization shall be placed landward of the existing OHWM such that no net intrusion into the waterbody occurs nor does net creation of uplands occur. The length of hard structural shoreline stabilization transition area to adjacent properties should be minimized to the maximum extent feasible.
4. Fill behind hard structural shoreline stabilization shall be limited to one cubic yard per running foot of stabilization. Fill in excess of this amount is a regulated shoreline activity.

#### ***H. Specific Soft Structural Stabilization Design Standards***

In addition to the applicable general design standards and hard structural shoreline stabilization standards above, the following standards shall be incorporated into the design:

1. The soft shoreline stabilization design shall provide sufficient protection of adjacent properties by tying in with the existing contours of the adjoining properties to prevent erosion at the property line.
2. The soft shoreline stabilization measure shall be designed so that the project remains stable under wave conditions, including storm events.

#### ***I. Submittal Requirements***

In addition to submitting an application for the appropriate shoreline permit, the applicant shall submit the following as part of a request to construct a new, enlarged, or replacement shoreline stabilization measure:

1. For a new or enlarged hard or soft structural shoreline stabilization measure, a geotechnical analysis must be prepared by a geotechnical engineer licensed by the state. The analysis shall include the following:
  - a. An assessment of the necessity for structural shoreline stabilization by estimating time frames and rates of erosion and reporting on the urgency associated with the specific situation.
    - 1) New hard structural shoreline stabilization measures shall not be authorized, except when an analysis confirms that:
      - a) There is a significant possibility that an existing structure will be damaged within three years as a result of shoreline erosion in the absence of such hard structural shoreline stabilization measures, or
      - b) Where waiting until the need is immediate results in the loss of opportunity to use measures that would avoid impacts on ecological functions.
    - 2) If the geotechnical analysis shows that an existing structure will not be damaged within three years as a result of shoreline erosion, but confirms a need to prevent potential damage to a primary structure, the analysis may be used to justify protection against erosion using soft shoreline stabilization measures.
  - b. An assessment of the cause of erosion, looking at processes occurring both waterward and landward of the OHWM.
  - c. An assessment of alternative measures to shoreline stabilization, including:
    - 1) Placing the structure farther from the OHWM.
    - 2) Correcting on-site groundwater or drainage issues that may be causing shoreline erosion.
  - d. Where structural shoreline stabilization is determined to be necessary, the assessment must evaluate the feasibility of using soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures.
  - e. Design recommendations for minimum sizing of hard structural or soft structural shoreline stabilization materials.
2. For replacements of existing hard structural shoreline stabilization measures with a similar measure, the applicant shall submit a written narrative providing a demonstration of need. A geotechnical engineer licensed by the state must prepare the narrative. The demonstration of need shall consist of the following:

- a. An assessment of the necessity for continued structural shoreline stabilization, considering site-specific conditions such as water depth, orientation of the shoreline, wave fetch or flow velocities, and location of the nearest primary structure.
  - b. An assessment of erosion potential resulting from the action of waves or other natural processes operating at or waterward of the OHWM in the absence of the hard structural shoreline stabilization.
  - c. An assessment of alternative measures to shoreline stabilization, including:
    - 1) Relocating the development farther from the OHWM.
    - 2) Correcting on-site groundwater or drainage issues that may be causing shoreline erosion.
  - d. An assessment of the feasibility of using soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures.
  - e. Design recommendations for minimizing impacts of necessary hard structural shoreline stabilization.
3. A demonstration of need may be waived when an existing hard structural shoreline stabilization measure is proposed to be repaired or replaced using bio-engineered soft structural shoreline stabilization measures, resulting in significant restoration of shoreline ecological functions or processes.
4. Detailed construction plans for all structural shoreline stabilization measures, including bio-engineered soft structural shoreline stabilization showing the following:
- a. Plan and cross-section views of the existing and proposed shoreline configuration, showing accurate existing and proposed topography and OHWMs.
  - b. Detailed construction sequence and specifications for all materials. The sizing and placement of all materials shall be selected to accomplish the following objectives:
    - 1) Protect the primary structures from erosion and other damage over the long term, and accommodate the normal amount of alteration from currents and wind- or boat-driven waves;
    - 2) Allow safe passage and migration of fish and wildlife; and
    - 3) Minimize or eliminate juvenile salmon predator habitat.

- c. For projects that include native vegetation, a detailed five-year vegetation maintenance and monitoring program to include the following:
  - 1) Goals and objectives of the shoreline stabilization plan;
  - 2) Success criteria by which the implemented plan will be assessed;
  - 3) A five-year maintenance and monitoring plan, consisting of at least one site visit per year by a qualified professional and annual progress reports submitted to the Shoreline Administrator;
  - 4) A performance standard of 100 percent survival for the first year of growth post installation, with no less than 80 percent survival at the end of the third year; and
  - 5) A contingency plan and an assignment of funds in an amount and form acceptable to the city in case the applicant fails to maintain the re-vegetation area.

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# 7 SHORELINE ADMINISTRATION

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## 7.01 INTRODUCTION

SMP Chapter 7: Shoreline Administration describes the administrative procedures and enforcement of a permit system that implements the SMP, together with amendments or additions thereto. Issuance of a shoreline permit or letter of exemption from the Shoreline Administrator does not exclude the requirements for other city, state, and federal permits, procedures, and regulations.

Those portions of the city located within the Seashore Conservation Area (SCA), as defined in RCW 79A.05.605, are managed by Washington State Parks and Recreation Commission. Any proposed uses and development in the SCA must obtain the necessary approvals from State Parks, in addition to any required shoreline permits or exemptions from the city.

## 7.02 PERMIT PROCESSING - GENERAL

### 7.02.01 SHORELINE ADMINISTRATOR AUTHORIZATION AND RESPONSIBILITIES

- A. The Shoreline Administrator is responsible for the administration of the permit system in accordance with the requirements of the SMA and the policies and regulations adopted as part of the SMP. This includes, but is not limited to, determinations of whether a development is exempt or requires a shoreline substantial development permit, conditional use permit, and/ or variance. WAC 173-27-044 lists developments not required to obtain shoreline permits or local reviews and WAC 173-27-045 identifies developments not subject to the Shoreline Management Act or this SMP.
- B. The Shoreline Administrator shall ensure that administrative provisions are in place so that SMP permit procedures and enforcement are conducted in a manner consistent with relevant constitutional limitations on regulation of private property.
- C. Administrative Interpretation
  1. The Shoreline Administrator is authorized to interpret this SMP when such interpretation is clearly consistent with the goals and policies of this SMP and the Act.
  2. As part of this process, the Shoreline Administrator shall consult with Ecology to ensure that formal written interpretations are consistent with the purpose and intent of the SMA and Chapter 173-26 WAC.

3. Formal interpretations shall be kept on file by the city and shall be available for public review, and shall periodically be incorporated into the SMP during required update processes.
- D. The Shoreline Administrator shall determine if applications are complete based upon the information required by this section. The Shoreline Administrator may conduct a site inspection and/or request additional information to ensure that the proposal meets the exemption criteria.
- E. The Shoreline Administrator may recommend conditions to the Hearing Examiner for the approval of permits as necessary to ensure consistency of the project with the SMA and the SMP.

#### **7.02.02 PROVISIONS APPLICABLE TO ALL SHORELINE PERMITS**

- A. Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the SMA, and this SMP whether or not a permit is required.
- B. The city shall not grant authorization to undertake a use or development on shorelines of the state, unless, upon review, the use or development is determined to be consistent with the policy and provisions of the SMP.
- C. RCW 36.70A.480 governs the relationship between the SMP and the city's development regulations to protect critical areas that are adopted under Chapter 36.70A RCW.
- D. Applications for shoreline substantial development permits, conditional use permits, and variances shall be processed as provided for in OSMC Title 18 – Shoreline Management; if, where the provisions of the city's code and the administration and permitting provisions of the SMP conflict, the provisions of the SMP shall apply.
- E. The applicant shall meet all of the review criteria for all development found in WAC 173-27-140.
- F. A shoreline substantial development shall not be undertaken within the city unless a shoreline substantial development permit has been obtained, the appeal period has been completed, and any appeals have been resolved.
- G. If any parcel of land is developed or divided in violation of the SMP, the city will not grant building permits or other development permit except those permits required to bring the property into compliance.
- H. All purchasers or transferees of property shall comply with the provisions of the SMA, the SMP, and any shoreline substantial development permit, conditional use permit, variance, permit revision, or letter of exemption.



### **7.02.03 APPLICATION REQUIREMENTS**

Applications for shoreline permits and/or letters of exemptions shall be made on forms provided by the Shoreline Administrator. An applicant for a shoreline substantial development permit, who wishes to request a shoreline conditional use permit and/or variance, shall submit the shoreline conditional use permit and/or variance application(s) and the shoreline substantial development permit application simultaneously.

Applications shall be substantially consistent with the information required by WAC 173-27-180 and include the following:

- A. The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
- B. The name, address and phone number of the applicant's representative, if other than the applicant.
- C. The name, address and phone number of the property owner, if other than the applicant.
- D. 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.
- E. Identification of the SMA waterbody the proposal affects.
- F. A general description of the proposed project including the proposed use or uses and the activities necessary to accomplish the project.
- G. A general description of the property as it now exists including its physical characteristics, improvements, and structures.
- H. 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.
- I. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, which shall include:
  1. The boundary of the parcel(s) of land upon which the development is proposed.
  2. The OHWM of all waterbodies located adjacent to or within the boundary of the project. This may be an approximate location. If for any development where a determination of consistency with the applicable regulations requires a precise

location of the OHWM, the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the OHWM is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest OHWM of a shoreline.

3. Existing and proposed land contours. The contours shall be at intervals sufficient to determine accurately the existing character of the property and 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.
4. A delineation of all wetland areas that will be altered as a part of the development and other wetlands as required by SMP Appendix 2: Critical Areas Regulations.
5. A general description of the character of vegetation found on the site.
6. The dimensions and locations of all existing and proposed structures and improvements such as buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
7. Where applicable, landscaping plans for the project.
8. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project consistent with the requirements of this section.
9. Quantity, source, and composition of fill material that is placed on the site, whether temporary or permanent.
10. Quantity, composition, and destination of excavated or dredged material.
11. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments, and uses on adjacent properties.
12. Where applicable, a depiction of the impacts to views from existing residential development and public areas.
13. On all shoreline 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.

### **7.03 APPLICATION - NOTICES**

The following is applicable for the notice requirements all notices related to actions under the SMP:

- A. The Shoreline Administrator shall give notice of the application in accordance with the appropriate provisions OSMC Section 18.06.060 no less than 30 days prior to permit issuance.
- B. When a public hearing is required, public notice shall be given at least 15 days before the public hearing. The notice shall include a statement that a person desiring to present his/her views may do so orally or in writing at the public hearing, or may submit written comments prior to the public hearing. These written comments will be provided to the Hearing Examiner at the public hearing.
- C. The public notice shall also state that a person interested in the Hearing Examiner action on an application for a permit may notify the Shoreline Administrator of his/her interest in writing within 30 days of the last date of publication of the notice. Such notification to the Shoreline Administrator or the submission of views to the Hearing Examiner shall entitle said persons to a copy of the action taken on the application.

### **7.04 SHORELINE PERMITS AND APPROVALS**

#### ***7.04.01 SHORELINE SUBSTANTIAL DEVELOPMENT PERMITS***

The following is applicable for all shoreline substantial development permits:

- A. A shoreline substantial development permit shall be granted by the Shoreline Administrator only when the development proposed is consistent with the following:
  - 1. Goals, policies and use regulations of the SMP;
  - 2. The city's Comprehensive Plan, development codes, and associated regulations; and
  - 3. The policies and regulations of the SMA as well as the associated guidelines (Chapter 90.58 RCW; Chapter 173-26 WAC, and Chapter 173-27 WAC).
- B. The applicant shall meet all of the review criteria for a shoreline substantial development permit as listed in WAC 173-27-150.

#### ***7.04.02 SHORELINE CONDITIONAL USE PERMITS***

The following is applicable for all shoreline conditional use permits:

- A. Pursuant to WAC 173-27-210 and WAC 173-27-160, the criteria below shall constitute the minimum criteria for review and approval of a shoreline conditional use permit. Uses classified as conditional uses by the regulations of the SMP, may be authorized; provided, that the applicant can demonstrate all of the following:
1. The proposed use is consistent with the policies of RCW 90.58.020 and the SMP;
  2. The proposed use will not interfere with the normal public use or access to public shorelines;
  3. The proposed use of the site and design of the project will be compatible with other authorized uses within the area and with uses planned for the area under the city's Comprehensive Plan and SMP;
  4. The proposed use will cause no significant adverse effects to shoreline jurisdiction, will not result in a net loss of ecological functions, and will not be incompatible with the shoreline environment designation or zoning classification in which it is to be located;
  5. The public interest suffers no substantial detrimental effect;
  6. The proposed use is in the best interest of the public health, safety, morals, or welfare; and
  7. Consideration of cumulative impacts resultant from the proposed use has occurred and has demonstrated that no substantial cumulative impacts are anticipated, consistent with WAC 173-27-160(2).
- B. Other uses, which are not classified or set forth in the SMP, may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the SMP.
- C. Uses that are specifically prohibited in the SMP may not be authorized.
- D. The Shoreline Administrator may forward recommended conditions to the Hearing Examiner, who may attach conditions to the approval of permits as necessary to assure consistency of the proposal with the above criteria.
- E. The decision of the Hearing Examiner shall be the final decision of the city. Ecology shall be the final authority authorizing a shoreline conditional use permit consistent with WAC 173-27-200.

#### **7.04.03 SHORELINE VARIANCES**

The following is applicable for all shoreline variances:

- A. The purpose of a shoreline variance is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the SMP, and where there are extraordinary or unique circumstances relating to the physical character or configuration of property such that the strict implementation of the SMP would impose unnecessary hardships on the applicant or thwart the SMA policies as stated in RCW 90.58.020.
- B. Construction in accordance with this shoreline variance shall not begin nor can construction be authorized except as provided in RCW 90.58.140.
- C. Pursuant to WAC 173-27-210 and WAC 173-27-170, the criteria below shall constitute the minimum criteria for review and approval of a shoreline variance. A shoreline variance for development that will be located landward of the OHWM (per RCW 90.58.030(2)(c) definition), and/or landward of a wetland as defined in RCW 90.58.030(2)(h) may be authorized, provided the applicant can demonstrate all of the following:
  - 1. The strict requirements of the bulk, dimensional or performance standards set forth in the SMP preclude or significantly interfere with a reasonable use of the property not otherwise prohibited by the SMP;
  - 2. The hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the SMP, and not, for example, from deed restrictions or the applicant's own actions;
  - 3. The design of the project will be compatible with other permitted uses within the area and with uses planned for the area under the city's Comprehensive Plan and SMP and will not cause adverse impacts to the area of the city subject to the SMA;
  - 4. The shoreline variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief; and
  - 5. The public interest will suffer no substantial detrimental effect.
- D. Shoreline variances for development that will be located either waterward of the OHWM or in a wetland as defined in RCW 90.58.030(2)(h) may be authorized, provided the applicant can demonstrate all the criteria stated above as well as the following:
  - 1. The strict application of the bulk, dimensional or performance standards set forth in the SMP precludes all reasonable use of the property not otherwise prohibited by the SMP; and

2. The public rights of navigation and use of the area of the city subject to the SMA will not be adversely affected by the granting of the shoreline variance.
- E. In the granting of all shoreline variance approvals, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment or result in a net loss of ecological functions.
  - F. Shoreline variances from the use regulations of the SMP are prohibited.
  - G. The Shoreline Administrator may forward recommended conditions to the Hearing Examiner, who may attach conditions to the approval of the variance as necessary to assure consistency of the proposal with the above criteria.
  - H. The decision of the Hearing Examiner shall be the final decision of the city. Ecology shall be the final authority authorizing a shoreline variance consistent with WAC 173-27-200.

#### **7.04.04 SHORELINE LETTERS OF EXEMPTION**

The following is applicable for all shoreline letters of exemption:

- A. A letter of exemption shall be required for a development that is exempt from the requirements for a shoreline substantial development permit.
- B. To qualify for a letter of exemption, the proposed use, activity, or development must meet all of the requirements for an exemption as described and listed in WAC 173-27-040.
- C. The Shoreline Administrator shall prepare a letter of exemption and transmit a copy to the applicant and Ecology when a development is determined by the Shoreline Administrator to be exempt from the shoreline substantial development permit requirements. The letter of exemption shall indicate the specific exemption provisions from WAC 173-27-040 that apply to the development and provide a summary of the analysis demonstrating consistency of the project with the SMA and the SMP.
- D. Ecology is designated as the coordinating agency for the state with regard to USACE permits. The following is intended to facilitate Ecology's coordination of city actions, with regard to exempt development, with federal permit review.
  1. An exempt development may be subject to one or more of the following federal permit requirements:

- a. A USACE 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 a project occurring on or over navigable waters. Specific applicability information should be obtained from the USACE; or
  - b. 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 a project that may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the USACE.
- E. Exempt proposals shall be consistent with the goals and policies of the SMP.
1. 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.
  2. Exempt proposals shall be consistent with the goals, policies, and provisions of the SMA and the SMP. A letter of exemption from the substantial development permit process is not an exemption from compliance with the SMA or the SMP, or from any other regulatory requirements.
  3. A development or use that is listed as a conditional use in the SMP, or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit.
  4. When a development or use is proposed that does not comply with the bulk, dimensional, and performance standards of the SMP, such development or use can only be authorized by approval of a shoreline variance.
  5. The burden of proof that a development or use is exempt from the shoreline permit process is on the applicant.
  6. If any part of a proposed development is not eligible for exemption, then a shoreline substantial development permit is required for the entire proposed development project.
  7. The Shoreline Administrator may attach conditions to letters of exemption as necessary to assure consistency of the proposal with the SMA and the SMP.

## **7.05 PUBLIC HEARING AND DECISION**

### **7.05.01 BURDEN OF PROOF FOR DEVELOPMENT CONFORMANCE**

The applicant bears the burden of proving that the proposed development is consistent with the criteria set forth in the SMP and the requirements of the SMA.

### **7.05.02 PUBLIC HEARING PROCESS**

- A. In accordance with OSMC Section 18.06.06, the Hearing Examiner shall hold at least one open record public hearing on each application for a conditional use permit or variance in shoreline jurisdiction.
- B. If, for any reason, testimony on a matter set for public hearing, or being heard, cannot be completed on the date set for such hearing, the Hearing Examiner may, before adjournment or recess of such matters under consideration, publicly announce the time and place of the continued hearing and no further notice is required.
- C. When the Hearing Examiner renders the final decision, the Hearing Examiner shall make and enter written findings from the record and conclusions thereof, which support the decision. The findings and conclusions shall set forth the manner in which the decision is consistent with the criteria set forth in the SMA and the city's regulations.

### **7.05.03 NOTICE OF DECISION**

- A. The Shoreline Administrator shall notify the following persons in writing of the final approval, conditional approval, or disapproval of a shoreline substantial development permit, conditional use permit, or variance within 14 days of the Shoreline Administrator or Hearing Examiner's final decision:
  - 1. The applicant, the property owner, and the representative;
  - 2. Ecology, consistent with WAC 173-27-130;
  - 3. The State Attorney General;
  - 4. Any person who has provided written or oral comments on the application at the public hearing; and
  - 5. Any person who has written the Shoreline Administrator requesting notification.

### **7.05.04 DEVELOPMENT START**

- A. Development in accordance with a shoreline substantial development permit, conditional use permit, or variance shall not be authorized until 21 days from the date of filing of the approved shoreline substantial development permit, conditional use



permit, or variance, or until all review proceedings initiated within 21 days of the date of such filing have been terminated.

- B. The date of filing of a substantial development permit is the date of receipt by Ecology of the local government's decision.
- C. Shoreline conditional use permits and variances are subject to Ecology review and approval before the 21-day period starts. The date of filing of a shoreline conditional use permit or variance is the date Ecology's decision is transmitted to the city.
- D. The date of filing for Substantial development permits filed concurrently with a conditional use permit or variance, or both, is the date Ecology's decision is transmitted to the city.

#### **7.05.05 APPEALS OF DECISIONS**

- A. Any person aggrieved by the granting or denying of a shoreline substantial development permit, conditional use permit, or variance, or by the rescinding of a permit in accordance with the provisions of the SMP, may seek review from the State Shorelines Hearings Board. A request for review may be done by filing a petition for review with the board within 21 days of the date of filing of the final decision, as defined by RCW 90.58.140(6) and by concurrently filing copies of such request with the city Clerk, Ecology and the Attorney General's office. State Shorelines Hearings Board regulations are provided in RCW 90.58.180 and Chapter 461-08 WAC. The applicant is responsible for knowing the date of filing and the twenty-one day period.
- B. An appeal of a letter of exemption follows the Land Use Petition Act (LUPA) judicial review of land use decisions process found in Chapter 36.70C RCW.

### **7.06 TIME REQUIREMENTS AND REVISIONS**

#### **7.06.01 TIME REQUIREMENTS FOR SHORELINE PERMITS**

- A. The time requirements of this section shall apply to all shoreline substantial development permits and to any development authorized in accordance with a shoreline conditional use permit or variance.
- B. Construction activities shall be commenced or, where no construction activities are involved, the use shall be commenced within two years of the effective date of a shoreline substantial development permit, conditional use permit, or variance. However, the city may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the

expiration date and notice of the proposed extension is given to parties of record on the shoreline substantial development permit, conditional use permit, or variance and to Ecology.

- C. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline substantial development permit, conditional use permit, or variance. However, the city may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and Ecology.
- D. The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in SMP Sections 7.06.01(B) and (C) do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on such permits or approvals.
- E. Revisions to permits, in accordance with the provisions of WAC 173-27-100, may be authorized after original permit authorization has expired; provided, that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
- F. The Shoreline Administrator shall notify Ecology in writing of any change to the effective date of a permit, as authorized by this section, 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 RCW 90.58.143 and the SMP shall require a new permit application.

#### **7.06.02 REVISIONS OF SHORELINE PERMITS**

- A. A permit revision is required whenever the applicant proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance with the terms and conditions of the permit, the SMP, and/or the SMA. Changes, which are not substantive in effect, do not require approval of a revision.
- B. When an applicant wants to revise a shoreline permit, the applicant must submit detailed plans and text describing the proposed changes. If the Shoreline Administrator determines that the revisions proposed are within the scope and intent of the original permit, consistent with the SMP and the SMA, the Shoreline Administrator may approve

the revision. Within the scope and intent of the original permit means all of the following:

1. No additional over-water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;
  2. Ground area coverage and height is not increased more than ten percent from the provisions of the original permit;
  3. The revision does not authorize development to exceed height, lot coverage, setback, or any other requirements of the SMP, except as authorized under a variance granted as the original permit or a part thereof;
  4. Additional landscaping is consistent with conditions, if any, attached to the original permit;
  5. The use authorized in accordance with the original permit is not changed; and
  6. No substantial adverse environmental impact will be caused by the project revision.
- C. If the proposed revision, together with any previously approved, revisions exceeds the limits listed herein, an application for a new shoreline permit must be submitted.
- D. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with Ecology. In addition, the city shall notify parties of record of the city's action.
- E. If the revision involves a shoreline variance or conditional use, the revision also must be reviewed and approved by Ecology. The city shall notify parties of record of Ecology's decision.
- F. The city or Ecology decision on revision to the shoreline permit may be appealed within 21 days of the date of filing, in accordance with the SMA. The applicant is responsible for knowing the date of filing and the 21 day period.
- G. Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's own risk until the expiration of the appeals deadline.
- H. Revisions to permits under WAC 173-27-100 shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

## **7.07 NON-CONFORMING DEVELOPMENT**

### **7.07.01 NONCONFORMING USE AND DEVELOPMENT STANDARDS.**

- A. "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.
- B. Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards, area, bulk, height or density may be maintained and repaired and may be enlarged or expanded, provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. In accordance with RCW 90.58.620, residential and appurtenant structures that were legally established prior to the SMP, but that do not meet the SMP buffer standards are authorized and considered conforming. Future redevelopment, expansion, change with the class of occupancy, or replacement of the structures is allowed, if it is consistent with the SMP, including requirements for no net loss of shoreline ecological functions.
- C. Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.
- D. A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.
- E. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.
- F. A structure, which is being or has been used for a nonconforming use, may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:
  - 1. No reasonable alternative conforming use is practical; and

2. The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.
  3. In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the SMA and to assure that the use will not become a nuisance or a hazard.
- G. Relocation of a nonconforming structure is allowed provided that the new location meets the requirements for no net loss of shoreline ecological functions, even if full compliance with the buffer and setback standards cannot be met.
- H. If a nonconforming development is damaged to an extent not exceeding 75 percent of the replacement cost of the damaged structure or development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within 12 months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.
- I. If a nonconforming use is discontinued for 12 consecutive months or for 12 months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to SMP Section 7.07.01(F) shall be considered a conforming use for purposes of this section.
- J. An undeveloped lot, tract, parcel, site, or division of land located landward of the OHWM, which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

## **7.08 ENFORCEMENT AND PENALTIES**

### **7.08.01 ENFORCEMENT**

- A. The provisions of OSMC Section 18.06.100 - Enforcement shall apply to the SMP.
- B. The Shoreline Administrator or a designated representative shall enforce all provisions of the SMP. For such purposes, the Shoreline Administrator or a designated representative shall have the power of a police officer.

- C. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject to the enforcement action; the benefits that accrue to the violator; and the cost of obtaining compliance may also be considered.
- D. The enforcement procedures and penalties contained in Chapter 173-27 WAC, Shoreline Management Permit and Enforcement Procedures are hereby incorporated by reference.

#### **7.08.02 PENALTY**

- A. A person found to have willfully engaged in activities in shoreline jurisdiction in violation of the SMA or in violation of the SMP or rules or regulations adopted pursuant thereto shall be subject to the penalty provisions of OSMC Section 18.54.010, RCW 90.58.210, RCW 90.58.220, WAC 173-27-270, and WAC 173-27-280.

#### **7.08.03 PUBLIC AND PRIVATE REDRESS**

- A. A person subject to the regulatory program of the SMP who violates any provision of the SMP or the provisions of a permit issued pursuant thereto shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to such violation. The City Attorney may sue for damages under SMP Section 7.08 on behalf of the city.
- B. Private persons shall have the right to sue for damages under this section on their own behalf and on behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by violation, the court shall make provisions to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including monetary damages, the court, in its discretion, may award attorneys' fees and costs of the suit to the prevailing party.

#### **7.08.04 DELINQUENT PERMIT PENALTY**

- A. A person applying for a permit after commencement of the use or activity may be required, at the discretion of the city, to pay a delinquent permit penalty not to exceed three times the appropriate permit fee paid by the applicant.
- B. A person who has caused, aided, or abetted a violation within two years after the issuance of a regulatory order, notice of violation, or penalty by the city or Ecology against said person may be subject to a delinquent permit penalty not to exceed ten times the appropriate permit fee paid by the applicant. Delinquent permit penalties shall be paid in full prior to resuming the use or activity.

## **7.09 SHORELINE MASTER PROGRAM – ADMINISTRATION**

### **7.09.01 GENERAL ADMINISTRATION**

- A. The Shoreline Administrator shall keep a record all project review actions within shoreline jurisdiction, including shoreline permits, letters of exemption, and enforcement actions.
- B. As part of shoreline permit review process, the city shall evaluate shoreline conditions on an ongoing basis to ensure no net loss of ecological functions, to protect and enhance visual quality, and to identify and protect significant historic or cultural resources in the shoreline. Specific issues to address in evaluations include, but are not limited to the following:
  - 1. Water quality;
  - 2. Conservation of aquatic vegetation and control of noxious weeds;
  - 3. Changing visual character as a result of new development or redevelopment and individual vegetation conservation practices along shoreline and upland areas;
  - 4. Shoreline stabilization and modifications; and
  - 5. Significant historic or cultural resources within shoreline jurisdiction resulting from research, inventories, discoveries, or new information.

### **7.09.02 SHORELINE MASTER PROGRAM REVIEW**

The following guidelines are to be used for review of the SMP:

- A. The SMP shall be reviewed periodically at least once every eight years as required by RCW 90.58.080(4)(b) beginning on or before June 30, 2022 and every eight years thereafter. Amendments shall be made as necessary to reflect changing local circumstances, new information or improved data, and changes in state statutes and regulations.
- B. The city's established permit tracking system, aerial photos, reviewing of other available data, and field observations as feasible shall be used to document the cumulative effect of all project review actions in the city's shoreline jurisdiction.
- C. The city will periodically evaluate the effectiveness of the SMP in achieving no net loss of ecological functions in shoreline jurisdiction considering authorized developments that include mitigation and restoration actions, letters of exemption, and enforcement

actions. This process may involve a joint effort by the city, state, and federal agencies, and Native American Indian tribes, and other parties.

- D. As part of any required SMP update, an evaluation report assessing the effectiveness of the SMP in achieving the no net loss standard shall be prepared and considered in determining whether policies and regulations are adequate in achieving this requirement.
- E. The SMP review and update process shall be consistent with the requirements of Chapter 173-26 WAC or its successor and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.
- F. The city should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. Related to the constitutional takings limitation, a process established for this purpose is set forth in a publication entitled, *State of Washington, Attorney General's Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property*, first published in February 1992.

### **7.09.03 SHORELINE MASTER PROGRAM AMENDMENTS**

The following guidelines are to be used for amendments to the SMP:

- A. Any of the provisions of the SMP may be amended as provided for in RCW 90.58.100, RCW 90.58.200, and Chapter 173-26 WAC. Amendments shall also be subject to the procedures in the city code.
- B. Amendments or revisions to the SMP, as provided by law, do not become effective until approved by Ecology.



# 8 DEFINITIONS

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## 8.01 UNLISTED WORDS OR PHRASES

Any word or phrase not defined in SMP Chapter 7: Definitions that is called into question when administering the SMP shall be defined utilizing the SMA and its implementing rules.

The Shoreline Administrator may obtain secondary definition sources from one of the following sources:

- A. The city's code;
- B. Any city resolution, ordinance, policy, or regulation;
- C. The most applicable statute or regulation from the state;
- D. Legal definitions generated from case law or provided within a law dictionary; or
- E. The common dictionary.

## 8.02 DEFINITIONS

### A

**Accessory Structure or Use** – A structure or use incidental, related, and clearly subordinate to the principal structure or use of a lot or main building. An accessory structure or use is only located on the same lot as a permitted principal structure or use.

**Act** – The Washington State Shoreline Management Act (SMA). Chapter 90.58 RCW as amended.

**Agriculture** – The use of land for agricultural purposes, including farming, dairying, pasturage, horticulture, floriculture, viticulture, apiaries, and animal and poultry husbandry, and the necessary accessory uses for storing produce; provided, however, that the operation of any such accessory use shall be incidental to that of normal agricultural activities. In all cases, the use of agriculture related terms should be consistent with the specific meanings provided in WAC 173-26-020.

**Alteration** – Any human-induced change in an existing condition of a critical area or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing of vegetation, construction, compaction, excavation, or any other activity that changes the character of the critical area.

**Applicant** – Any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a shoreline development proposal, permit, or approval.

**Appurtenance** – A building, structure, or development necessarily connected to the use and enjoyment of a single-family residence that is located landward of the OHWM and of the perimeter of any wetland. On a statewide basis, normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drain field, and grading which does not exceed 250 cubic yards (except to construct a conventional drain field) and which does not involve placement of fill in any wetland or waterward of the OHWM. Refer to WAC 173-27-040(2)(g).

**Aquaculture** – The culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

**Aquifer Recharge Area** – The incorporated area of the city is designated as an aquifer recharge area.

**Associated Wetlands** – Those wetlands that are in proximity to, and either influence or are influenced by, tidal waters or a lake or stream subject to the SMA. Refer to WAC 173-27-030(1).

**Average Grade Level** – The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property, which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level shall be the elevation of the OHWM. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

## **B**

**Best Available Science (BAS)** – Information from research, inventory, monitoring, surveys, modeling, synthesis, expert opinion, and assessment that is used to designate, protect, or restore critical areas that is derived from a valid scientific process as defined by WAC 365-195-900 through WAC 365-195-925, BAS is derived from a process that includes peer-reviewed literature, standard methods, logical conclusions and reasonable inferences, quantitative analysis, and documented references to produce reliable information.

**Berm** – A linear mound or series of mounds of sand or gravel generally that parallels the water at or landward of the line of OHWM. In addition, a linear mound used to screen an adjacent use, such as a parking lot, from transmitting excess noise and glare.

**Best Management Practices** – Best Management Practices are the utilization of methods, techniques, or products, which have been demonstrated to be the most effective and reliable in minimizing environmental impacts. Best Management Practices encompass a variety of behavioral, procedural, and structural measures that reduce the amount of contaminants in stormwater run-off and in receiving waters and include conservation practices or systems of practices and management measures that:

- A. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
- B. Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- C. Protect trees, vegetation and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- D. Provide standards for proper use of chemical herbicides within critical areas.

**Boat Launch** –Launches are ramps including graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device. **Boathouse** – Any structure, whether upland or overwater, designed for storage of boats.

**Boating facility** –A structure or group of structures including but not limited to ramps, marinas, docks, piers, floats, or mooring buoys providing access to or service for boats.

**Bog** – A low nutrient, acidic wetland with organic soils and characteristic bog plants, which is sensitive to disturbance and impossible to re-create through compensatory mitigation.

**Breakwater** – 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.

**Buffer or Buffer Zone** – The area contiguous with a shoreline of the state or a critical area that maintains the functions and/or structural stability of the shoreline of the state or critical area.

**Bulkhead** – A vertical or nearly vertical erosion protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

## C

**Chapter 90.58 RCW** – The Shoreline Management Act of 1971, as amended.

**City** – The City of Ocean Shores.

**Clean Water Act** – The primary federal law providing water pollution prevention and control; previously known as the Federal Water Pollution Control Act. See 33 USC 1251 et seq.

**Clearing** – 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.

**Comprehensive Plan** – The document, including maps adopted by the city in accordance with applicable state law, that guides land use development within the city.

**Conditional Use** – A use, development, or substantial development that is classified as a conditional use or is not classified within the applicable SMP. Refer to WAC 173-27-030(4).

**County** – Grays Harbor County.

**Covered moorage** – Boat moorage, with or without walls, that has a roof to protect a boat. Boat lift canopies are not included in this definition.

**Creation** – The manipulation of the physical, chemical, or biological characteristics to develop a wetland on an upland or deepwater site, where a wetland did not previously exist. Creation results in a gain in wetland acreage and function. A typical action is the excavation of upland soils to elevations that will produce a wetland hydroperiod and hydric soils, and support the growth of hydrophytic plant species.

**Critical Areas** – Defined under Chapter 36.70A RCW includes the following areas and ecosystems:

- A. Wetlands;
- B. Areas with a critical recharging effect on aquifers used for potable waters;
- C. Fish and wildlife habitat conservation areas;
- D. Frequently flooded areas; and
- E. Geologically hazardous areas

**Critical Saltwater Habitat** – Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, 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.

**Cumulative Impact** – The impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over an interval of time.

## D

**Developable Area** – A site or portion of a site that may be used as the location of development, in accordance with the rules of this Chapter.

**Development** – The construction or exterior alteration of buildings or structures; dredging; drilling; dumping; filling; removal of sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or a project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to Chapter 90.58 RCW at any state of water level (RCW 90.58.030(3)(d)).

**Dredging** – Excavating or displacing of the bottom or shoreline of a waterbody. Dredging can be accomplished with mechanical or hydraulic machines. Most dredging is done to maintain channel depths or berths for navigational purposes; other dredging is for cleanup of polluted sediments.

## E

**Ecological Functions** – The work performed or the 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.

**Ecology** – The Washington State Department of Ecology.

**Ecosystem-wide Processes** – 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.

**Emergency** – An unanticipated and imminent threat to public health, safety, or the environment, requiring immediate action within a time too short to allow full compliance with the SMP. Emergency construction is construed narrowly as that which is necessary to protect property from the elements (RCW 90.58.030(3)(e)(iii) and WAC 173-27-040(2)(d)). 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 which would have been required, absent an emergency, obtained. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this SMP. 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.

**Endangered Species Act (ESA)** – A federal law intended to protect any fish or wildlife species that are threatened with extinction throughout all or a significant portion of its range.

**Enhancement** – The manipulation of the physical, chemical, or biological characteristics of a shoreline buffer or wetland to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, floodwater retention, or wildlife habitat. Enhancement results in a change in shoreline buffer or wetland function(s) and can lead to a decline in other shoreline buffer or wetland functions, but does not result in a gain in shoreline buffer or wetland area. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to alter hydroperiods.

**Environmental Impacts** – The effects or consequences of actions on the natural and built environments. Environmental impacts include effects upon the elements of the environment listed in the SEPA. Refer to WAC 197-11-600 and WAC 197-11-444.

**Environments, (Shoreline Environment Designations)** – Designations given to specific shoreline areas based on the existing development pattern, the biophysical character and limitations, and the goals and aspirations of local citizenry, as part of an SMP.

**Exemption** – Certain specific developments are exempt from the definition of substantial developments and are therefore exempt from the shoreline substantial development permit process of the SMA. A use or activity that is exempt from the substantial development provisions of the SMA must still be carried out in compliance with policies and standards of the SMA and the city's SMP. Shoreline conditional use permits and variances may also still be required even though the use or activity does not need a shoreline substantial development permit (WAC 173-27-040).

## **F**

**Fair Market Value** – 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 donated, contributed or found labor, equipment or materials (WAC 173-27-030(8)).

**Feasible** – 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 the SMP Guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the city may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

**Feasible Alternatives** – Alternatives to the proposed project that will accomplish essentially the same objective as the original project while avoiding or having less adverse impacts.

**Fill** – Raising the elevation or creating dry land by adding soil, sand, rock, gravel, sediment, earth-retaining structure, or other material to an area waterward of the OHWM, in wetland, or on shorelands.

**Floodplain** – Term is synonymous with 100-year floodplain. The land area that is susceptible to being inundated with a one percent chance of being equaled or exceeded in a given year. The limits of this area are based on flood regulation ordinance maps or a reasonable method that meets the objectives of the SMA (WAC 173-22-030(2)).

**Floodway** – The area that has either: (i) has been established in FEMA flood insurance rate maps (FIRMs) or floodway maps; or (ii) consists of 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 condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

**Frequently Flooded Areas** – Those lands in the floodplain subject to a one percent or greater chance of flooding in any given year. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and the like. The 100-year floodplain designations of the National Flood Insurance Program delineate the presence of frequently flooded areas.

**Functions and Values** – The services provided by critical areas to society, including, but not limited to, improving and maintaining water quality, providing fish and wildlife habitat, supporting terrestrial and aquatic food chains, reducing flooding and erosive flows, wave attenuation, historical or archaeological importance, educational opportunities, and recreation.

## G

**Geotechnical Report or Geotechnical Analysis** – A scientific study or evaluation conducted by a qualified expert 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 and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

**Grading** – 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.

**Groin** – A barrier-type structure extending from, and usually perpendicular to, the backshore into a waterbody. Its purpose is to protect a shoreline and adjacent upland by influencing the movement of water or deposition of materials. This is accomplished by building or preserving an accretion beach on its updrift side by trapping littoral drift. A groin is relatively narrow in width but varies greatly in length. A groin is sometimes built in a series as a system and may be permeable or impermeable, high or low, and fixed or adjustable.

**Growth Management Act (GMA)** – The Washington State Growth Management Act, Chapter 36.70A RCW and Chapter 36.70B RCW, as amended.

**Guidelines** – See Shoreline Master Program (SMP) Guidelines (Chapter 173-26 WAC).

## H

**Hazardous Substances** – 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 WAC 173-303-100.

**Height** – Measured from average grade level to the highest point of a structure: provided that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial



number of residences on areas adjoining such shorelines, or the applicable SMP specifically requires that such appurtenances be included: provided further that temporary construction equipment is excluded in this calculation.

**Historic Condition** – Condition of the land, including flora, fauna, soil, topography, and hydrology that existed before the area and vicinity were developed or altered by Euro-American settlement, or in some cases before any human habitation occurred.

**Historic Resources** – Those historic or cultural properties or items that fall under the jurisdiction of the Washington State Department of Archaeology and Historic Preservation.

## I – J – K

**Impermeable Surface** – The area of a lot that is covered by impermeable surfaces, measured by percentage. A non-vertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle including, but not limited to, roof tops, swimming pools, paved or graveled roads and walkways or parking areas, but excluding landscaping and surface water retention/detention facilities.

**Impervious Surface** – Any alterations to the surface of a soil that prevents or retards the entry of water into it compared to its undisturbed condition, or any reductions in infiltration that cause water to run off the surface in greater quantities or at an increased rate of flow compared to that present prior to development. Common impervious surfaces include, but are not limited to, rooftops, 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.

**In-Kind Compensation** – To replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

**In-Water Structure** – A structure placed waterward of the OHWM that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-water structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

**Infiltration** – The downward entry of water into the immediate surface of soil.

**Interested Party** – Synonymous with party of record, 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 the application; or notified the city 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 (WAC 173-27-030(12)).

**Isolated Wetlands** – Those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water, including other wetlands.

**Jetty** – A structure generally perpendicular to the shore, extending through or past the intertidal zone. Jetties are built singly or in pairs at a harbor entrance or river mouth mainly to prevent accretion from littoral drift in an entrance channel. Jetties also serve to protect channels from storm waves or cross currents and to stabilize inlets through barrier beaches. Most jetties are of riprapped mound construction.

## L

**Landscaping** – Vegetation ground cover including shrubs, trees, flower beds, grass, ivy and other similar plants and including tree bark and other materials which aid vegetative growth and maintenance.

**Low Impact Development (LID)** – A stormwater and land use management strategy that strives to mimic pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation, and transpiration by emphasizing conservation, use of on-site natural features, site planning, and distributed stormwater management practices that are integrated into a project design.

## M

**Marine** – Pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Grays Harbor, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries and inlets associated therewith.

**Mature Forested Wetland** – A wetland where at least one acre of the wetland surface is covered by woody vegetation greater than 20 feet in height with a crown cover of at least 30 percent and where at least eight trees/acre are 80 to 200 years old or have average diameters (d. b. h.) exceeding 21 inches (53 centimeters) measured from the uphill side of the tree trunk at 4.5 feet up from the ground.

**May** – An action that is acceptable, provided it conforms to the provisions of the SMP.

**Mitigation or Mitigation Sequencing** – Avoiding, reducing, or compensating for a proposal's environmental impact(s). See WAC 197-11-768 and WAC 173-26-020(30). Mitigation or mitigation sequencing means the following sequence of steps listed in order of priority, with A. of this subsection being top priority:

- A. Avoiding the impact all together by not taking a certain action or parts of an action;

- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations;
- E. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- F. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

**Monitoring** – Evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems, and assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features. Monitoring includes gathering baseline data.

**Moorage** – A pier, dock, buoy or float, either fixed or floating, to which boats may be secured.

**Must** – A mandate; the action is required.

## **N**

**Native Vegetation** – Vegetation comprised of plant species that are indigenous to an area.

**Natural or Existing Topography** – The topography of the lot, parcel, or tract of real property immediately prior to site preparation or grading, including exaction or filling.

**Non-Conforming Use or Development** – A shoreline use, building, or structure which was lawfully constructed or established prior to the effective date of the applicable SMA/SMP provision, and which no longer conforms to the applicable shoreline provisions (WAC 173-27-080).

**Non-Water-Oriented Uses** – Those uses that are not water-dependent, water-related, or water-enjoyment, which have little or no relationship to the shoreline and are not considered priority uses under the SMA. Examples include professional offices, automobile sales or repair shops, mini-storage facilities, residential development, department stores and gas stations.

**Normal Maintenance** – Those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC 173-27-040(2)(b)). See also Normal Repair.

**Normal Repair** – To restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance,

within a reasonable period after decay or partial destruction except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment (WAC 173-27-040(2)(b)). See also Normal Maintenance.

## O

**Off-Site Compensation** – To replace critical areas away from the site on which a critical area has been impacted.

**On-Site Compensation** – To replace critical areas at or adjacent to the site on which a critical areas has been impacted.

**Ordinary High Water Mark (OHWM)** – 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 permits issued by the city or Ecology: provided, that in an area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water. See RCW 90.58.030(2)(b) and WAC 173-22-030(5).

**Over-water Structure** – A device or structure projecting over the OHWM, including, but not limited to: bridges for motorized or non-motorized uses, piers, docks, floats, and moorage.

## P – Q

**Permit (or Shoreline Permit)** – A shoreline substantial development permit, conditional use permit, or variance, or any combination thereof, authorized by the Act. Refer to WAC 173-27-030(13).

**Piers and docks** – Structures that abut the shoreline and often used as a landing or moorage place for watercraft. Piers are built on fixed platforms supported by piles above the water, while docks float upon the water. Some piers may terminate in a float section that is connected by a ramp.

**Practical Alternative** – An alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, with less of an impact to critical areas.

**Preservation** – The removal of a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This term includes the purchase of land or easements, repairing water control structures or fences, or structural protection. Preservation does not result in a gain of wetland acres but may result in a gain in functions over the long term.

**Primary Structure** – The structure associated with the principal use of the property. It may also include single-family residential appurtenant structures, such as garages, attached decks, driveways, utilities, and septic tanks and drain fields, which cannot feasibly be relocated. It does not include structures such as tool sheds, gazebos, greenhouses, or other ancillary residential improvements that can feasibly be moved landward to prevent the erosion threat.

**Priority Habitat** – 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:

- A. Comparatively high fish or wildlife density;
- B. Comparatively high fish or wildlife species diversity;
- C. Fish spawning habitat;
- D. Important wildlife habitat;
- E. Important fish or wildlife seasonal range;
- F. Important fish or wildlife movement corridor;
- G. Rearing and foraging habitat;
- H. Important marine mammal haul-out;
- I. Refugia habitat;
- J. Limited availability;
- K. High vulnerability to habitat alteration;
- L. Unique or dependent species; or
- M. 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.

**Priority Species** – Species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the four criteria listed below.

- A. Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014),

threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the WDFW (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

- B. Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.
- C. Criterion 3. Species of recreational, commercial, or Tribal importance. Native and non-native fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for Tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.
- D. Criterion 4. Species listed under the Federal Endangered Species Act as proposed, threatened, or endangered.

**Project Area** – All areas, including those within 50 feet of the area, proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

**Proposed, Threatened, and Endangered Species** – Those native species that are proposed to be listed or are listed in rule by the WDFW as threatened or endangered, or that are proposed to be listed as threatened or endangered or that are listed as threatened or endangered under the ESA.

**Provisions** – Policies, regulations, standards, guideline criteria or shoreline environment designations.

**Public Access** – Public access is the ability of the public 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 from adjacent locations. Refer to WAC 173-26-221(4).

**Public Interest** – 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 such as an effect on public property or on health, safety, or general welfare resulting from a use or development (WAC 173-27-030(14)).

**Public Use** – To be made available daily to the public on a first-come, first-served basis, and may not be leased to private parties on more than a day use basis. Refer to WAC 332-30-106.

**Qualified Professional** – A person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert 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, engineering, environmental studies, fisheries, geomorphology, or related field, and two years of related work experience.

- A. A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species.
- B. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state.
- C. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

## R

**RCW** – Revised Code of Washington.

**Recreational Facilities** – Facilities such as parks, trails, and pathways, whether public, private or commercial, that provide a means for relaxation, play, or amusement.

**Recreational floats** – Independent anchored offshore platforms, used for water-dependent recreational activities such as swimming and diving.

**Re-establishment** – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland. Re-establishment results in rebuilding a former wetland and results in a gain in wetland acres and functions. Activities could include removing fill, plugging ditches, or breaking drain tiles.

**Rehabilitation** – The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions and processes of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or returning tidal influence to a wetland.

**Repair or Maintenance** – 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.

**Residential Development** – Development, which is primarily devoted to or designed for use as a dwelling(s). Residential development includes single-family development, multifamily development and the creation of new residential lots through land division.

**Restore, Restoration, or Ecological Restoration** – The reestablishment 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.

**Riparian** – Of, on, or pertaining to the banks of a river, stream, or lake.

**Riprap** – A layer, facing, or protective mound of stones placed to prevent erosion, scour, or sloughing of a structure or embankment; also, the stone so used.

**Run-Off** – Water that is not absorbed into the soil but rather flows along the ground surface following the topography.

## **S**

**Seashore Conservation Area (SCA)** – Under the jurisdiction of the Washington state parks and recreation commission, this area is established for the recreational use and enjoyment of the public the Washington State Seashore Conservation Area. It shall include all lands now or hereafter under state ownership or control lying between Cape Disappointment and Leadbetter Point; between Toke Point and the South jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the Washington state parks and recreation commission and the line of extreme low tide, as these lines now are or may hereafter be located; and shall also include all state- owned nontrust accreted lands along the ocean, provided, that no such conservation area shall include any lands within the established boundaries of any Indian reservation. RCW 79A.05.605.

**Shall** – A mandate; the action must be done.

**Shorelands or Shoreland Areas** – Those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the OHWM; adopted FEMA floodways contiguous flood plain areas landward 200 feet from such adopted FEMA floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters, which are subject to the provisions of the SMA.

**Shoreline Administrator** – As appointed by the Mayor, the city's Shoreline Administrator is charged with the responsibility of administering the SMP.

**Shoreline Buffer/Shoreline Vegetation Buffer** – A required vegetated open space, measured horizontally upland from and perpendicular to the OHWM. Shoreline buffers are vegetated



areas that protect the ecological functions of the shoreline and help to reduce the impacts of land uses on the water body.

**Shoreline Environment Designations** – The categories of shorelines established by the city’s SMP in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. See WAC 173-26-211.

**Shoreline Jurisdiction** – The term describing all of the geographic areas covered by the SMA, related rules, the applicable SMP, and such areas within the city that are under the SMA. See definitions of Shorelines, shorelines of the state, shorelines of statewide significance, Shorelands, and Wetlands.

**Shoreline Management Act (SMA)** – Chapter 90.58 RCW, as amended. The SMA was passed by the Legislature in 1971 and adopted by the public in a 1972 referendum. The goal of the SMA is to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.

**Shoreline Master Program (SMP)** – The comprehensive use plan and related use regulations, together with maps, diagrams, charts, or other descriptive material and text, which is used by the city to administer and enforce the permit system for shoreline management. The SMP must be developed in accordance with the policies of the SMA, be approved and adopted by the state, and be consistent with the WACs adopted by Ecology.

**Shoreline Master Program (SMP) Guidelines** – The state standards that the city must follow in drafting its SMP. The Guidelines translate the broad policies of the SMA into standards for regulation of shoreline uses.

**Shoreline Modification** – Those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, application of chemicals, or significant vegetation removal.

**Shoreline Permit** – A shoreline substantial development permit, conditional use permit, variance, revision, or any combination thereof (WAC 173-27-030(13)).

**Shoreline Stabilization** – Actions taken to address erosion impacts to property and dwellings, businesses, buildings, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural measures such as bulkheads and non-structural methods such as structural setbacks. New stabilization measures include enlargement of existing structures.

**Shoreline Structural Setback** – A required structural setback, specified in the SMP, measured horizontally from the landward edge of the shoreline vegetation buffer. A shoreline structural

setback protects the waterbody and shoreline buffer from the impacts related to use of a structure.

**Shoreline Vegetation Buffer** – See the definition for Shoreline Buffer/ Shoreline Vegetation Buffer

**Shorelines** – All of the water areas of the state, including reservoirs and their associated uplands, together with the lands underlying them, except those areas excluded under RCW 90.58.030(2)(d).

**Shorelines Hearings Board** – A state-level quasi-judicial body, created by the SMA, which hears appeals on the granting, denying, or rescinding of a shoreline permit, enforcement penalty and approval of SMPs in jurisdictions not fully planning under the Washington State Growth Management Act. See RCW 90.58.170 and RCW 90.58.180.

**Shorelines of Statewide Significance** – A select category of shorelines of the state, defined in RCW 90.58.030(2)(e), where use preferences apply and where greater planning authority is granted by the SMA. Permit review must acknowledge the use priorities for these areas established by the SMA. See RCW 90.58.020.

**Shorelines of the State** – The total of shorelines and shorelines of statewide significance.

**Should** – The particular action is required unless there is a demonstrated, compelling reason, based on policy of the SMA and the SMP, against taking the action.

**Sign** – A device, structure, fixture, or placard that uses words, letters, numbers, symbols, graphic designs, logos, or trademarks for the purpose of: a) providing information or directions or b) identifying or advertising a place, establishment, product, good, or service.

**Significant Vegetation Removal** – The removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to 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.

**Significantly Degrade** – To cause significant ecological impact.

**Single-Family Residence** – A detached dwelling designed for and occupied by one family including those buildings, structures and developments within a contiguous ownership which are a normal appurtenance (WAC 173-27-040(2)(g)).

**Soil Survey** – The most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

**Solid Waste** – All garbage, rubbish trash, refuse, debris, scrap, waste materials and discarded materials of all types whatsoever, whether the sources be residential or commercial, exclusive of hazardous wastes, and including all source-separated recyclable materials and yard waste.

**Species** – Any group of animals or plants classified as a species or subspecies as commonly accepted by the scientific community.

**Species, Endangered** – Any wildlife species native to the state that is seriously threatened with extinction throughout all or a significant portion of its range within the state (WAC 232-12-297, Section 2.4).

**Species of Local Importance** – Those species of local concern designated by the city due to their population status or their sensitivity to habitat manipulation.

**Species, Priority** – Any fish or wildlife species requiring protective measures and/or management guidelines to ensure its persistence at genetically viable population levels as classified by the Washington Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate, and monitor species, and those of recreational, commercial, or tribal importance.

**Species, Threatened** – Any wildlife species native to the state that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.5).

**Species, Sensitive** – Any wildlife species native to the state that is vulnerable or declining and is likely to become endangered or threatened throughout a significant portion of its range within the state without cooperative management or removal of threats (WAC 232-12-297, Section 2.6).

**State** – State of Washington

**Stream** – A naturally occurring body of periodic or continuously flowing water where: a) the mean annual flow is greater than 20 cubic feet per second and b) the water is contained within a channel (WAC 173-22-030(8)).

**Strict Construction** – The close or narrow reading and interpretation of a statute or written document.

**Structural Setback** – See definition for Shoreline Structural Setback.

**Structural Shoreline Stabilization** – Hard structural stabilization measures refer to those with solid, hard surfaces, such as concrete groins, retaining walls, and bulkheads, while soft structural stabilization measures rely on less rigid materials, such as biotechnical vegetation measures or beach enhancement. There is a range of measures varying from soft to hard that

include vegetation enhancement, upland drainage control, biotechnical measures, beach enhancement, anchor trees, gravel placement, rock revetments, gabions, concrete groins, retaining walls, and bluff walls, and bulkheads. Generally, the harder the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions.

**Structure** – A permanent or temporary edifice or building, or a piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above or below the surface of the ground or water, except for vessels (WAC 173-27-030(15)).

**Substantial Development** – A development of which the total cost or fair market value exceeds \$7,047.00, or any development, which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this definition must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. Consumer price index means, for a calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The Office of Financial Management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect (RCW 90.58.030(3)(e)). A list of developments, uses, and activities that shall not be considered substantial development is provided in SMP Chapter 7: Shoreline Administration (WAC 173-27-040(2)(a)).

## T – U

**Unavoidable Impacts** – Adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

**Upland** – Generally described as the dry land area above and landward of the OHWM.

**Utilities** – Services and facilities that produce, transmit, store, process, or dispose of electric power, gas, water, stormwater, sewage, and communications.

**Utilities, Accessory** – Utilities comprised of small-scale distribution and collection facilities connected directly to development within the shoreline area. Examples include local power, telephone, cable, gas, water, sewer, and stormwater service lines.

**Utilities, Primary** – Utilities comprised of trunk lines or mains that serve neighborhoods, areas, and the city. Examples include solid waste handling and disposal sites, water transmission lines, sewage treatment facilities and mains, power generating or transmission facilities, gas storage and transmission facilities and stormwater mains and regional facilities.

## V – W – Y – Z

**Variance** – A means to grant relief from the specific bulk, dimensional or performance standards specified in the SMP, but not a means to vary a shoreline use. Shoreline variances must be specifically approved, approved with conditions, or denied by Ecology (See WAC 173-27-170).

**Water-Dependent Use** – A use or a portion of a use, which cannot exist in any other location and is dependent on the water due to the intrinsic nature of its operations. Examples of water-dependent uses may include moorage structures (including those associated with residential properties), ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities and sewer outfalls.

**Water-Enjoyment Use** – A recreational use or other use that facilitates public access to the shoreline as a primary characteristic 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 characteristic of the use and which through location, design, and operation ensures 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 public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

**Water-Oriented Use** – Any combination of water-dependent, water-related, or water enjoyment uses that serves as an all-encompassing definition for priority uses under the SMA.

**Water-Related Use** – A use or a portion of a use, which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- A. Of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water or,
- B. The use provides a necessary service supportive of the water-dependent commercial activities and the proximity of the use to its customers makes its services less expensive or more convenient. Examples include manufacturers of ship parts large enough that transportation becomes a significant factor in the products cost, professional services serving primarily water-dependent uses and storage of water-transported foods. Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker and log storage.

**Water Quality** – The physical characteristics of water within the shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in the SMP, the term water quantity refers only to development and uses regulated under the SMP and affecting water quantity, such as impermeable surfaces and stormwater handling practices. Water quantity, for purposes of the SMP, does not mean the withdrawal of ground water or diversion of surface water in accordance with RCW 90.03.250 through RCW 90.03.340.

**Watershed Restoration Plan** – A plan developed or sponsored by the WDFW, Ecology, or the Department of Transportation acting within or in accordance with its authority, a city, a county or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted in accordance with SEPA.

**Weir** – A low dam built across a stream to raise its level, divert its flow, or measure its flow. Weirs have been used to address erosion and scouring of stream channels, but can also have negative impacts depending on how they are constructed, such as detrimental effects on fish habitat conditions.

**Wetland or Wetland Areas** – Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do 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 from non-wetland sites, including, but not limited to: irrigation and drainage ditches, grass-lined 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.

**Wetland Mitigation Bank** – A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for providing advance mitigation to compensate for future, permitted impacts to similar resources.

**Wetland Mosaic** – An area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50 percent of the total area of the entire mosaic, including uplands and open water.

# APPENDIX 1: SHORELINE ENVIRONMENT DESIGNATION MAP

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# **APPENDIX 2: CRITICAL AREAS REGULATIONS**

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