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Amended pursuant to Resolution 2022-027
and incorporating ECY's Required
Amendments

Exhibit D: Proposed Amendments to WCC Title 23

Shoreline Management
Program Periodic Update
2020

Whatcom County Planning and Development
Services

**Amended pursuant to Resolution 2022-027 and incorporating ECY's
Required Amendments**

SMP Update – Title 23 Amendments

August 30, 2024

Title 23 – Shoreline Management Program

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Chapter 23.10-05 ~~Purpose and Intent~~ General Provisions

~~23.1005.010~~ Authority.

Authority for enactment and administration of this program is the Shoreline Management Act of 1971, Chapter 90.58 RCW, also referred to herein as "the Act," and the Washington Administrative Code 173-27 and 173-26.

~~23.1005.020~~ Purpose and Intent.

As provided in the Whatcom County Comprehensive Plan, Chapter 11 (Shorelines), Whatcom County's shorelines provide valuable habitat for fish and wildlife, economic diversity, and recreational opportunities used by residents of all ages. Shorelines play an important role in enhancing the quality of life for our county's citizens. Therefore, the purpose of the master program is to guide the future development of the County's shorelines in a manner consistent with the Shoreline Management Act of 1971 (hereinafter referred to as the "Act"). The Act and this program, in conjunction with other County land use regulations, comprise the basic state and County law regulating use of shorelines in the county.

The purposes of this program are:

- A. To promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of Whatcom County shorelines; and
- B. To manage shorelines in a positive, effective, and equitable manner; and
- C. To further assume and carry out the responsibilities established by the Act for Whatcom County, and to adopt and foster the following policy contained in RCW 90.58.020 for shorelines of the state:
- D. It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...

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

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1 the shorelines of the State and other development that will provide an opportunity for substantial
2 numbers of the people to enjoy the shorelines of the State...

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

Commented [CES1]: Moved to CompPlan.

23.10.030 Governing principles

6 The following principles along with the policy statements of RCW 90.58.020 establish basic concepts
7 that underpin the goals, policies and regulations of this program:

Commented [MD2]: Moved to CompPlan.

8 A. Any inconsistencies between this program and the Act must be resolved in accordance with the Act.

9 B. The policies of this program may be achieved by diverse means, one of which is regulation. Other
10 means, authorized by the Act, include but are not limited to: acquisition of lands and/or easements
11 by purchase or gift, incentive programs, and implementation of capital facility and/or nonstructural
12 programs.

13 C. Protecting the shoreline environment is an essential statewide policy goal, consistent with other
14 policy goals. Permitted and/or exempt development, actions taken prior to the Act's adoption,
15 and/or unregulated activities can impair shoreline ecological processes and functions. This program
16 protects shoreline ecology from such impairments in the following ways:

17 1. By using a process that identifies, inventories, and ensures meaningful understanding of current
18 and potential ecological functions provided by shorelines.

19 2. By including policies and regulations that require mitigation of significant adverse impacts in a
20 manner that ensures no net loss of shoreline ecological functions. The required mitigation shall
21 include avoidance, minimization, and compensation of impacts in accordance with the policies
22 and regulations for mitigation sequencing in WCC 23.90.030 and the Whatcom County critical
23 areas ordinance (Chapter 16.16 WCC). This program and any future amendment hereto shall
24 ensure no net loss of shoreline ecological functions and processes on a programmatic basis in
25 accordance with the baseline functions present as of the date of adoption of this program,
26 February 27, 2007.

27 3. By including policies and regulations to address cumulative impacts, including ensuring that the
28 cumulative effect of exempt development will not cause a net loss of shoreline ecological
29 functions, and by fairly allocating the burden of addressing such impacts among development
30 opportunities.

31 4. By including regulations and regulatory incentives designed to protect shoreline ecological
32 functions, and restore impaired ecological functions where such opportunities have been
33 identified, consistent with the Shoreline Management Program Restoration Plan developed by
34 Whatcom County.

35 D. Regulation of private property to implement program goals such as public access and protection of
36 ecological functions and processes must be consistent with all relevant constitutional and other
37 legal limitations. These include, but are not limited to, civil rights guaranteed by the U.S. and state
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1 ~~Constitutions, recent federal and state case law, and state statutes, such as RCW 34.05.328 and~~
2 ~~43.21C.060 and Chapter 82.02 RCW.~~

3 ~~E. Regulatory or administrative actions contained herein must be implemented consistent with the~~
4 ~~public trust doctrine and other applicable legal principles as appropriate and must not~~
5 ~~unconstitutionally infringe on private property rights or result in an unconstitutional taking of~~
6 ~~private property.~~

7 ~~F. The regulatory provisions of this program are limited to shorelines of the state, whereas the~~
8 ~~planning functions of this program may extend beyond the designated shoreline boundaries.~~

9 ~~G. The policies and regulations established by the program must be integrated and coordinated with~~
10 ~~those policies and rules of the Whatcom County Comprehensive Plan and development regulations~~
11 ~~adopted under the Growth Management Act (GMA) and RCW 34.05.328.~~

12 ~~H. Consistent with the policy and use preferences of RCW 90.58.020, Whatcom County should balance~~
13 ~~the various policy goals of this program giving consideration to other relevant local, state, and~~
14 ~~federal regulatory and non-regulatory programs.~~

15 **23.10.04005.030 Title.**

16 This title, taken together with Chapter 11 (Shorelines) of the Whatcom County Comprehensive Plan,
17 shall be known and may be cited as "The Whatcom County Shoreline Management Program." Herein,
18 this title together with Chapter 11 of the Comprehensive Plan may be referred to as the "SMP" or the
19 "program."

20 **23.10.050 Short title.**

21 This title may be referred to herein as the "SMP," or the "program."

22 **23.10.06005.040 Relationship to the Comprehensive Plan and other Federal, State, and County Codes** 23 **and Regulations**~~References to plans, regulations or information sources.~~

24 A. Consistent with RCW 36.70A.480, the goals and policies of this program approved under Chapter
25 90.58 RCW are included as Chapter 11 (Shorelines) of the County's Comprehensive Plan. All
26 regulatory elements of this program shall be considered a part of the County's development
27 regulations.

28 B. Uses, developments, and activities regulated by this program may be independently subject to the
29 Whatcom County Comprehensive Plan, the Whatcom County Code (WCC), the Washington State
30 Environmental Policy Act, and various other federal, state, and county laws.

31 C. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse
32 the applicant/proponent from complying with any other local, tribal, state, regional, or federal
33 statutes or regulations applicable to such development or use. The responsibility for determining
34 applicable statutes and regulations and complying with the same rests with the applicant/proponent
35 or responsible person carrying out the use or development in question. The applicant must comply
36 with all applicable laws prior to commencing any uses, development, or activity.

37 D. Should a conflict occur between the provisions of this program or between this program and the
38 laws, regulations, codes, or rules promulgated by Whatcom County or any other authority having

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jurisdiction within Whatcom County, the more restrictive requirements shall apply, except when
constrained by federal or state law, or where specifically provided otherwise in this program.

E. Relationship to other County regulations.

1. Incorporation of the Whatcom County critical areas regulations, WCC Chapter 16.16, is
addressed in WCC 23.05.050 (Critical Areas).

2. The permitting procedures necessary for implementing this program are found in WCC Chapter
22 (Land Use and Development).

a. In the case of development subject to the shoreline permit requirement of this program, the
County Building Official shall not issue a building permit for such development until a
shoreline permit has been granted; provided, that any permit issued by the Building Official
for such development shall be subject to the same terms and conditions that apply to the
shoreline permit. All shoreline permits shall be obtained prior to issuance of a building permit
provided, that any permit issued by the Building Official for such development shall be
subject to the same terms and conditions that apply to the shoreline permit.

b. In the case of development subject to regulations of this program but exempt from the
shoreline substantial development permit requirement, any required statement of
exemption shall be obtained prior to issuance of the building permit; provided, that for
single-family residences, review for compliance with this Title may be completed as part of a
building permit or non-shoreline permit.

c. reviewed and signed off by the administrator may substitute for a written statement of
exemption. A record of review documenting compliance with bulk and dimensional
standards as well as policies and regulations of this program shall be included in the permit
review. Conditions of approval for compliance with this Title shall be added to such permit.
The conditions of approval shall be enforced with the provisions of this Title- Section
23.10.060 (Violations, Enforcement, and Penalties). The Building Official shall attach and
enforce conditions to the building permit as required by applicable regulations of this
program pursuant to RCW 90.58.140(1).

d. In the case of zoning conditional use permits and/or variances, project permits are subject
to consolidated review pursuant to Chapter 22.05 (Land Use and Development). Required
by WCC Title 20 for development that is also within shorelines, the County designated
decision maker for such permits shall document compliance with bulk and dimensional
standards as well as the policies and regulations of this program in consideration of
recommendations from the administrator. The decision maker and shall attach conditions to
such permits and variances approvals as required to make such development consistent with
this program.

4. In the case of land divisions, such as short subdivisions, long plats, and planned unit
developments that require County approval, the decision maker shall document compliance
with bulk and dimensional standards as well as policies and regulations of this program and
attach appropriate conditions and/or mitigating measures to such approvals to ensure the

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~~design, development activities and future use associated with such land division(s) are consistent with this program.~~

Commented [CES5]: Don't need; subsection (c) amended to include all permits, including land division.

~~5.3.~~ Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:

- a. Building, plumbing, mechanical, and fire codes.
- b. Boating and swimming, WCC Title 11.
- c. On-site sewage system regulations, WCC Chapter 24.05.
- d. Solid waste rules and regulations, WCC Chapter 24.06.
- e. Zoning, WCC Title 20.
- f. Land division regulations, WCC Title 21.
- g. Development standards.

~~F.~~ Relationship to other state, tribal, and federal regulations.

~~1.~~ Where this program makes reference to any RCW, WAC, or other state or federal law or regulation, the most recent amendment or current edition shall apply.

~~2.~~ This program shall be applied consistent with all federal, state, and local laws affecting tribal rights.

~~3.~~ The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged.

Commented [RCE6]: Moved from 23.60.080 (Notice of Application)

~~6.4.~~ Coastal Zone Management Act consistency reviews for sites within federal jurisdiction shall apply the shoreline environment designation criteria of Chapter 11 (Shorelines) of the Comprehensive Plan that most closely correspond to the project site in order to determine applicable program policies.

~~7.~~ Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional, or federal statutes or regulations applicable to such development or use.

~~8.~~ At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.

Commented [CES7]: Covered elsewhere.

~~9.~~ Stipulated Judgment No. 93-2-02447-6 between Governor's Point Development Company and Whatcom County, the state of Washington, and the Department of Ecology is incorporated by reference into Whatcom County's shoreline management program. A copy of the judgment is on file with the Whatcom County Planning and Development Services department.

Commented [CES8]: No longer needed as it no longer applies.

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23.1005.050 Critical Areas.

A. The Whatcom County critical areas ~~ordinance regulations~~ (CAO), WCC Chapter 16.16 (Ordinance No. ~~X2017-077~~, dated ~~XDecember 5, 2017~~), ~~is are~~ hereby adopted in whole as a part of this program, except that the provisions of WCC 16.16.270 (Reasonable Use Exceptions), 16.16.275 (Nonconforming Uses, Structures, and Lots), and 16.16.285 (Penalties and Enforcement) and as specifically excluded elsewhere within this Title shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), WCC Chapter 16.16, are for this specific version.

Commented [CES9]: To do: Will need to update this to the ordinance and date of the CAO we're amending as part of this update.

~~except that the permit, nonconforming use, appeal and enforcement provisions of the critical areas ordinance (WCC 16.16.270 through 16.16.285) shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), Chapter 16.16 WCC, are for this specific version.~~

Commented [DOE-Req10]: Required Change – Whatcom County is concurrently updating its CAO regulations along with this Shoreline Master Program (SMP) amendment. The final adopting ordinance is required in the provision once known.

The added language clarifies that this provision does not represent an exhaustive list of CAO provisions that do not apply within the context of the SMP. There are numerous other sections of the CAO that conflict with statutory and rule requirements related to shoreline permit processing such as 16.16.230 (Activities Allowed without Notification), 16.16.235 (Activities Allowed with Notification) and 16.16.275 (Variances). These sections contain language either requiring SMP review or excluding their applicability within shoreline jurisdiction.

B. The adopted provisions of WCC Chapter 16.16 (Critical Areas) shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or statement of exemption is required.

~~Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided, without full compliance with WCC Chapter 16.16 and this program.~~

23.1005.060 Program Effects on Property Values.

A. As provided for in RCW 90.58.290, the restrictions imposed upon use of real property through implementation of policies and regulations of the Act and this program shall be duly considered by the County Assessor and the County Board of Equalization in establishing the fair market value of such properties.

B. Designation of private property as a natural or conservancy shoreline ~~area~~ environment pursuant to WCC Chapter 23.230 (Shoreline Jurisdiction and Area Environment Designations) shall qualify the property as meeting the definition of "open space land" under the Open Space Taxation Act of 1970, as amended (RCW 84.34.020(1)) and shall qualify such land for application for open space taxation in accordance with RCW 84.34.037 and WCC Chapter 3.28 (Open Space Land Classification).

23.1005.070 Property Rights.

A. Regulation of private property to implement program goals, such as public access and protection of ecological functions and processes, must be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, the protections afforded by the federal and state constitutions, and federal, state, and local laws.

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

~~B-C.~~ This program does not alter existing law on access to or trespass on private property and does not give the general public any right to enter private property without the owner's permission.

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1 ~~C.D.~~ Consistent with Whatcom County's high standard of staff conduct, County staff shall observe all
2 applicable federal, ~~and state, and County~~ laws regarding entry onto privately owned property.

3 ~~23.10.070 Liberal construction.~~

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

Commented [CES11]: Moved to 23.10.040 Code Interpretation

7 ~~23.1005.080~~ Severability.

8 The Act and this program adopted pursuant thereto, in conjunction with other applicable County land
9 use regulations, comprise the basic state and County law regulating use of shorelines in the county. In
10 the event provisions of this program conflict with other applicable County policies or regulations, the
11 more restrictive shall prevail. Should any section or provision of this program be declared invalid, such
12 decision shall not affect the validity of this program as a whole.

13 ~~23.1005.090~~ Effective Date.

14 This program and all amendments thereto shall become effective 14 days from immediately upon final
15 approval and adoption by the Department of Ecology's written notice of final action.

Commented [AP12]: Updated per Periodic Review Checklist, Item 2010.a, and Scoping Document, Item #1g.

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~~Chapter 23.20 Goals and Objectives~~

Commented [MD13]: All content in Chapter 23.20 moved to CompPlan.

~~23.20.005 Generally.~~

~~This chapter describes overall program goals and objectives. The general policies and regulations in Chapter 23.90 WCC and the specific use policies and regulations in Chapter 23.10 WCC are the means by which these goals and objectives are implemented.~~

~~23.20.010 Adoption.~~

~~In addition to the policy adopted in WCC 23.10.020(C), the following goals and objectives relating to the program elements specified in RCW 90.58.100(2) are hereby adopted. They provide the comprehensive foundation and framework upon which the shoreline area designations, policies, regulations, and administrative procedures are based.~~

~~23.20.020 Economic development.~~

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

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

~~B.—Objectives.~~

- ~~1.—Encourage economic development that has minimal adverse effects and mitigates unavoidable impacts upon shoreline ecological functions and processes and the built environment.~~
- ~~2.—Encourage shoreline development that has a positive effect upon economic and social activities of value to the region.~~
- ~~3.—Encourage new water dependent, water related, and water enjoyment economic development in priority order.~~
- ~~4.—Encourage economic development that is consistent with the adopted Comprehensive Economic Development Strategy (CEDS) for Whatcom County.~~
- ~~5.—Implement economic development policies contained in the Whatcom County Comprehensive Plan in shoreline areas consistent with this program and the Act.~~
- ~~6.—Encourage new economic development to locate in areas that are already developed with similar uses.~~
- ~~7.—Discourage expansion of existing development that is incompatible with this program, the character of the local area, or the Whatcom County Comprehensive Plan.~~

~~23.20.030 Public access.~~

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

~~A.—Goal. To increase the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and/or to view the water and the shoreline from adjacent locations; provided, that private rights, the public safety, and shoreline ecological functions and~~

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~~processes are protected consistent with the U.S. and state Constitutions, state case law, and state statutes.~~

~~B. Objectives.~~

- ~~1. Locate, design, manage and maintain public access in a manner that protects shoreline ecological functions and processes and the public health and safety.~~
- ~~2. Design and manage public access in a manner that ensures compatibility with water dependent uses.~~
- ~~3. Where appropriate, acquire access to publicly owned tidelands and shorelands. Encourage cooperation among the county, landowners, developers, other agencies and organizations to enhance and increase public access to shorelines as specific opportunities arise.~~
- ~~4. Provide and protect visual access to shorelines and tidelands.~~
- ~~5. Require physical or visual access to shorelines as a condition of approval for shoreline development activities commensurate with the impacts of such development and the corresponding benefit to the public, and consistent with constitutional limitations.~~
- ~~6. Develop and manage public access to prevent adverse impacts to adjacent private shoreline properties and developments.~~

23.20.040 Recreation.

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

~~A. Goal. To provide opportunities and space for diverse forms of water oriented recreation.~~

~~B. Objectives.~~

- ~~1. Locate, develop, manage, and maintain recreation areas in a manner that protects shoreline ecological functions and processes.~~
- ~~2. Provide a balanced choice of water oriented public recreational opportunities regionally. Ensure that shoreline recreation facilities serve projected county growth in accordance with the level of service standards established in the Whatcom County Comprehensive Plan and related goals and policies; the Comprehensive Park and Recreation Open Space Plan; the Whatcom County Bicycle Plan; and the Natural Heritage Plan.~~
- ~~3. Acquire additional recreation areas and public access areas with a high recreation value prior to demand to assure that sufficient shoreline recreation opportunities are available to serve future recreational needs.~~
- ~~4. Encourage cooperation among public agencies, nonprofit groups, and private landowners and developers to increase and diversify recreational opportunities through a variety of means including incorporating water oriented recreational opportunities into mixed use developments and other innovative techniques.~~
- ~~5. Recognize and protect the interest of all people of the state by providing increased recreational opportunities within shorelines of statewide significance and associated shorelands.~~

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~~6. Encourage private and public investment in recreation facilities.~~

~~7. Locate, design, and operate recreational development in a manner that minimizes adverse effects on adjacent properties as well as other social, recreational, or economic activities.~~

~~23.20.050 Transportation and essential public facilities.~~

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

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

~~B. Objectives.~~

~~1. Locate, develop, manage, and maintain transportation systems and essential public facilities in a manner that protects shoreline ecological functions and processes. Minimize and mitigate unavoidable impacts.~~

~~2. Locate and design transportation systems and essential public facilities to be harmonious with the existing and future economic and social needs of the community.~~

~~3. Discourage the development of non-water dependent transportation systems and essential public facilities unless no feasible alternatives exist. Devote roads within the shoreline jurisdiction to low volume local access routes and shoreline public access where feasible.~~

~~4. When appropriate, require adequate compensation where transportation systems and essential public facilities reduce the benefits people derive from their property.~~

~~5. Provide for alternate modes of travel, encourage freedom of choice among travel modes, and provide multiple-use transportation corridors where compatible in association with shoreline transportation development.~~

~~6. Require transportation system and essential public facility development in shoreline areas to protect and enhance physical and visual shoreline public access.~~

~~23.20.060 Shoreline use.~~

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

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

~~B. Objectives.~~

~~1. Give preference to water dependent and single-family residential uses that are consistent with preservation of shoreline ecological functions and processes. Give secondary preference to water-related and water-enjoyment uses. Allow non-water-oriented uses only when substantial public benefit is provided with respect to the goals of the Act for public access and ecological restoration.~~

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

23.20.070 Conservation.

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

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

B. Objectives.

1. Develop regulations and mitigation standards that ensure new shoreline developments prevent a net loss of shoreline ecological functions and processes. Implement such regulations and standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.
2. Protect critical areas in accordance with the policies and regulations in Chapter 16.16 WCC.
3. Manage renewable natural resources on a sustained yield basis. Extract nonrenewable natural resources in a manner that maintains the quality of other resources and shoreline ecological functions and processes.
4. Prioritize protection and/or conservation of shoreline areas that are ecologically intact and minimally developed or degraded.

23.20.080 Archaeological, historical and cultural resources.

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

A. Goal. Protect shoreline features of historic, cultural, archeological, or scientific value or significance to prevent damage or destruction through coordination and consultation with the appropriate local, state and federal authorities, including affected Indian tribes.

B. Objectives.

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1. ~~Protect sites in collaboration with appropriate tribal, state, federal and local governments.~~
2. ~~Encourage public agencies and private parties to cooperate in the identification, protection and~~
3. ~~management of cultural resources.~~
2. ~~Where appropriate, make access to such sites available to parties of interest; provided, that~~
5. ~~access to such sites must be designed and managed in a manner that gives maximum protection~~
6. ~~to the resource.~~
3. ~~Provide opportunities for education related to archaeological, historical and cultural features~~
8. ~~where appropriate and incorporated into public and private programs and development.~~

~~23.20.090 Views and aesthetics.~~

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

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

~~B. Objectives.~~

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

~~23.20.100 Restoration and enhancement.~~

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

~~A. Goal. To reestablish, rehabilitate and/or otherwise improve impaired shoreline ecological functions
and/or processes through voluntary and incentive-based public and private programs and actions
that are consistent with the Shoreline Management Program Restoration Plan (County Resolution
2007-011) and other approved restoration plans.~~

~~B. Objectives.~~

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

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- 1 ~~Protection District Plans, WRIA 1 Watershed Management Plan, Whatcom County~~
- 2 ~~Comprehensive Plan, and the Puget Sound Salmon Recovery Draft Plan.~~

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Chapter 23.05-10 Administrative Procedures Provisions

23.10.010 Authorization.

RCW 90.58.140(3) requires local governments to establish a program, consistent with the rules adopted by Ecology, for the administration and enforcement of shoreline development. ~~Also, in accordance with RCW 90.58.050, which provides that~~ This program is intended to establish a cooperative program between Whatcom County and the state. Whatcom County shall have the primary responsibility for administering the regulatory program, and Ecology shall act primarily in a supportive and review capacity, in accordance with RCW 90.58.050.

23.10.100-020 Application to persons and development Applicability.

A. ~~Unless specifically exempted by statute, or as excluded below,~~ this program shall apply to any person, as defined in WCC Chapter 23.110. ~~This program shall apply to any proposed development, use, or activity development as defined in WCC Chapter 23.110. All development and use of shorelines of the state shall be carried out in a manner that is consistent with this program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required for such development pursuant to Chapter 23.60 WCC, occurring within shoreline jurisdiction. Such development, use, or activity must conform to chapter 90.58 RCW, the Shoreline Management Act, and this master program whether or not a permit is required.~~

B. ~~Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided, without full compliance with this program, including WCC Chapter 16.16 (Critical Areas).~~

~~B-C.~~ No substantial development as defined in WCC Chapter 23.110 shall be undertaken within shorelines by any person ~~on shorelines~~ without first obtaining a substantial development permit from Whatcom County; provided, that such a permit shall not be required for the exempt activities listed in WCC 22.07.020 (Exemptions from Shoreline Substantial Development Permits) ~~23.60.022.~~

D. ~~All developments, uses and development activities on shorelines shall be subject to the policies of the Whatcom County Comprehensive Plan Chapter 11 (Shorelines) and regulations of this program in addition to any other applicable regulations of the Whatcom County Code, provided, that all use and development that is to be located within the Cherry Point Management Area, as defined in Chapter 23.90 WCC, shall be subject to the regulations found in WCC 23.40.210 only, and shall not be subject to the regulations found in this chapter and Chapter 23.40 WCC unless otherwise specified.~~

E. Application within Federal Reserves or Lands.

1. Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of RCW Chapter 90.58 (SMA).
2. As recognized by RCW 90.58.350, nothing in this program shall affect any rights established by treaty to which the United States is a party.
3. The Act and this program, including the permit system, shall apply to all nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal

Commented [AP14]: Moved sections 23.10.100 – 150 here from 23.50.

Commented [DN15]: This text is required per WAC 173-26-191(2)(a)(iii)(A).

Commented [CES16]: Covered by 23.40.115 (CPMA)

Commented [AP17]: Moved from 23.30.010 – General Regulations

Commented [AP18]: Updated per Periodic Review Checklist, Item 2017.f, and Scoping Document, Item #2c.

Commented [CES19]: From WAC 90.58.350.

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- ownership, lease, or agreement, even though such lands may fall within the external boundaries of a federal ownership.
- F. Direct federal agency activities affecting the uses or resources subject to the Act must be consistent to the maximum extent practicable with the enforceable provisions of the Act and with this master program as required by WAC 173-27-060.
- G. This master program shall apply to all unincorporated urban lands until such time as a city meets the requirements of WAC 173-26-150 or 173-26-160 for pre-designation of urban growth areas (UGAs) or amends its master program as appropriate.
- H. This program shall not apply to:
1. Activities undertaken to comply with a United States Environmental Protection Agency Superfund-related order, or a Washington Department of Ecology order pursuant to the Model Toxics Control Act (such as the Swift Creek Sediment Management Action Plan), or a Department of Homeland Security order that specifically preempts local regulations in the findings of the order.
 2. Pursuant to RCW 90.58.045 regarding environmental excellence program agreements, notwithstanding any other provision of law, any legal requirement under the Shoreline Management Act, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.
 3. The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under chapter 90.58 RCW.
- I. Pursuant to RCW 90.58.140(12), a permit is not required in order to dispose of dredged materials at a disposal site approved through the cooperative planning process referenced in RCW 79.105.500, provided the dredged material disposal proponent obtains a valid site use authorization from the Dredged Material Management Program office within the Department of Natural Resources.
- 23.10.180-030 AdministrationAdministrative Duties.**
- A. The Director is hereby ~~vested with the authorized~~ authorized to:
1. Administer this program.
 2. Determine if a public hearing should be held on a shoreline permit application by the Hearing Examiner pursuant to WCC Title 22 (Land Use and Development) ~~23.60.130~~.
 3. Grant or deny statements of exemption.
 4. Authorize, approve, or deny shoreline substantial development permits, except for those for which the Hearing Examiner or County Council is the designated decision maker.
 5. Enforce the code pursuant to WCC 23.10.060 (Violations, Enforcement, and Penalties), including issuing a stop work orders pursuant to the procedure set forth in WAC 173-27-270 and this program, upon a person undertaking an activity on shorelines in violation of Chapter 90.58 RCW or this program; and seek remedies for alleged violations of this program's regulations, or of the provisions of the Act, or of conditions of approval for attached to a all project permits with

Commented [CES20]: Added per Periodic Review Checklist, Item 2017.c, and Scoping Document, Item #1c: Update to fully cover the exceptions in WAC 173-27-044 and -045 to satisfy required legislative amendment.

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- 1 ~~shoreline permit~~ conditions of approval for consistency with this program issued by Whatcom
2 County.
- 3 6. Decide whether or not a proposal is subject to the consolidated review process of Chapter WCC
4 22.05 (Land Use and Development) and determine what other permits are required to be
5 included in the consolidated review.
- 6 7. Make field inspections as needed, and prepare or require reports on a shoreline permit ~~or~~
7 statement of exemption applications.
- 8 8. Make written recommendations to the County Council or Hearing Examiner as appropriate and,
9 insofar as possible, assure that all relevant information, testimony, and questions regarding a
10 specific matter are made available during their respective reviews of such matter.
- 11 9. Propose amendments to the Planning Commission deemed necessary to more effectively or
12 equitably achieve the purposes and goals of this program.
- 13 10. Advise interested persons and prospective applicants/proponents as to the administrative
14 procedures and related components of this program.
- 15 11. Collect fees as provided for in WCC Title 22 (Land Use and Development) 23.60.070; and
16 12. Assure that proper notice is given to interested persons and the public ~~through news media,~~
17 ~~posting, or mailing of notices~~ as required by Title 22 (Land Use and Development).
- 18 13. Review administrative and management policies, regulations, plans, and ordinances relative to
19 lands under County jurisdiction that are adjacent to shorelines so as to achieve a use policy on
20 such lands that is consistent with the Act and this program.
- 21 14. Review and evaluate the records of project review actions in shoreline environments and report
22 on the cumulative effects of authorized development of shoreline conditions. The Director shall
23 coordinate such review with the Washington Department of Ecology, the Washington
24 Department of Fish and Wildlife, the Lummi Nation and Nooksack Tribe, and other interested
25 parties.
- 26 ~~15. Make recommendations to the Planning Commission for open space tax designations pursuant~~
27 ~~to Chapter 84.34 RCW.~~
- 28 ~~16.~~ 15. Develop administrative guidance materials related to the interpretations of principles
29 and terms in this program as required to provide for consistent and equitable implementation of
30 this program. Such administrative guidance documents shall be ~~developed in consultation with~~
31 ~~the provided to~~ Washington State Department of Ecology ~~to ensure that any formal written~~
32 ~~interpretations are consistent with the purpose and intent of Chapter 90.58 RCW, the applicable~~
33 ~~guidelines, and the goals and objectives of this program.~~
- 34 B. The Whatcom County Planning Commission is hereby vested with the responsibility to periodically
35 review the program as a major element of the County's planning and regulatory program, and make
36 recommendations for amendments thereof to the County Council.
- 37 C. The Whatcom County Council is hereby vested with authority to:
- 38 1. Initiate an amendment to this program according to the procedures prescribed in WAC 173-26-
39 100.

Commented [PDS21]: Not relevant to SMP

Commented [CES22]: Moved from 23.70.040

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2. Adopt all amendments to this program, after consideration of the recommendation of the Planning Commission and pursuant to the procedural requirements of WCC Chapter 2.02; provided, that substantive amendments shall become effective 14 days from immediately upon adoption by the Department of Ecology's written notice of final action.
3. Make final County decisions or recommendations, as applicable, with regard to shoreline permit, shoreline variance, or shoreline conditional use applications that require County Council action on a consolidated review as provided by WCC Chapter 22.05.

Commented [CES23]: Moved from 23.70.050

23.05.010 Authority.

As described in adopted Whatcom County Ordinance 2008-034, the general administrative sections of Title 23 (Whatcom County Shoreline Management Program) are not part of this program. They are, however, included with the text of this title for consistency and ease of use. Department of Ecology will be notified of any changes to the administrative chapters listed below.

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

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

23.05.020 Purpose.

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

23.05.030 Administrative procedures.

A. All applications for project permits covered by this title shall be reviewed and processed in accordance with Chapter 22.05 WCC, except as otherwise stated within this title.

B. The following administrative sections and chapters were adopted by the Whatcom County Administrative Procedures Ordinance 2008-034, and are separate from this title:

- WCC 23.60.050 — Minimum application requirements.
- WCC 23.60.060 — Pre-application conference.
- WCC 23.60.070 — Fees.
- WCC 23.60.080 — Notice of application.
- WCC 23.60.090 — Permit application review.
- WCC 23.60.100 — Consolidated permit review.

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~~WCC 23.60.110 State Environmental Policy Act (SEPA) compliance.~~

~~WCC 23.60.130 Public hearings.~~

~~WCC 23.60.140 Permit conditions.~~

~~WCC 23.60.150 Notice of decision, reconsideration and appeal.~~

~~WCC 23.60.160 Initiation of development.~~

~~WCC 23.60.180 Rescission and modification.~~

~~WCC 23.60.190 Expiration.~~

~~Chapter 23.70 WCC Administration.~~

~~Chapter 23.80 WCC Legal Provisions.~~

23.10.110 Relationship to other local regulations.

A. In the case of development subject to the shoreline permit requirement of this program, the county building official shall not issue a building permit for such development until a shoreline permit has been granted; provided, that any permit issued by the building official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.

B. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided, that for single family residences, a building permit reviewed and signed off by the administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review. The building official shall attach and enforce conditions to the building permit as required by applicable regulations of this program pursuant to RCW 90.58.140(1).

C. In the case of zoning conditional use permits and/or variances required by WCC Title 20 for development that is also within shorelines, the county decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program in consideration of recommendations from the administrator. The decision maker shall attach conditions to such permits and variances as required to make such development consistent with this program.

D. In the case of land divisions, such as short subdivisions, long plats and planned unit developments that require county approval, the decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this program.

E. Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:

1. Building, plumbing, mechanical, and fire codes.

2. Boating and swimming, WCC Title 11.

3. On-site sewage system regulations, Chapter 24.05 WCC.

4. Solid waste rules and regulations, Chapter 24.06 WCC.

Commented [AP24]: Moved to WCC 23.10.060.

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~~5. Zoning, WCC Title 20.~~

~~6. Land division regulations, WCC Title 21.~~

~~7. Development standards.~~

~~23.10.120 Relationship to other state and federal laws.~~

~~A. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional or federal statutes or regulations applicable to such development or use.~~

~~B. At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.~~

~~C. Washington State statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~

~~1. Flood Control Zone Act, Chapter 86.16 RCW.~~

~~2. Forest Practices Act, Chapter 76.09 RCW.~~

~~3. Fish and Wildlife, RCW Title 77.~~

~~4. Water Pollution Control Act, Chapter 90.48 RCW.~~

~~5. Land Subdivision Act, Chapter 58.17 RCW.~~

~~6. Surface Mining Act, Chapter 78.44 RCW.~~

~~7. Washington Clean Air Act, Chapter 70.94 RCW.~~

~~8. State Environmental Policy Act (SEPA), Chapter 43.21C RCW.~~

~~9. Camping Resorts Act, Chapter 19.105 RCW.~~

~~10. Water Resources Act of 1971, Chapter 90.54 RCW.~~

~~11. Growth Management Act, Chapter 36.70A RCW.~~

~~12. State Hydraulic Code, Chapter 77.55 RCW.~~

~~D. Regional authority regulations authorized by state law that may be applicable to shoreline development or use include, but are not limited to:~~

~~1. Northwest Clean Air Agency regulations.~~

~~2. Puget Sound Water Quality Management Plan.~~

~~E. Federal statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~

~~1. Rivers and Harbors Act of 1899.~~

~~2. Fish and Wildlife Coordination Act of 1958.~~

~~3. National Environmental Policy Act of 1969 (NEPA).~~

~~4. Coastal Zone Management Act of 1972, as amended.~~

~~5. Federal Water Pollution Control Act, as amended.~~

~~6. Flood Insurance Act of 1968, as amended.~~

Commented [AP25]: Moved to 23.10.060.

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~~7. Clean Air Act, as amended.~~

~~8. Endangered Species Act (ESA).~~

~~23.10.1310 Application within federal reserves.~~

~~A. As recognized by RCW 90.58.350, the provisions of this program shall not apply to lands held in trust by the United States for Indian nations, tribes or individuals.~~

Commented [CES26]: Moved to 23.10.020, Applicability

23.10.040 Code Interpretation.

A. The regulations of this Program shall be interpreted to allow the development, use, or activity as described in the General Regulations and/or Specific Use Regulations only when the proposal is designed, constructed, and/or mitigated to provide no net loss of or a net lift to ecological functions and ecosystem wide processes.

B. The policies of Chapter 11 (Shorelines) of the Comprehensive Plan shall guide interpretation of the regulations.

C. Conflict between the provisions of the this Program and the WACs implementing the Act must be resolved in accordance with the WACs; provided that conflict between the provisions of the WACs implementing the Act and the Act must be resolved in accordance with the Act.

D. In case of conflict between the provisions of this program and Whatcom County Code or the laws, regulations, codes, or rules promulgated by any other authority having jurisdiction within Whatcom County, the more restrictive requirements shall apply, except when constrained by federal or state law.

E. As provided for in RCW 90.58.900, the Act is exempt from the rule of strict construction, and this program, including these regulations, shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies of the Act for which this program was enacted and adopted, respectively.

F. Within shoreline jurisdiction, the regulations of WCC Chapter 16.16 adopted pursuant to 23.05.050 (Critical Areas) shall be liberally construed together with the program to give full effect to the objectives and purposes of the provisions of the program and Act.

23.10.050 Shoreline Permits Required.

A. To be authorized, all shoreline development, uses, or activities shall be done in a manner consistent with this program and the Shoreline Management Act as required by RCW 90.58.140(1), regardless of whether a shoreline permit, statement of exemption, shoreline variance, or shoreline conditional use permit is required.

B. The applicable provisions of WCC Title 22 (Land Use and Development) shall govern the processing of permits required under this Title. If any conflict should exist between Title 22 and this program, the provisions of this program shall prevail.

23.10.060 Violations, Enforcement, and Penalties.

A. The Director, when necessary in consultation with the Department of Ecology, is authorized to adopt such rules as are necessary and appropriate to carry out the provisions of the Shoreline Management Act (RCW 90.58.200) and Chapter 173-27 WAC, Part II. The Act calls for a cooperative

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program between local government and the state. It provides for a variety of means of enforcement, including civil and criminal penalties, orders to cease and desist, orders to take corrective action, and permit rescission.

B. In addition to the following provisions, this Title shall be enforced in accordance with WCC Chapter 20.94 (Enforcement and Penalties) and WAC 173-27-240 through 173-27-300 or their successors.

C. To achieve no net loss, if a development, use, or activity has occurred in violation of this program, prompt restoration or mitigation of any adverse impacts shall be provided. The standard mitigation ratio for the critical area or buffer impacts shall be doubled to address temporal loss when appropriate. If this provision is not complied with, the County may restore or mitigate the site and charge the responsible person for the full cost of such an activity. Additionally, any and all permits or approvals issued by the County may be denied for that property for a period of up to six years.

D. Any responsible party that willfully refuses to complete a required restoration plan pursuant to this section shall be guilty of a misdemeanor and, in addition to the requirement of subsection (C), shall provide shoreline restoration equal to double the square footage of the impacted area.

E. Pursuant to WCC 22.05.150 (Permit Revocation), the County may revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.

~~23.80.040~~ **23.10.070 Abatement.**

Structures or development on shorelines considered by the ~~administrator~~ Director to present a hazard or other public nuisance to persons, properties, or natural features may be abated by the County under the provisions of WCC Title 15 (Buildings & Construction) and WCC Chapter 22.15 (Code Enforcement) ~~the applicable provisions of the Uniform Code for the Abatement of Dangerous Buildings, 1997 Edition, or successor as adopted by Whatcom County,~~ or by other appropriate means.

23.10.080 Financial Sureties.

In approving any application or exemption for a shoreline development, the Director may require the posting of a financial surety to ensure continued compliance with any conditions imposed, including the construction of improvements, the adherence to County standards, and/or maintenance, repair or replacement of such improvements. The financial surety shall be in a form acceptable to the County's attorney. In the event a condition occurs warranting the use of financial surety, the Director may act under such financial surety or may perform the work required at the County's expense, which expense shall be a lien against the property, enforceable as would be a judgment thereon.

~~23.80.010~~ **23.10.090 Amendments.**

A. Amendments to the Shoreline Management Program—including both Comprehensive Plan policies and Title 23 regulations—shall be processed pursuant to WCC Chapter 22.10 (Legislative Action Procedures).

B. All regulatory elements of this Program shall be considered a part of the County's development regulations. Certain non-regulatory elements of this master program, including but not limited to the Shoreline Restoration Plan or administrative procedures (WCC Title 22), may be updated and amended at any time without requiring a formal master program amendment. Future changes to

Commented [CES27]: Added. Though we use financial sureties to ensure performance, there was no authorizing language in the SMP.

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WCC Title 22 shall remain consistent with the Shoreline Management Act and associated rules, specifically RCW 90.58.140, 90.58.143, 90.58.210, 90.58.220 and Chapter 173-27 WAC.

C. After approval or disapproval of a program amendment by the Department of Ecology as provided in RCW 90.58.090, the County shall publish a notice that the program amendment has been approved or disapproved by the Department of Ecology. For the purposes of RCW 36.70A.290, the date of publication for the amendment of a program is the date the County publishes notice that the program amendment has been approved or disapproved by the Department of Ecology.

A.D. The Director shall submit an annual report to the County Council reviewing the effectiveness of the program in achieving its stated purpose, goals, and objectives. Such report may also include any proposed amendments deemed necessary to increase its effectiveness or equity. If said report contains proposed amendments, the Council may schedule a public hearing to consider such matter in accordance with the procedure described in subsection (A). Said report shall also include a determination of whether or not the goal of no net loss of shoreline ecological function is being achieved and provide recommendations for achieving and maintaining the goal.

Commented [DOE-Req28]: Required Change – This change clarifies that while administrative provisions can be codified within a local ordinance separate from the SMP, such changes shall remain consistent with the Shoreline Management Act (SMA) and applicable rules (See SMP Guidelines at WAC 173-26-191(2)(a)(iii)(C)).

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Chapter 23.230 Shoreline Jurisdiction and ~~Area~~ Environment Designations

23.230.010 Shoreline Jurisdiction.

A. The provisions of this program shall apply to all shorelines of the state in unincorporated Whatcom County, including all shorelines of statewide significance (~~Appendix D of this title~~) and all shorelands as defined in WCC Chapter 23.110 and collectively referred to herein as "shorelines." For the purposes of this program, jurisdictional shorelines are divided into segments or reaches. Each segment is assigned one or more shoreline ~~environment~~ designations pursuant to this chapter in order to provide for the management of use and development within shorelines.

B. The shoreline master program jurisdiction applies to all shorelines of the state and their associated shorelands. This includes:

1. All marine waters;
2. Rivers and streams with more than twenty cubic feet per second (cfs) mean annual flow;
3. Lakes and reservoirs twenty acres and greater in area;
4. Floodways and ~~the entire 100-year contiguous floodplain areas landward two hundred feet from such floodways;~~
5. All associated wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of the Act;
6. Shorelands adjacent to these waterbodies, typically within two hundred feet of the ordinary high water mark (OHWM);
7. Buffers necessary to protect critical areas that are located within shoreline jurisdiction as described in this program;
8. Associated estuarine wetlands: the jurisdictional boundary shall extend two hundred feet landward of the OHWM of the wetland;
9. Associated ~~palustrine~~ wetlands that extend greater than two hundred feet landward of the OHWM of the shoreline: the jurisdictional boundary shall extend to the ~~delineated edge OHWM of the wetland;~~
10. Critical areas designated pursuant to Chapter 36.70A RCW and located within shoreline jurisdiction shall be subject to the regulations of this program.

23.20.020 ~~23.230.020~~ Official Shoreline Map.

A. As part of this program, there is one official Whatcom County shoreline environment designations map, which shall be in the custody of the Planning and Development Services Department and available for public inspection during normal business hours and on the Whatcom County website. Unofficial copies of the official map or portions thereof may be included or distributed with copies of this program. Shoreline Area Designations. Shoreline area designations are delineated on a map, hereby incorporated as a part of this program (Appendix E of this title) that shall be known as the Official Shoreline Map. There shall be only one official copy of this map that shall reside in the custody of the Washington State Department of Ecology. Additional copies have been provided to

Commented [DOE-Req29]: Required Change – Whatcom County has removed the previously adopted "geomorphic floodplain" on the Official Shoreline Map to determine jurisdiction for the Nooksack and Sumas Rivers and has elected to set its jurisdiction as the extent of the 100-year floodplain recently remapped by FEMA. This change is necessary for consistency with the map change.

Commented [DOE-Req30]: Required Change – This change clarifies that while administrative provisions can be codified within a local ordinance separate from the SMP, such changes shall remain consistent with the Shoreline Management Act (SMA) and applicable rules (See SMP Guidelines at WAC 173-26-191(2)(a)(iii)(C).

Commented [DOE-Req31]: Required Change – Shoreline associated wetlands are not limited to palustrine wetlands for the purposes of determining shoreline jurisdiction. Also, the lateral extent of wetlands is not always consistent with the OHWM of the primary waterbody. As such, these changes are necessary for consistency with the definition of "Shorelands" found in RCW 90.58.030(2)(f).

Commented [CES32]: From RCW 90.58.030(2)(f) and DOE SMP Handbook.

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- 1 the Whatcom County auditor and the Whatcom County planning and development services
2 department where they are available for public use.
- 3 B. The purpose of the official shoreline environment designations map is to depict graphically those
4 areas of Whatcom County falling under the jurisdiction of this program, and the shoreline
5 environment designations of those areas. ~~Shoreline Jurisdictional Limits. The purpose of the Official
6 Shoreline Map is to identify shoreline area designations.~~ The map does not necessarily identify or
7 depict the lateral extent of shoreline jurisdiction nor does it identify all associated wetlands. The
8 lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the
9 location of the ordinary high water mark (OHWM), floodway, floodplain, and presence of associated
10 wetlands; ~~provided, that, exclusive of associated wetlands, the map identifies the lateral extent of
11 shoreline jurisdiction on the Sumas River and the Mainstem, North Fork, Middle Fork and South Fork
12 of the Nooksack River.~~
- 13 C. Where questions arise regarding the precise boundaries of any shoreline designation, the Director
14 will make the final determination following the guidance of 23.20.030 (Interpretation of Official Map
15 Boundaries) and 23.20.040 (Mapping Errors). Appeals of such interpretations may be filed pursuant
16 to WCC 22.05.160 (Appeals).
- 17 D. All shorelines waterward of the OHWM shall be designated aquatic, except that in the Cherry Point
18 Management Area the aquatic designation shall start waterward of the CPMA boundary (see
19 subsection E).
- 20 E. The Cherry Point Management Area is a geographic area lying between the eastern property
21 boundary of Tax Lots 2.27 and 2.28 within the SE 1/4 of Section 11, Township 39 North, Range 1
22 West, as it existed on June 18, 1987, and the southern boundary of Section 32, Township 39 North,
23 Range 1 East, extending waterward a distance of 5,000 feet and extending landward for 200 feet as
24 measured on a horizontal plane from the OHWM. This area shall have the Cherry Point Management
25 Area shoreline environment designation.
- 26 F. Upland shoreline environment designations shall apply to shorelands, unless specifically stated to be
27 applied to the aquatic designation by this program.
- 28 ~~F-G.~~ Only one shoreline environment designation shall apply to a given shoreland area. In the case of
29 designations running parallel to one another (as along the coast), designations shall be divided along
30 an identified linear feature. Such linear features shall be clearly noted in the metadata associated
31 with the Official Shoreline Map.
- 32 ~~G-H.~~ All shorelines east of the Mount Baker National Forest western boundary are designated ~~natural~~
33 ~~or~~ conservancy unless there are federal projects on federal lands.
- 34 ~~H-I.~~ All areas within shorelines that are not mapped and/or designated ~~and are not directly adjacent to
35 other shoreline designated areas~~ are automatically assigned a conservancy designation. Within
36 urban growth areas, such shorelines shall be automatically assigned an urban conservancy
37 designation until such time that the shoreline environment can be re-designated through a formal
38 amendment.

Commented [PDS33]: Should be based existing conditions

Commented [DOE-Req34]: Required Change – This change restores existing language and the Official Shoreline Map does not include the western portions of the county, and thus a Conservancy designation would be assigned as a default pursuant to the SMP Guidelines at WAC 173-26-211(2)(e).

Commented [DOE-Req35]: Required Change – This change restores existing language by removing a proviso that is not applicable to unmapped and/or designated shorelines per WAC 173-26-211(2)(e).

Commented [CES36]: Moved from "Interpretation of Map" section, below.

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~~23.3020.021-030~~ Interpretation of ~~shoreline area designation boundaries~~ Official Map Boundaries.

~~Where the exact location of an environment designation boundary line is uncertain, the official shoreline environment designations map will be used to determine the location of such line. When resorting to the shoreline environment designations map does not resolve the conflict, the following rules will apply:~~

- ~~1. Boundaries indicated as approximately following the center lines of streets, highways, alleys, or other roadways, or railroads shall be construed to follow the nearest right-of-way edge;~~
- ~~2. Boundaries indicated as approximately following lot, fractional section, or other subdivision lines shall be construed as following such subdivision lines;~~
- ~~3. Boundaries indicated as approximately following any lines of corporate limits or other local government jurisdictional lines shall be construed as following such lines;~~
- ~~4. Boundaries indicated as parallel to or extensions of features identified in subsections (1) through (3) of this section shall be so construed; and,~~
- ~~5. Boundaries between parallel environment designations along the shoreline shall be construed as the top of the bluff or vegetation line that distinguishes existing development from the critical area abutting the shoreline.~~

~~When not specifically indicated on the shoreline environment designations map, distances shall be determined by the scale of the map;~~

~~Where existing physical or cultural features are at variance with those shown on the shoreline environment designations map and cannot be determined with certainty by applying subsections (A)(1) through (6) of this section, the director shall determine the location or existence of such feature utilizing the provisions of WAC 173-27-211, the policies of RCW 90.58.020, and the corresponding master program provisions herein; and~~

~~If disagreement develops as to the exact location of a shoreline area designation boundary line, the Official Shoreline Map shall prevail.~~

~~If disagreement develops as to the exact location of a shoreline area designation boundary line, the following rules shall apply:~~

~~Boundaries indicated as approximately following lot, tract, or section lines shall be so construed.~~

~~Boundaries indicated as approximately following roads or railways shall be respectively construed to follow their centerlines.~~

~~Boundaries indicated as approximately parallel to or extensions of features indicated in subsection (B)(1) or (2) of this section shall be so construed.~~

~~Whenever existing physical features are inconsistent with boundaries on the Official Shoreline Map, the administrator shall interpret the boundaries. Appeals of such interpretations may be filed pursuant to WCC 23.60.150(H).~~

~~All shoreline area waterward of the OHWM shall be designated aquatic.~~

~~Upland shoreline area designations shall apply to shorelands.~~

~~Only one shoreline area designation shall apply to a given shoreland area. In the case of parallel designations, designations shall be divided along an identified linear feature. Such linear features shall be clearly noted in the metadata associated with the Official Shoreline Map.~~

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All shorelines east of the Mount Baker National Forest western boundary are designated conservancy unless there are federal projects on federal lands.
All areas within shorelines that are not mapped and/or designated are automatically assigned a conservancy designation. Within urban growth areas, such shorelines shall be automatically assigned an urban conservancy designation until such time that the shoreline area can be re-designated through a formal amendment.

Commented [CES37]: Moved to 23.20.020 Official Map section

23.20.040 Mapping Errors

Some mapping errors may be adjusted prior to a master program amendment to assign the appropriate designation to that area by the following methods:

1. The common boundary descriptions and the criteria in RCW 90.58.030(2) and Chapter 173-22 WAC supersede the map when there are mapping error conflicts, other than those with a solution provided in this section.
~~In the event that a jurisdictional area, including associated wetlands, is not mapped, it will automatically be assigned a "resource," "conservancy," or "urban conservancy" designation depending on its location. If outside a UGA and adjacent to an existing "resource" designation, it shall be "resource," if adjacent to "conservancy" it shall be "conservancy. If outside or inside of a UGA or LAMIRD it shall be "urban conservancy." Such designation will apply until a master program amendment is approved that assigns the appropriate designation to the subject area.~~
2. In the event that a parcel was inadvertently assigned more than one designation, the more restrictive designation shall apply.
3. In the event that a parcel on the boundary between two designations appears to be a mapping error based on the criteria in this section, the County shall apply the most appropriate of the two designations, until such time as the map can be formally corrected consistent with WAC 173-26-100 and Section 22.500.105(I) (Shoreline Master Program Amendment).
4. In the event of an environment designation mapping error where the master program update or amendment record, including the public hearing process, is clear in terms of the correct environment designation to apply to a property, the County shall apply the environment designation approved through the master program update or amendment process and correct the map.
5. If the environment designation criteria were misapplied, but the update or amendment record, including the public hearing process, does not clearly show that a different designation was intended to be shown on the map, a master program amendment may be obtained consistent with WAC 173-26-100 and Section 22.500.105(I) (Shoreline Master Program Amendment). This process is intended to allow for reasonable corrections to the shoreline environment designation process. Such process shall include early consultation with the Department of Ecology and other agencies with jurisdiction, affected tribes, and appropriate public notification prior to local approval. Current designations are reflected in the shoreline environment designations map located pursuant to WCC Chapter 23.20 (Shoreline Jurisdiction and Environment Designations).

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23.3020.022-050 Shoreline Area Environment Designations.

- A. ~~A set of 10 shoreline area designations has been developed as a part of this program. The purpose of the shoreline area designations is to provide a systematic, rational, and equitable basis upon which to guide and regulate development within specific shoreline reaches.~~
- B. ~~Shoreline area designations have been determined after consideration of:~~
- ~~1. The ecological functions and processes that characterize the shoreline, together with the degree of human alteration; and~~
 - ~~2. Existing development patterns together with WCC Title 20, Zoning, designations, the County Comprehensive Plan designations and other officially adopted plans; and~~
 - ~~3. Federal and tribal ownership status; and~~
 - ~~4. The goals of Whatcom County citizens for their shorelines; and~~
 - ~~5. Pursuant to RCW 90.58.100(4), in designating state-owned shorelines, consideration has been given to public demand for wilderness beaches, ecological study areas, and other recreational activities; and~~
 - ~~6. Other state policies in the Act and the Shoreline Master Program Guidelines (RCW 90.58.020 and Chapter 173-26 WAC, respectively).~~

A. Development, use, and activities use within each designated shoreline ~~area~~environment shall occur consistent with ~~this program~~this program, including but not limited to: the shoreline environment designation purpose, designation criteria, and policies ~~described found in Whatcom County Comprehensive Plan Chapter 11 (Shorelines)~~below; the general policies and regulations contained in Chapter 11 (Shorelines) and WCC Chapter 23.390 (Shoreline Management Program), and the use and modification policies and regulations provided in Chapter 11 (Shorelines) and WCC Chapter 23.4100 (Shoreline Use and Modification Regulations), subject to the provisions of ~~Whatcom County Zoning Code~~WCC Title 20 (Zoning) and other applicable land use regulations where more restrictive.

B. Shoreline environment designations in Whatcom County include the following:

1. Urban
2. Urban Resort
3. Urban Conservancy
4. Shoreline Residential
5. Rural
6. Resource
7. Conservancy
8. Natural
9. Aquatic
10. Cherry Point Management Area

Commented [MD38]: Moved to CompPlan.

23.3020.023-060 Designation of Shorelines of Statewide Significance.

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

Commented [CES39]: Policy Change. The existing SMP treats the SPMA as a sort of overlay designation. Based on Council's recent actions regarding this area, staff is proposing that it be given its own environment designation.

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- 1 A. Lakes:
 - 2 1. Lake Whatcom;
 - 3 2. Ross Lake; and
 - 4 3. Baker Lake.
- 5 B. Rivers:
 - 6 1. Nooksack River: its Mainstem downstream to Bellingham Bay, its North Fork upstream to the
 - 7 mouth of Glacier Creek, and its South Fork upstream to the mouth of Hutchinson Creek.
 - 8 2. Skagit River: upstream of the Whatcom-/Skagit County line to the point where the mean annual
 - 9 flow is measured at 1,000 feet per second or more, approximately, at the confluence of
 - 10 Newhalem Creek.
- 11 C. Marine:
 - 12 1. Birch Bay from Birch Point to Point Whitehorn.
 - 13 2. All other marine waters, water columns, and bedlands waterward of extreme low tide.

~~23.30.030 Urban shoreline area.~~

~~23.30.031 Urban shoreline area—Purpose.~~

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

~~23.30.032 Urban shoreline area—Designation criteria.~~

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

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

~~23.30.033 Urban shoreline area—Policies.~~

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

- ~~A.—New urban character development should be directed toward already developed or developing areas where compatible.~~
- ~~B.—First priority should be given to water-dependent uses. Second priority should be given to water-related and then water-enjoyment uses. Non-water-oriented uses should not be allowed except as part of mixed-use developments. Non-water-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where~~

Commented [CES40]: The remainder of this chapter has been moved to either the CompPlan (in the case of purpose statements, designation criteria, and policies) or the amended Table 2 (Shoreline Use Table) (in the case of use permissions) so as to make it easier to find all such regulations.

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~~there is no direct access to the shoreline, or where the needs of existing and future water-dependent uses are met.~~

23.30.034 Urban shoreline area—Permitted uses.

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

~~A. Residential.~~

~~B. Water-oriented commercial, industrial and/or port development.~~

~~C. Water-oriented recreation.~~

~~D. Agricultural.~~

23.30.035 Urban shoreline area—Conditional uses.

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

~~A. Non-water-oriented commercial, industrial and/or port development, subject to the criteria in WCC 23.100.050(B)(1)(d) and 23.100.070(B)(1)(c)(iv), respectively.~~

~~B. Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~C. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~D. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

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

23.30.036 Urban shoreline area—Prohibited uses.

The following uses are prohibited:

~~A. Forest practices.~~

~~B. Surface mining.~~

23.30.040 Urban resort shoreline area.

23.30.041 Urban resort shoreline area—Purpose.

The purpose of the urban resort shoreline area is to provide for intensive residential and commercial uses geared to the needs of tourists and day visitors while protecting existing shoreline ecological functions and processes. Emphasis is on hotels, motels, shops, restaurants, commercial rental campgrounds, rental cabins, and shoreline-related recreation facilities.

23.30.042 Urban resort shoreline area—Designation criteria.

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

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~~23.30.043 Urban resort shoreline area—Policies.~~

~~Development within urban resort shoreline areas shall be consistent with the following policies:~~

~~A. Scale and design of resort development should assure compatibility with allowed uses of adjacent shoreline areas and shoreline ecological functions and processes.~~

~~B. Buildings over 35 feet in height may be permitted if additional open space, view areas, public access and/or other amenities are provided.~~

~~23.30.044 Urban resort shoreline area—Permitted uses.~~

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

~~A. Residential.~~

~~B. Water-oriented commercial.~~

~~C. Port development, limited to passenger terminals.~~

~~D. Water-oriented recreation.~~

~~23.30.045 Urban resort shoreline area—Conditional uses.~~

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

~~A. Non-water-oriented commercial, subject to the criteria in WCC 23.100.050(B)(1)(d).~~

~~B. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~C. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

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

~~23.30.046 Urban resort shoreline area—Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. Agricultural.~~

~~B. Forest practices.~~

~~C. Surface mining.~~

~~D. All other industrial and port development.~~

~~23.30.050 Urban conservancy shoreline area.~~

~~23.30.051 Urban conservancy shoreline area—Purpose.~~

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

~~23.30.052 Urban conservancy shoreline area—Designation criteria.~~

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

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- 1 ~~A. They support or retain important shoreline ecological functions and/or processes, even though~~
2 ~~partially developed.~~
- 3 ~~B. They have the potential for development at an intensity and character that is compatible with~~
4 ~~preserving and restoring ecological functions. They are generally not designated for high intensity~~
5 ~~residential use, commercial use, or industrial use.~~
- 6 ~~C. They are characterized by critical areas or indicate the presence of other valuable or sensitive~~
7 ~~ecological resources.~~
- 8 **23.30.053 Urban conservancy shoreline area – Policies.**
9 Development within urban conservancy shoreline areas shall be consistent with the following policies:
- 10 ~~A. Primary permitted uses should consist of low intensity residential uses or other low intensity uses~~
11 ~~that preserve the natural character of the area or promote preservation of open space and critical~~
12 ~~areas.~~
- 13 ~~B. Moderate to high intensity residential use may be permitted if the proposed uses and design result~~
14 ~~in substantial open space, public access and/or restoration of shoreline ecological functions and/or~~
15 ~~processes, and if compatible with surrounding uses.~~
- 16 ~~C. Public access and public recreation facilities are a preferred use if they will not cause substantial~~
17 ~~ecological impacts and when restoration of ecological functions is incorporated.~~
- 18 ~~D. Low intensity commercial uses may be permitted if the specific uses and design result in substantial~~
19 ~~open space, public access and/or restoration of ecological functions and if compatible with~~
20 ~~surrounding uses.~~
- 21 **23.30.054 Urban conservancy shoreline area – Permitted uses.**
22 The following uses may be permitted subject to the applicable policies and regulations of this program:
- 23 ~~1. Single family and duplex residential.~~
24 ~~2. Agricultural.~~
- 25 ~~3. Low intensity recreation; provided, that facilities do not require substantive alterations to~~
26 ~~topography, such as public forest preserves, wildlife reserves, natural systems education, and/or~~
27 ~~interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no~~
28 ~~more than 30 vehicles, and buildings for interpretive facilities not exceeding 4,000 square feet,~~
29 ~~subject to the criteria in WCC 23.100.100.~~
- 30 **23.30.055 Urban conservancy shoreline area – Conditional uses.**
31 The following may be permitted as conditional uses subject to the applicable policies and regulations of
32 this program:
- 33 ~~A. All other residential development.~~
- 34 ~~B. Low intensity water oriented commercial limited to resort, bed and breakfast, campgrounds and~~
35 ~~similar facilities subject to the criteria in WCC 23.100.050. Low intensity non water oriented~~
36 ~~commercial limited to resort, bed and breakfast, campgrounds and similar facilities, subject to the~~
37 ~~criteria in WCC 23.100.050(B)(1)(d).~~
- 38 ~~C. Dams, diversions and tailrace structures for hydroelectric power generation.~~

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~~D. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

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

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

~~23.30.056 Urban conservancy shoreline area — Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. Forest practices.~~

~~B. Surface mining.~~

~~C. All other industrial and port development.~~

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

~~23.30.060 Shoreline residential area.~~

~~23.30.061 Shoreline residential area — Purpose.~~

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

~~23.30.062 Shoreline residential area — Designation criteria.~~

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

~~23.30.063 Shoreline residential area — Policies.~~

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

~~A. The scale and density of new uses and development should be compatible with, and protect or enhance, the existing residential character of the area while sustaining shoreline ecological functions and processes.~~

~~B. Public or private outdoor recreation facilities should be encouraged if compatible with the character of the area. Preferred uses include water dependent and water enjoyment recreation facilities that provide opportunities for substantial numbers of people to access and enjoy the shoreline.~~

~~C. Commercial development should be limited to water-oriented uses. Non-water-oriented commercial uses may be permitted as part of mixed use developments where the primary use is residential; provided, that such uses should provide a substantial benefit with respect to the goals and policies of this program such as providing public access or restoring degraded shorelines.~~

~~23.30.064 Shoreline residential area — Permitted uses.~~

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

~~A. Residential.~~

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~~B. Water-oriented commercial.~~

~~C. Water-oriented recreation.~~

~~D. Agricultural.~~

~~23.30.065 Shoreline residential area – Conditional uses.~~

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

~~A. Non-water oriented commercial, subject to the criteria in WCC 23.100.050(B)(1)(d).~~

~~B. Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~C. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~D. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

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

~~23.30.066 Shoreline residential area – Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. Forest practices.~~

~~B. Surface mining.~~

~~C. All other industrial and port development.~~

~~23.30.070 Rural shoreline area.~~

~~23.30.071 Rural shoreline area – Purpose.~~

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

~~23.30.072 Rural shoreline area – Designation criteria.~~

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

~~A. Where the shoreline currently accommodates residential uses outside urban growth areas and is characterized by low density development, pasture, agriculture, woodlots, home occupations, and cottage industries. The distribution of rural land use is adjacent to agricultural, forestry, and urban land uses and often provides a transition between urban areas and commercial agriculture and forestry uses. Natural vegetative cover and topography have been altered in many rural areas, but substantial ecological functions, and/or the potential for restoration of ecological functions, are present.~~

~~B. That are now used or potentially usable for a mix of agriculture, forestry, and residential use.~~

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- ~~C. Where residential development is or should be of low density, because of limitations by physical features, the presence of critical areas, and/or lack of utilities or access.~~
- ~~D. That have high recreational value or unique historic or cultural resources.~~
- ~~E. Where low intensity outdoor recreation use or development would be appropriate and compatible with other uses and the physical environment.~~
- ~~F. Where the shoreline has been developed with low intensity water dependent uses.~~

23.30.073 Rural shoreline area – Policies.

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

- ~~A. Uses in rural areas should protect or enhance the rural character of the shoreline and sustain the shoreline ecological functions and processes by limiting building density and height, and providing effective setbacks, buffers and open space.~~
- ~~B. Residential development consistent with the rural character of the area is permitted, provided it includes measures to protect ecological functions and processes. Related uses consistent with the rural character of the area are permitted.~~
- ~~C. Public or private outdoor recreation facilities should be encouraged if compatible with the rural character of the area and developed in a manner that maintains shoreline ecological functions and processes. Preferred uses include water oriented recreation facilities that do not deplete shoreline resources over time, such as boating facilities, angling, wildlife viewing trails, and swimming beaches.~~
- ~~D. Industrial or commercial development should be limited to, water oriented commercial and industrial uses in the limited locations where such uses have been established or at sites in rural communities that possess appropriate shoreline conditions and services sufficient to support such developments. Non water dependent uses should provide a substantial benefit with respect to the goals and policies of this program such as providing public access and/or restoring degraded shorelines.~~
- ~~E. Agriculture and forestry consistent with rural character and the maintenance of shoreline ecological functions and processes should be encouraged.~~

23.30.074 Rural shoreline area – Permitted uses.

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

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

23.30.075 Rural shoreline area – Conditional uses.

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

- ~~A. Non water oriented commercial, industrial and/or port development, subject to the criteria in WCC 23.100.050(B)(1)(d) and 23.100.070(B)(1) (c)(iv), respectively.~~

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- 1 ~~B. Dams, diversions and tailrace structures for hydroelectric power generation.~~
- 2 ~~C. Institutional development and essential public facilities, where there is no feasible location outside~~
- 3 ~~the shoreline.~~
- 4 ~~D. Transportation facilities not serving a specific approved use, including roads, railways, and parking~~
- 5 ~~areas, provided there is no feasible location outside the shoreline.~~
- 6 ~~E. Regional utility development not serving adjacent uses such as sewage trunk lines, desalinization~~
- 7 ~~facilities, solid waste transfer and disposal sites, oil pipelines and gas pipelines other than local~~
- 8 ~~distribution, provided there is no feasible location outside the shoreline.~~
- 9 ~~F. Surface mining.~~

23.30.080 Resource shoreline area.

23.30.081 Resource shoreline area – Purpose.

The purpose of the resource shoreline area is to protect shoreline ecological functions and processes in areas designated in the Whatcom County Comprehensive Plan as agriculture resource lands, rural forestry, commercial forestry and mineral resource lands and to protect the economic base of those lands and limit incompatible uses.

23.30.082 Resource shoreline area – Designation criteria.

The resource shoreline area is applied to shoreline areas designated as agriculture, rural forestry, commercial forestry and mineral resource lands in the Whatcom County Comprehensive Plan and includes areas where the shoreline currently accommodates ongoing resource management, where natural vegetation cover has been altered but substantial ecological functions, or the potential for restoring ecological functions, are present.

23.30.083 Resource shoreline area – Policies.

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

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

23.30.084 Resource shoreline area – Permitted uses.

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

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

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~~C. Water-oriented industrial facilities for processing, manufacturing, and storage of natural resource products.~~

~~D. Low intensity water oriented recreation, including public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than 30 vehicles, subject to the criteria in WCC 23.100.100.~~

~~E. Agricultural and forest practices.~~

23.30.085 Resource shoreline area – Conditional uses.

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

~~A. Non-water oriented commercial and industrial development related to natural resource products predominantly produced on-site, subject to the criteria in WCC 23.100.050(B)(1)(d) and 23.100.070(B)(1)(c)(iv), respectively.~~

~~B. Water-oriented industrial and port development other than those uses related to products predominantly produced on-site.~~

~~C. Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~D. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

~~E. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, provided there is no feasible location outside the shoreline.~~

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

~~G. Surface mining.~~

23.30.086 Resource shoreline area – Prohibited uses.

The following uses are prohibited:

~~A. All other commercial development.~~

~~B. Other non-water oriented industrial and port development.~~

23.30.090 Conservancy shoreline area.

23.30.091 Conservancy shoreline area – Purpose.

The purpose of the conservancy shoreline area is to retain shoreline ecological functions in areas where important ecological processes have not been substantially degraded by human activities. Conservancy areas are designated outside of urban growth areas. The primary management goal is to preserve shoreline ecological functions and processes by avoiding forms of development that would be incompatible with existing functions and processes, as well as identify and focus restoration efforts in areas where benefits to overall functions and processes can be realized. This policy should be furthered by keeping overall intensity of development or use low, and by maintaining most of the area's natural character.

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~~23.30.092 Conservancy shoreline area — Designation criteria.~~

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

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

~~23.30.093 Conservancy shoreline area — Policies.~~

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

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

~~23.30.094 Conservancy shoreline area — Permitted uses.~~

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

- ~~A. Single family and duplex residential development.~~
- ~~B. Low intensity water oriented recreation; provided, that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than 30 vehicles, and buildings for interpretive facilities not exceeding 2,000 square feet, subject to the criteria in WCC 23.100.100.~~
- ~~C. Agricultural and forest practices.~~

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~~23.30.095 Conservancy shoreline area—Conditional uses.~~

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

~~A. All other residential development.~~

~~B. Low intensity water oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities. Low intensity non-water oriented commercial uses limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use, subject to the criteria in WCC 23.100.050(B)(1)(d).~~

~~C. Dams, diversions and tailrace structures for hydroelectric power generation.~~

~~D. Institutional development and essential public facilities, where there is no feasible location outside the shoreline.~~

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

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

~~G. Surface mining.~~

~~23.30.096 Conservancy shoreline area—Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. All other industrial and port development.~~

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

~~23.30.100 Natural shoreline area.~~

~~23.30.101 Natural shoreline area—Purpose.~~

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

~~23.30.102 Natural shoreline area—Designation criteria.~~

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

~~A. The majority of natural ecological shoreline functions and/or processes are retained, often evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, they include ecologically intact shorelines that are free of structural shoreline modifications, structures, and intensive human uses.~~

~~B. Forested areas that generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies.~~

~~C. Valuable functions are provided for the larger aquatic and terrestrial environments, which could be lost or significantly reduced by human development.~~

~~D. Ecosystems or geologic types that are of particular scientific and educational interest are represented.~~

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~~E. Largely undisturbed areas of wetlands, estuaries, unstable bluffs, coastal dunes, and spits are present.~~

~~F. New development, extractive uses, or physical modifications cannot be supported without significant adverse impacts to ecological functions and/or processes or risk to human safety.~~

~~23.30.103 Natural shoreline area—Policies.~~

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

~~A. Preservation of the area's ecological functions, natural features and overall character must receive priority over any other potential use. Uses should not degrade shoreline ecological functions or processes or the natural character of the shoreline area. New development or significant vegetation removal that would reduce the capability of the shoreline to perform a full range of ecological functions or processes should not be permitted.~~

~~B. Private and/or public enjoyment of natural shoreline areas should be encouraged and facilitated through low intensity recreational, scientific, historical, cultural, and educational research uses; provided, that no significant ecological impact on the area will result.~~

~~C. Agricultural and forestry uses of a very low intensity nature may be consistent with the natural shoreline area when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.~~

~~D. The following uses should not be permitted in the natural shoreline area:~~

~~1. Commercial uses.~~

~~2. Industrial uses.~~

~~3. Non-water oriented recreation.~~

~~4. Roads, utility corridors, and parking areas that can be located outside of natural shoreline areas.~~

~~23.30.104 Natural shoreline area—Permitted uses.~~

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

~~A. Low intensity water oriented recreation; provided, that facilities do not require substantive alterations to topography, such as public forest preserves, wildlife reserves, natural systems education, and/or interpretive areas, trails, trailheads, with associated restroom facilities and parking areas for no more than 10 vehicles, and buildings for interpretive facilities not exceeding 500 square feet, subject to the criteria in WCC 23.100.100.~~

~~B. Low intensity agricultural.~~

~~23.30.105 Natural shoreline area—Conditional uses.~~

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

~~A. Single family residential use and development is only permitted on existing lots of record and where there is no feasible location outside the shoreline. Further subdivision is not permitted.~~

~~B. Forest practices; provided, that it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.~~

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~~23.30.106 Natural shoreline area—Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. All other residential.~~

~~B. Commercial.~~

~~C. Industrial and port development.~~

~~D. Non-water-oriented recreation.~~

~~E. Institutional.~~

~~F. Transportation facilities not serving a specific approved recreational development.~~

~~G. Utility development not serving a specific approved use.~~

~~H. Surface mining.~~

~~23.30.110 Aquatic shoreline area.~~

~~23.30.111 Aquatic shoreline area—Purpose.~~

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

~~23.30.112 Aquatic shoreline area—Designation criteria.~~

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

~~23.30.113 Aquatic shoreline area—Policies.~~

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

~~A. New over-water structures should only be permitted for water-dependent uses, public access, or ecological restoration. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use. In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.~~

~~B. All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.~~

~~C. Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be permitted except where necessary to achieve the objectives of RCW 90.58.020, and then only when all potential impacts are mitigated as necessary to assure maintenance of shoreline ecological functions and processes.~~

~~D. Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural conditions.~~

~~23.30.114 Aquatic shoreline area—Permitted uses.~~

~~Permitted uses consist of the water-dependent uses permitted in abutting upland shoreline area designations, subject to the exceptions listed in WCC 23.30.116.~~

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~~23.30.115 Aquatic shoreline area—Conditional uses.~~

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

~~23.30.116 Aquatic shoreline area—Prohibited uses.~~

~~The following uses are prohibited:~~

~~A. Residential.~~

~~B. Non-water-dependent commercial, industrial and port development.~~

~~C. Institutional.~~

~~D. Agricultural.~~

~~23.30.120 Cherry Point management area.~~

~~The policies, regulations and standards, etc., applicable to the Cherry Point management area are found in WCC 23.100.170, except as otherwise specified therein.~~

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Chapter 23.40 Shorelines of Statewide Significance

~~23.40.010 Adoption of policy.~~

~~In accordance with RCW 90.58.020, the following management and administrative policies are hereby adopted for all shorelines of statewide significance in unincorporated Whatcom County, as defined in RCW 90.58.030(2)(e) and identified in WCC 23.40.020. Consistent with the policy contained in RCW 90.58.020, preference shall be given to the uses that are consistent with the statewide interest in such shorelines. These are uses that:~~

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

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

Commented [MD41]: Moved to CompPlan.

~~23.40.020 Designation of shorelines of statewide significance.~~

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

~~D. Lakes:~~

- ~~1. Lake Whatcom;~~
- ~~2. Ross Lake; and~~
- ~~3. Baker Lake.~~

~~E. Rivers:~~

- ~~1. Nooksack River: its Mainstem downstream to Bellingham Bay, its North Fork to the mouth of Glacier Creek and its South Fork to the mouth of Hutchinson Creek.~~
- ~~2. Skagit River: upstream of the Whatcom-Skagit County line to the point where the mean annual flow is measured at 1,000 feet per second or more, approximately, at the confluence of Newhalem Creek.~~

~~F. Marine:~~

- ~~1. Birch Bay from Birch Point to Point Whitehorn.~~
- ~~2. All other marine waters, water columns, and bedlands waterward of extreme low tide.~~

~~23.40.030 Policies for shorelines of statewide significance.~~

~~The statewide interest should be recognized and protected over the local interest in shorelines of statewide significance. To ensure that statewide interests are protected over local interests, the county~~

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1 shall review all development proposals within shorelines of statewide significance for consistency with
2 RCW 90.58.030 and the following policies:

3 A. Redevelopment of shorelines should be encouraged where it restores or enhances shoreline
4 ecological functions and processes impaired by prior development activities.

5 B. The Washington Departments of Fish and Wildlife and Ecology, the Lummi Nation, the Nooksack
6 Tribe, and other resources agencies should be consulted for development proposals that could
7 affect anadromous fisheries.

8 C. Where commercial timber cutting takes place pursuant to WCC 23.90.110 and RCW 90.58.150,
9 reforestation should take place as soon as possible.

10 D. Activities that use shoreline resources on a sustained yield or non-consuming basis and that are
11 compatible with other appropriate uses should be given priority over uses not meeting these
12 criteria.

13 E. The range of options for shoreline use should be preserved to the maximum possible extent for
14 succeeding generations. Development that consumes valuable, scarce or irreplaceable natural
15 resources should not be permitted if alternative sites are available.

16 F. Potential short-term economic gains or convenience should be measured against potential long-
17 term and/or costly impairment of natural features.

18 G. Protection or enhancement of aesthetic values should be actively promoted in design review of new
19 or expanding development.

20 H. Resources and ecological systems of shorelines of statewide significance should be protected.
21 Shorelands and submerged lands should be protected to accommodate current and projected
22 demand for economic resources of statewide importance such as commercial shellfish beds.

23 I. Those limited shorelines containing unique, scarce and/or sensitive resources should be protected
24 to the maximum extent feasible.

25 J. Erosion and sedimentation from development sites should be controlled to minimize adverse
26 impacts on ecosystem processes. If site conditions preclude effective erosion and sediment control,
27 excavations, land clearing, or other activities likely to result in significant erosion should be severely
28 limited.

29 K. Public access development in extremely sensitive areas should be restricted or prohibited. All forms
30 of recreation or access development should be designed to protect the resource base upon which
31 such uses in general depend.

32 L. Public and private developments should be encouraged to provide trails, viewpoints, water access
33 points and shoreline-related recreation opportunities whenever possible. Such development is
34 recognized as a high priority use.

35 M. Development not requiring a waterside or shoreline location should be located inland so that lawful
36 public enjoyment of shorelines is enhanced.

37 N. Lodging and related facilities should be located inland and provide for appropriate means of access
38 to the shoreline.

Commented [MD42]: Moved to CompPlan.

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Chapter 23.390 General Regulations

~~23.90.010 Applicability.~~

~~All use and development activities on shorelines shall be subject to all of the following general policies and regulations in addition to the applicable use policies and regulations of Chapter 23.100 WCC; provided, that all use and development that is to be located within the Cherry Point management area, as defined in Chapter 23.110 WCC, shall be subject to the policies and regulations found in WCC 23.100.170 and shall not be subject to the policies and regulations found in this chapter and Chapter 23.100 WCC unless otherwise specified.~~

Commented [AP43]: This chapter has been moved forward as it contains the general regulations and the others more specific regulations. All policies, with exception of regulations and those noted as duplicative, have been moved to the CompPlan.

Commented [DN44]: Moved to 23.10 Applicability and slightly reworded

~~23.90.020 Land use.~~

~~The following land use policies delineate the use preferences of the Act and this program and are intended to support the goals and objectives of the program:~~

~~A. Policies.~~

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

~~B. Regulations.~~

- ~~1. Single family residential uses shall be allowed on all shorelines not subject to a preference for commercial or industrial water dependent uses and shall be located, designed, and used in accordance with applicable policies and regulations of this program.~~
- ~~2. Resource uses such as agriculture, forestry and mining activities shall be carried out in a manner consistent with the applicable policies and regulations of this program.~~
- ~~3. Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed and implemented in accordance with applicable policies and regulations of this program.~~
- ~~4. Shoreline uses and developments that are water dependent shall be given priority. Permit conditions may limit the range of uses or sites developed for such uses. Interim non water~~

Commented [AP45]: Removed. This provision is more appropriate as a policy, which is already captured in the CompPlan. Implementing regulations are included in the Residential Shoreline Use and Modification Section (WCC 23.40.160).

Commented [AP46]: Removed for clarity and simplicity. This is established in the use table and the applicable use and modification sections.

Commented [DN47]: Moved to WCC 23.40.170 (Restoration and Enhancement)

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dependent uses authorized as a conditional use may be allowed to respond to short-term market conditions; provided, that permit conditions are placed on such uses to provide for a specific timetable or review process to ensure water-dependent use of the development in the long term.

5. Shoreline uses and developments should be located, designed, and managed so that other appropriate uses are neither subjected to substantial or unnecessary adverse impacts, nor deprived of reasonable, lawful use of navigable waters, other publicly owned shorelines, or private property.

6. Navigable waters should be kept free of obstructions for the general benefit of the region, state, and nation. No use or development shall be allowed to effectively exclude other appropriate uses from navigable waters.

7. Shoreline uses and developments should be located in a manner so that shoreline stabilization is not likely to become necessary in the future.

23.90.030-30.010 Ecological Protection and critical areas.

A. Ecological protection of shoreline environments shall be achieved through compliance with the applicable provisions of WCC Chapter 16.16 (Critical Areas) and (B) and (C) of this subsection.

A. Policies.

1. Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in Chapter 16.16 WCC, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, insofar as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground-water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.

2. In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.

3. Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

B. Regulations.

Commented [DN48]: These provisions were moved to WCC 23.40.030 (General Shoreline Use and Modifications) since they are applicable to that section. These were also reviewed as policies for the CompPlan.

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1 A. ~~An assessment of the existing ecological functions and/or processes provided by topographic,~~
2 ~~physical, and vegetation characteristics of the site shall accompany development proposals. Such~~
3 ~~assessments shall include the following general information:~~
4 ~~1. Impacts of the proposed use/development on ecological processes with clear designation of~~
5 ~~existing and proposed routes for water flow, wildlife movement, and other features;~~
6 ~~Infrastructure requirements such as parking, services, lighting, and other features, together with~~
7 ~~the effects of those infrastructure improvements on shoreline ecological functions and/or~~
8 ~~processes;~~
9 B. ~~Development, use, and activities within the shoreline jurisdiction shall avoid and minimize adverse~~
10 ~~impacts, and any unavoidable impacts shall be mitigated to meet no net loss of ecological function~~
11 ~~and ecosystem-wide processes pursuant to WAC 173-26-186.~~
12 C. ~~To provide for flexibility in the administration of the ecological protection provisions of this~~
13 ~~program, buffer modification and alternative mitigation approaches as provided for in WCC 16.16~~
14 ~~may be approved within shorelines where such approaches provide increased protection of~~
15 ~~shoreline ecological functions and processes over the standard provisions of this program and are~~
16 ~~scientifically supported. Use of WCC 16.16.261 (Alternative Mitigation Plans) and 16.16.262~~
17 ~~(Watershed-Based Management Plans) within shoreline jurisdiction shall require a Shoreline~~
18 ~~Conditional Use Permit.~~
19 B. ~~Mitigation Sequencing. To comply with the policies of subsection A of this section, a shoreline~~
20 ~~permit applicant or project proponent shall demonstrate that all reasonable efforts have been taken~~
21 ~~to provide sufficient mitigation such that the activity does not have significant adverse impacts.~~
22 ~~Mitigation shall occur in the following prioritized order:~~
23 C. ~~Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or~~
24 ~~moving the action.~~
25 D. ~~Minimizing adverse impacts by limiting the degree or magnitude of the action and its~~
26 ~~implementation by using appropriate technology and engineering, or by taking affirmative steps to~~
27 ~~avoid or reduce adverse impacts.~~
28 E. ~~Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.~~
29 F. ~~Reducing or eliminating the adverse impact over time by preservation and maintenance operations~~
30 ~~during the life of action.~~
31 G. ~~Compensating for the adverse impact by replacing, enhancing, or providing similar substitute~~
32 ~~resources or environments and monitoring the adverse impact and the mitigation project and taking~~
33 ~~appropriate corrective measures. Where appropriate, new development shall use clustering to~~
34 ~~minimize adverse impacts on shoreline ecological functions and processes.~~
35 H. ~~Accessory uses that do not require a shoreline location shall be sited away from the land/water~~
36 ~~interface and landward of the principal use and, unless otherwise specified,~~
37 I. ~~Because of its incorporation by reference herein under WCC 23.10.060(A), the provisions of the~~
38 ~~Whatcom County critical areas ordinance, Chapter 16.16 WCC, shall apply to any use, alteration, or~~
39 ~~development within shoreline jurisdiction whether or not a shoreline permit or written statement of~~
40 ~~exemption is required. Unless otherwise stated, no development shall be constructed, located,~~

Commented [AP49]: Moved from Site Planning section (WCC 23.30.090). Note: Per Scoping Document, Item #5a., removed "provided, that proposals for single-family residences shall be exempt from this requirement."

Commented [CES50]: Covered by CAO

Commented [DOE-Req51]: Required Change – This change maintains the existing requirement for a CUP for use of select alternative mitigation approaches outlined within the CAO. This change is necessary due to the fact that the impacts from such future proposals using these provisions cannot be reasonably identified at the time of the amendment consistent with the SMP Guidelines at 173-26-201(3)(d)(i)(E)(iii). The CUP requirement maintains the flexibility sought by the proposed language without prohibiting the use of these CAO provisions.

Commented [CES52]: Covered by CAO

Commented [CES53]: Moved to 23.40.030 (General Shoreline Use and Modification Regulations)

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extended, modified, converted, or altered, or land divided without full compliance with Chapter 16.16 WCC and the program; provided, that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225(B)(3). Within shoreline jurisdiction, the regulations of Chapter 16.16 WCC shall be liberally construed together with the program to give full effect to the objectives and purposes of the provisions of the program and Act. Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this program and Chapter 16.16 WCC. Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and landward of the principal use and, unless otherwise specified,

Commented [CES54]: Covered by CAO

J.A. Use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Motor vehicle use, except for vessels and float planes, is prohibited waterward of the ordinary high water mark, on tidelands, public or private beaches, wetlands and/or their associated buffers, except as necessary for public health and safety or permitted maintenance activities associated with approved developments or as otherwise permitted.

Commented [CES55]: Moved to 23.40.030 General Shoreline Use and Modification Regulations

K. Buildings, fencing, walls, hedges, and similar features shall be designed, located, and constructed in a manner that does not preclude or significantly interfere with wildlife movement to/ or from important habitat areas consistent with the applicable provisions of Chapter 16.16 WCC this program; provided, that the administrator/Director may exempt security fencing associated with residential, industrial, and/or commercial developments from this requirement on a case-by-case basis.

Commented [CES56]: Moved to 23.40.030 General Shoreline Use and Modification Regulations

L. To provide for flexibility in the administration of the ecological protection provisions of this program, alternative mitigation approaches as provided for in WCC 16.16.2610(E) may be approved within shorelines as a conditional use where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this program and are scientifically supported.

M. The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved. Whenever the administrator issues a determination or recommendation and/or conditions of approval on a proposal, which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s).

Commented [CES57]: Covered by CAO

23.30.020 Critical Areas

Because of its incorporation by reference under WCC 23.10.065, the provisions of the Whatcom County critical areas regulations, Chapter 16.16 WCC, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided, without full compliance with Chapter 16.16 WCC and this program; provided, that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225. Within shoreline jurisdiction, the regulations of

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~~Chapter 16.16 WCC shall be liberally construed together with the program to give full effect to the objectives and purposes of the provisions of the program and Act.~~

Commented [CES58]: Covered by CAO

~~23.90.04030.0320~~ **Water Quality and Quantity.**

~~A. Policies.~~

~~B. The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.~~

~~C. Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.~~

~~D. Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.~~

~~E. Regulations.~~

~~F.A.~~ Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws, including compliance with Whatcom County stormwater and drainage regulations in WCC 20.80.630 through 20.80.635.

1. Development shall meet minimum requirements 1 – 9 of the current stormwater manual, as applicable. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention, and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.

2. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan or administrative conditions.

~~B.~~ To avoid water quality degradation by malfunctioning or failing septic systems located within shoreline jurisdiction, on-site sewage systems shall be located and designed to meet all applicable water quality, utility, and health standards. The owner must be in compliance with WCC 24.05.160, ~~(Operation and Maintenance).~~

~~G.C.~~ Septic tanks and drainfields are prohibited where public sewer is reasonably available.

Commented [DN60]: Relocated from the Utilities section since this applies universally.

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

~~E.~~ Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate. Outfalls (including stormwater and sewer outfalls) and discharge pipes shall not be located in critical saltwater habitats or areas where outfall or discharge

Commented [AP61]: Removed to reduce redundancy. Already captured in stormwater regulations (WCC 20.80.630).

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will adversely affect critical saltwater habitat, unless the applicant can show that all of the following can be met:

1. There is no feasible alternative location for the outfall or pipe;
2. The outfall or pipe is placed below the surface of the beach or bed of the waterbody, except at the point of discharge;
3. The discharge point(s) on the outfall or discharge pipe is located so the discharges, including nutrients and flow, do not adversely affect critical saltwater habitats; and
4. For public sewage outfalls:
 1. The outfall discharges waterward of the intertidal zone.
 2. The disturbed area will be revegetated with native vegetation.

~~F.~~ The use of existing outfalls shall be maximized to limit the need for additional outfalls, provided the existing outfall meets the standards of this section, or unless an alternatives analysis demonstrates the dispersal is less impacting to the shoreline environment.

Commented [AP62]: Added to address potential impacts from stormwater and sewer outfalls

~~23.90.05030.0430~~ Views and Aesthetics.

~~A. Policies:~~

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

~~E. Regulations:~~

~~A. When the two are in conflict, P~~ protection and/or enhancement of critical areas and their associated buffers shall be preferred over provisions for new visual access except where otherwise allowed by this program, when the two are in conflict.

~~B. The following standards shall apply to developments and uses within the jurisdiction of this program:~~

~~B. To protect views of the shoreline from existing structures, setbacks may be modified pursuant to WCC 23.40.020(D) (Shoreline Bulk Provisions, Setbacks)~~

~~C. To minimize impacts to views from the water, the Director may require the planting of vegetation to mitigate the impacts.~~

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- 1 ~~G.D.~~ Where commercial, industrial, mixed use, multifamily, ~~and/or multi-lot-unit~~ developments are
2 proposed, primary structures shall provide for reasonable view corridors between buildings.
- 3 ~~D.E.~~ Buildings shall incorporate architectural ~~and/or landscape~~ features that reduce scale ~~or bulk~~, such as
4 setbacks, ~~vegetation~~, pitched roofs, offsets, angled facets, and recesses.
- 5 ~~E.F.~~ Building surfaces on or adjacent to the water shall employ materials that minimize reflected light.
- 6 ~~F.G.~~ Building mechanical equipment shall be incorporated into building architectural features, such as
7 pitched roofs, to the maximum extent possible. Where mechanical equipment cannot be
8 incorporated into architectural features, a visual screen shall be provided consistent with building
9 exterior materials that obstructs views of such equipment.
- 10 ~~G.H.~~ Any other design standards included in community plans or regulations adopted by Whatcom
11 County ~~shall apply~~.
- 12 ~~H.I.~~ Fences, walls, ~~other than retaining walls~~, hedges, and other similar accessory structures, excluding
13 those associated with agricultural uses, ~~and retaining walls necessary to protect existing primary~~
14 ~~structures from erosion, landslides or other geologic hazards~~, shall be limited to four feet in height
15 between the ordinary high water mark and structures, and within shoreline view areas as defined in
16 WCC Chapter 23. ~~11.60~~ (Definitions); provided, that, within shoreline view areas, the
17 ~~administrator~~ Director may approve a greater height where a fence or other feature is parallel to the
18 right-of-way and does not extend above a line of sight between the ordinary high water mark and a
19 point three and one-half feet above the centerline of the road.
- 20 ~~I.~~ Where permitted, fences, walls, hedges and other similar structures shall be limited to four feet in
21 height within critical area buffers. Outside of critical area buffers, fences shall be limited to six feet
22 in height.
- 23 ~~J.~~ Fences, walls, hedges, or ~~private~~ accessory structures on public property shall not be permitted to
24 obscure shoreline views within shoreline view areas as defined in WCC Chapter 23. ~~11.60~~ or from
25 existing residences on adjacent property, ~~or views from the water~~, unless specific findings are made
26 that the proposed view obstruction is justified by overriding considerations of the public interest.
- 27 ~~K.~~ Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties
28 or public areas; prevent glare on adjacent properties, public areas, or roadways; ~~to~~ avoid infringing
29 on the use and enjoyment of such areas; and to prevent hazards. Methods of controlling spillover
30 light include, but are not limited to, limits on height of structure, limits on light levels of fixtures,
31 light shields, setbacks, buffer areas, and screening.
- 32 ~~J.L.~~ Where shoreline setbacks or buffers are allowed to be reduced per this program, the proposed use
33 or development shall not be permitted to ~~substantially obscure shoreline views within shoreline~~
34 ~~view areas as defined in WCC Chapter 23.60 (Definitions) or from existing residences on adjacent~~
35 ~~property~~.
- 36 ~~M.~~ Limbing, clearing, and/or thinning for limited view corridors shall only be allowed pursuant to WCC
37 16.16.235(B)(5) (Activities Allowed with Notification), except that view corridors are not permitted
38 in the Natural shoreline environment.
- 39 ~~K.~~ Stairs and walkways located within the shoreline or critical area buffers shall not exceed four feet in
40 width; provided, that where ADA requirements apply, such facilities may be increased to five feet in

Commented [AP63]: Added for clarity per Scoping Document, Item #17e.

Commented [DN64]: Moved to Bulk Provisions since this provision does not address Views and Aesthetics

Commented [DN65]: Moved from the former Site Planning section

Commented [AP66]: Added per Scoping Document, Item #18c.

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width. Stairways shall conform to the existing topography to the extent feasible and minimize impervious surfaces.

Commented [T67]: Removed for clarity. This is fully captured in the Shoreline Bulk Provisions.

23.90.06030.0540 Vegetation Conservation Management.

A. Pursuant to WCC 16.16.710, shorelines are designated as Fish & Wildlife Habitat Conservation Areas.

Within these areas and their buffers it is important to protect and enhance vegetation to provide ecological and habitat functions as well as human health and safety. Vegetation management practices consist of retaining or improving vegetated areas to protect the integrity, functions, and values of the affected critical area (shoreline) while allowing the shoreline (critical area) buffer to be modified to accommodate allowed uses when consistent with the Act and this program.

B. Vegetation management within the shoreline (critical area) buffer shall adhere to the applicable regulations of WCC Chapter 16.16 (Critical Areas). In addition:

1. Vegetation clearing within shoreline jurisdiction shall be limited to the minimum necessary to accommodate approved shoreline development.

1.2. ~~Design of structures~~ Shoreline development shall conform to natural contours and minimize disturbance to soils and native vegetation, ~~as feasible. Feasible~~ This shall include incorporation of trails or stairs from parking areas on steep slopes, and other design elements, to lessen the need to alter natural contours and minimize soil and native vegetation disturbance. Foundations shall be tiered with earth retention incorporated into the structure real design.

2.3. ~~Where compliance with subsection (B)(1) of this section is not feasible or required, new~~ All shoreline developments shall be required to develop and implement a vegetation management plan. ~~When required, vegetation management plans shall be~~ prepared by a qualified professional and shall be consistent with the requirements in WCC 16.16.260 ~~(B)(2)~~ and ~~(C)(1)~~; provided, that the ~~administrator~~ Director may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community to the extent possible given the area that is feasibly available. Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County auditor.

3. ~~Policies:~~

a. ~~Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:~~

- i. ~~Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.~~
- ii. ~~Regulating microclimate in riparian and nearshore areas.~~

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- ~~iii. Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macroinvertebrates.~~
- ~~iv. Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.~~
- ~~v. Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.~~
- ~~vi. Improving water quality through filtration and vegetative uptake of nutrients and pollutants.~~
- ~~vii. Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.~~
- ~~viii. Providing habitat for wildlife, including connectivity for travel and migration corridors.~~

~~4. B. Regulations.~~

~~1. Shoreline developments shall comply with the vegetation conservation policies of this program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.~~

~~3. Nonconforming lots that do not provide sufficient area to meet the standard dimensional requirements for buffers and setbacks as provided for in WCC 23.50.070(N) and are not located within a landslide, alluvial fan, or riverine and coastal erosion hazard areas, as defined in WCC 16.16.310, may employ the following standards in lieu of the vegetation management provisions of subsection (B)(2) of this section:~~

~~a. An inner management zone shall extend perpendicularly from the shoreline ordinary high water mark or critical area edge a distance equal to 50 percent of the buffer dimension established for nonconforming lots in WCC 23.50.070(N). In the inner management zone:~~

~~i. Lawn or turf is prohibited due to its limited functional benefits and need for chemical and fertilizer applications. Understory consisting of native groundcover and shrubs shall be provided at a sufficient density to prevent erosion, stabilize soils, and intercept surface runoff.~~

~~ii. Native trees shall be provided at a sufficient density and species composition to mimic natural vegetative conditions for purposes of creating shade, attenuating water temperature, stabilizing soils, and providing large woody debris and other organic inputs critical for aquatic resources.~~

~~b. An outer management zone shall extend from the outer boundaries of the inner management zone to the edge of the critical area buffer. Within the outer management zone:~~

~~i. Vegetation management shall consist of the requirements of subsection (B)(3)(a) of this section; provided, that on slopes of 25 percent or less, lawn, turf, ornamental vegetation or gardens may be allowed on up to 10 percent of the area or 500 square feet, whichever is greater.~~

~~ii. Lawn or turf shall be prohibited on slopes greater than 25 percent.~~

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- ~~4. Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.~~
- ~~5. Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants.~~
- ~~6. Clearing, pruning and revegetation of buffer areas, except landslide hazard areas and buffers and riverine and coastal erosion hazard areas and buffers, may be conducted in accordance with the regulations in WCC 16.16.235(5).~~
- ~~7. Selective vegetation clearing and pruning may be allowed in landslide hazard areas and/or riverine and coastal erosion hazard areas and/or their buffers pursuant to an approved vegetation management plan designed to improve overall slope or bank stability. The plan shall be prepared by a qualified professional and reviewed by a licensed geologist or geotechnical engineer.~~
- ~~8. Vegetation conservation standards shall not apply retroactively to existing uses and developments, such as existing agricultural practices.~~
- ~~9. Vegetation conservation standards do not apply to the removal of hazard trees pursuant to WCC 16.16.230(F).~~
- ~~10. Unless otherwise stated, the vegetation conservation regulations of this program do not apply to commercial forest practices as defined by this program when such activities are covered under the Washington State Forest Practices Act (Chapter 76.09 RCW), except where such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority. For the purposes of this program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, and Chapter 16.16 WCC, and shall be limited to the minimum necessary to accommodate an approved use.~~

Commented [CES68]: Moved up.

Commented [AP69]: Moved to Forest Practices section (WCC 23.40.100).

Commented [AP70]: Section rewritten in conjunction with the LINTHPO & WA State DAHP for greater clarity and streamlining.

23.90.07030.0650 Archaeological, Historic, and Cultural Resources.

A. Project Approval Requirements.

1. Upon receipt of an application for a permit, exemption, or other approval for a proposed project, the County shall determine whether the project lies within 500 feet of a site known to contain a cultural resource based on the Washington State Department of Archaeology & Historic Preservation's (DAHP) Inventory of Cultural Resources.
2. If the project meets this criterion, a cultural resources survey and report meeting the requirements of subsection (B) shall be required.
3. Whatcom County shall provide the cultural resource report to DAHP—and if Native American cultural resources are addressed, to the Lummi Nation Tribal Historic Preservation Office, the Nooksack Tribe, and/or other affected Native American Tribes—for a fifteen (15) day review and comment opportunity. Said review period may run concurrently with other required public review periods, such as for SEPA.

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4. Based upon consultation with DAHP and the affected Tribe(s), the Director may approve the report or reject or request revision of the conclusions reached and/or management recommendations when it is inaccurate or does not fully address the cultural resource management concerns involved.
5. If the cultural resource report identifies the presence of a cultural resource, any permit issued shall be conditioned on meeting the approved report's management recommendations.
6. Regardless of whether any cultural resources are identified or not, any activities are still subject to the state and federal regulations, including those regarding inadvertent discoveries (RCWs 68.50.645, 27.44.055, and 68.60.055).
7. Final cultural resource reports shall be filed with DAHP prior to the County's issuance of a permit, exemption, or other approval by the applicant or his/her agent. The project's cultural resource professional shall also uploading their reports and site forms to WISAARD, the state's digital repository for architectural and archaeological resources and reports maintained by DAHP.
8. Any costs associated with a cultural resource review shall be borne by the applicant.

B. Cultural Resources Report Standards.

1. Cultural resources reports shall meet the most recent "Washington State Standards for Cultural Resource Reporting" issued by DAHP (<https://dahp.wa.gov/project-review/washington-state-standards-for-cultural-resource-reporting>)
2. Cultural resources reports addressing archaeological resources shall be conducted by a professional archaeologist that meets the Secretary of the Interior Professional Qualification Standards (36 CFR Part 61). Cultural resources reports addressing historic resources shall be conducted by a qualified historic preservation professional.
3. If the cultural resource report identifies the presence of a cultural resource, it must provide management recommendations that, at a minimum, conform to DAHP's most current management standards. Such recommendations will depend on the resource identified, but may include but are not limited to:
 - a. Inadvertent Discovery Plan;
 - b. On-site monitoring by a qualified professional and/or a Tribal representative;
 - c. Avoidance, by redesigning the project; or
 - d. When impacts cannot be avoided, obtaining a Cultural Resource Permit (see RCWs 27.44 and 27.53; <https://dahp.wa.gov/archaeology/archaeological-permitting>, and <https://apps.leg.wa.gov/WAC/default.aspx?cite=25-48-060>).

G. A. Policies.

1. The county should work with tribal, state, federal and local governments as appropriate to maintain an inventory of all known significant local historic, cultural and archaeological sites in observance of applicable state and federal laws protecting such information from general public disclosure. As appropriate, such sites should be protected, preserved and/or restored for study, education and/or public enjoyment to the maximum possible extent.

Commented [PDS71]: Policies moved to the C/P.

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- ~~2. Site development plans should incorporate provisions for historic, cultural and archaeological site preservation, restoration and education with open space or recreation areas whenever compatible and possible.~~
- ~~3. Cooperation among involved private and public parties is encouraged to achieve the archaeological, historical and cultural element goals and objectives of this program.~~
- ~~4. Owners of property containing identified historic, cultural or archaeological sites are encouraged to make development plans known well in advance of application, so that appropriate agencies such as the Lummi Nation, Nooksack Tribe, Washington State Department of Archaeology and Historic Preservation, and others may have ample time to assess the site and make arrangements to preserve historical, cultural and archaeological values as applicable.~~
- ~~5. Private and public owners of historic sites should be encouraged to provide public access and educational opportunities in a manner consistent with long term protection of both historic values and shoreline ecological functions.~~
- ~~6. Historic, cultural and archaeological site development should be planned and carried out so as to prevent impacts to the resource. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.~~
- ~~7. If development is proposed adjacent to an identified historic, cultural or archaeological site, then the proposed development should be designed and operated so as to be compatible with continued protection of the historic, cultural or archaeological site.~~
- ~~8. The cultural resource provisions of this program are consistent with Chapters 27.44 and 27.53 RCW and WAC 25-48-060. In accordance with state law, all applicants are subject to these requirements.~~
- ~~H. Regulations.~~
- ~~A. Known Archaeological, Historic, and Cultural Resources.~~
 - ~~i. Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural, or archaeological resource(s), the county shall require a cultural resource site assessment; provided, that the provisions of this section may be waived if the administrator determines that the proposed development activities do not include any ground disturbing activities and will not impact a known historic, cultural, or archaeological site. The site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of significant historic or archaeological resources. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible. The applicant shall submit a minimum of five copies of the site assessment to the administrator for distribution to the applicable parties for review.~~
 - ~~ii. If the cultural resource site assessment identifies the presence of significant historic or archaeological resources, a cultural resource management plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. In the preparation of such plans, the professional~~

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archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe. Comments received shall be incorporated into the conclusions and recommended conditions of the CRMP to the maximum extent practicable. The applicant shall submit a minimum of five copies of the CRMP to the administrator for distribution to the applicable parties for review.

a. A CRMP shall contain the following minimum elements:

i. The purpose of the project; and

ii. A site plan for proposed on-site development; and

iii. Depth and location of all ground disturbing activities including, but not limited to, utilities, driveways, clearing, and grading; and

iv. An examination of project on-site design alternatives; and

v. An explanation of why the proposed activity requires a location on, or access across and/or through, a significant historic or archaeological resource; and

vi. A description of the historic/archaeological resources affected by the proposal; and

vii. An assessment of the historic/archaeological resource and an analysis of the potential adverse impacts as a result of the activity; and

viii. An analysis of how these impacts have been avoided; or w

ix. Where avoidance is not possible, how these impacts have been mitigated/minimized; and

x. A recommendation of appropriate mitigation measures, which may include but are not limited to the following:

A. Recording the site with the State Department of Archaeology and Historic Preservation, or listing the site in the National Register of Historic Places, Washington Heritage Register, as applicable, or any locally developed historic registry formally adopted by the Whatcom County Council;

B. Preservation in place;

C. Re-interment, in the case of grave sites;

D. Covering an archaeological site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);

E. Excavation and recovery of archaeological resources;

F. Inventorying prior to covering of archaeological resources with structures or development; and

G. Monitoring of construction excavation.

xi. An outline of actions to be taken by the property owner, developer, archaeologist, or historic preservation professional, as applicable, in the event that an inadvertent discovery of historic, cultural, or archaeological sites or artifacts occurs during site development, which includes the following:

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- 1 ~~A. A statement that work on that portion of the development site shall be stopped~~
2 ~~immediately and the find reported as soon as possible to the administrator and~~
3 ~~other appropriate governments and agencies.~~
- 4 ~~B. Contact information for applicable parties, agencies, and governments including~~
5 ~~the county administrator, the Washington State Department of Archaeology and~~
6 ~~Historic Preservation, Lummi Nation Tribal Historic Preservation Office, Nooksack~~
7 ~~Tribe, professional archaeologist or historic preservation professional; and in the~~
8 ~~event of inadvertent discovery of human remains, additional contact information~~
9 ~~for the Whatcom County Sheriff's office, Whatcom County Medical Examiner,~~
10 ~~and/or Lummi Repatriation Office.~~
- 11 ~~C. Proposed measures to stabilize, contain, or otherwise protect the area of~~
12 ~~inadvertent discovery until a site investigation and/or site assessment is~~
13 ~~conducted.~~
- 14 ~~xii. Where provision of public access for the purpose of public education related to a~~
15 ~~private or publicly owned building or structure of historic significance is desired by the~~
16 ~~property owner, a public access management plan shall be developed in consultation~~
17 ~~with the Washington State Department of Archaeology and Historic Preservation,~~
18 ~~Lummi Nation Tribal Historic Preservation Office, Nooksack Tribe, and/or other~~
19 ~~agencies, as appropriate, to address the following:~~
- 20 ~~A. The type and/or level of public access that is consistent with the long-term~~
21 ~~protection of both historic resource values and shoreline ecological functions and~~
22 ~~processes; and~~
- 23 ~~B. Site and resource specific conditions and/or improvements including the~~
24 ~~following, as applicable:~~
- 25 ~~(1) Hours of operation,~~
26 ~~(2) Interpretive and/or directional signage,~~
27 ~~(3) Lighting,~~
28 ~~(4) Pedestrian access, and/or~~
29 ~~(5) Traffic and parking.~~
- 30 ~~xiii. Where provision of public access for purposes of public education related to an~~
31 ~~archaeological or cultural resource site is desired by the property owner, the~~
32 ~~Washington State Department of Archaeology and Historic Preservation, Lummi~~
33 ~~Nation Tribal Historic Preservation Office, Nooksack Tribe, and/or other agencies, as~~
34 ~~appropriate, shall be in agreement prior to providing public access to the site. An~~
35 ~~access and resource management plan shall be developed in consultation with the~~
36 ~~Washington State Department of Archaeology and Historic Preservation, the Lummi~~
37 ~~Nation Tribal Historic Preservation Office, and the Nooksack Tribe.~~
- 38 ~~b. The recommendations and conclusions of the CRMP shall be used to assist the administrator~~
39 ~~in making final administrative decisions concerning the presence and extent of historic/~~
40 ~~archaeological resources and appropriate mitigating measures. The administrator shall~~

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consult with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe prior to approval of the CRMP.

~~c. The administrator may reject or request revision of the conclusions reached in a CRMP when the administrator can demonstrate that the assessment is inaccurate or does not fully address the historic/archaeological resource management concerns involved.~~

~~d. Upon receipt of a complete development permit application in an area of known historic/archaeological resources, the county shall notify and request a recommendation from appropriate agencies such as the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe. Recommendations of such agencies and other affected persons shall be duly considered and adhered to whenever possible and reasonable. Notification shall include the following information:~~

~~i. The date of application, the date of notice of completion for the application, and the date of the notice of application;~~

~~ii. A site map including the street address, tax parcel number, township, range, and section of the proposed project area;~~

~~iii. A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the cCounty;~~

~~iv. The identification of other permits not included in the application to the extent known by the cCounty;~~

~~v. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;~~

~~vi. Any other information determined appropriate by the cCounty;~~

~~vii. A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;~~

~~viii. A statement of the limits of the comment period and the right of each agency to comment on the application within a 15 day time period, request a copy of the decision once made, and to appeal a decision when allowed by law.~~

~~e. In granting shoreline permits or statements of exemption for such development, the cCounty may attach conditions to provide sufficient time and/or conditions for consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, and to assure that historic/archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of historic/archaeological sites shall be incorporated to the maximum extent practicable. Permit or other requirements administered by the~~

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Washington State Department of Archaeology and Historic Preservation pursuant to
Chapters 27.44 and 27.53 RCW may apply in addition.

~~B. Inadvertent Discovery.~~

- ~~1. Whenever historic, cultural, or archaeological sites or artifacts are discovered in the process of development on shorelines, work on that portion of the development site shall be stopped immediately, the site secured, and the find reported as soon as possible to the administrator. Upon notification of such find, the property owner shall notify the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, and the administrator shall conduct a site investigation to determine the significance of the discovery. Based upon the findings of the site investigation and consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe, the administrator may require that an immediate site assessment be conducted or may allow stopped work to resume.~~
- ~~2. If a site assessment is required, the area of inadvertent discovery shall be stabilized, contained, or otherwise protected until the site assessment and/or CRMP is completed. The site assessment shall be prepared pursuant to subsection (B)(1)(a) of this section to determine the significance of the discovery and the extent of damage to the resource and shall be distributed to the Washington State Department of Archaeology and Historic Preservation, the Lummi Nation Tribal Historic Preservation Office, and Nooksack Tribe for a 15-day review period or, in the case of inadvertent discovery of human remains, a 30-day review period to determine the significance of the discovery. If the site has been determined not to be significant by the above-listed agencies or governments, or if the above-listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.~~
- ~~3. Upon receipt of a positive determination of a site's significance, the administrator may invoke the provisions of subsections (B)(1)(b) through (d) of this section for a cultural resource management plan, if such action is reasonable and necessary to implement related SMP objectives.~~

~~C. The requirements of subsection (B)(1) of this section do not apply where an applicant/project proponent has obtained an approved archeological excavation and removal permit from the Washington State Department of Archaeology and Historic Preservation pursuant to WAC 25-48-060; provided, that the applicant must adhere to the requirements of said approved permit.~~

23.90.08030.0760 Public Access.

~~a. Policies.~~

- ~~i. Use and development that provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state are a preferred use.~~
- ~~ii. Physical or visual access to shorelines should be incorporated in all new development when the development would either generate a demand for one or more forms of such access, and/or~~

Commented [AP72]: Removed several provisions below that are beyond WAC requirements.

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1 would impair existing legal access opportunities or rights. Public health and safety concerns
2 should also be adequately addressed and maintenance of shoreline ecological functions and/or
3 processes should be assured. As required by the governing principles, all such conditions should
4 be consistent with all relevant constitutional and other legal limitations on regulation of private
5 property.

6 iii. Public access should be provided for water-oriented uses and non-water dependent uses and
7 developments that increase public use of the shorelines and public aquatic lands, or that would
8 impair existing legal access opportunities.

9 iv. Non-water related uses or activities located on the shoreline should provide public access as a
10 public benefit.

11 v. Public access area and/or facility requirements should be commensurate with the scale and
12 character of the development and should be reasonable, effective and fair to all affected parties
13 including but not limited to the land owner and the public.

14 vi. Public access design should provide for public safety and minimize potential impacts to private
15 property, individual privacy, and shoreline ecological functions and processes.

16 vii. Shoreline development by public entities, such as local governments, port districts, state
17 agencies, and public utility districts, should provide public access measures as part of each
18 development project, unless such access is shown to be incompatible due to reasons of safety,
19 security, or impact to the shoreline.

20 ~~b. Regulations.~~

21 A. ~~In the review of~~ All shoreline substantial development, shoreline conditional use permits, or
22 developments of more than four residential lots or dwelling units, ~~consideration of~~ shall provide
23 public access ~~shall be required~~, subject to the test stated in subsection (A)(2) of this section. When
24 appropriate, provisions for adequate public access shall be incorporated into such proposals,
25 including land division. ~~An applicant shall not be required to provide public access if the decision-~~
26 ~~maker determines that one or more of the following conditions apply unless the~~
27 ~~applicant/proponent demonstrates that one or more of the following provisions apply:~~

28 1. ~~Unavoidable health or safety hazards to the public exist that cannot be prevented by any~~
29 ~~practical means;~~

30 2. ~~Inherent security requirements of the use cannot be satisfied through the application of~~
31 ~~alternative design features or other solutions;~~

32 3. ~~1. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of~~
33 ~~public access is unreasonably disproportionate to the total long-term cost of the proposed~~
34 ~~development;~~

35 4. ~~Significant environmental impacts will result from the public access that cannot be mitigated;~~

36 ~~Significant undue and unavoidable conflict between any access provisions and the proposed use~~
37 ~~and/or adjacent uses would occur and cannot be mitigated.~~

38 ~~The parcel is separated from the water by an existing developed road or an additional parcel~~
39 ~~that serves to create a distinct break in connectivity to the shoreline.~~

Commented [CES73]: Deleted, as WAC 173-26 -221 does not list cost.

Commented [DOE-Req74]: Required Change – This change deletes this new exception to consideration of public access as it is overly prescriptive and inconsistent with the SMP Guidelines at WAC 173-26-221(4). Direct connectivity is not a requirement to accomplish proportionate public access. Public access includes the ability of the general public to reach, touch and enjoy the water's edge, travel on the waters of the state, and to view the water from adjacent locations [WAC 173-26-211(4)(a)]. Visual access to the shoreline is not necessarily precluded due to the presence of a developed road or additional parcel between the subject development and the shoreline.

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- ~~Other reasonable and safe opportunities for public access to the shoreline are located within one-quarter mile of the proposed development site.~~
2. ~~The proposed development has already been considered as site is part of a larger development project that has previously provided public access as part of the development permitting process.~~
3. ~~The proposed development is for the subdivision of property into four or fewer parcels.~~
4. ~~The proposed development consists of only agricultural activities.~~
5. ~~Provision of public access on the site would pose a health or safety risk to the public due to the nature of the proposed use or activity or the location of public access, or would be infeasible due to security requirements associated with the proposed development.~~
6. ~~Provision of public access at the proposed development site would result in a net loss of shoreline ecological function that cannot be effectively mitigated or avoided, or would pose a risk to threatened and/or endangered species listed under the Endangered Species Act.~~
- 5-7. ~~The proposal consists solely of a new or expanded utility crossing through shoreline jurisdiction, serving development located outside shoreline jurisdiction, provided that no adverse impacts to existing public access result.~~
- ~~B. When provisions for public access are required as a condition of project approval, the administrator shall prepare written findings, pursuant to Chapter 23.60 WCC, demonstrating consistency with the principles of nexus and proportionality and the test stated in subsection (A)(2) of this section and WCC 23.50.080(A).~~
- ~~C-B.~~ Prior to deciding public access is not required pursuant to subsection (B)(1)(a) through (e) of this section, the county must determine that all reasonable alternatives have been exhausted; including, but not limited to:
1. Regulating access by such means as maintaining a gate and/or limiting hours of use;
 2. Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and
 3. Providing for access at a site geographically separated from the proposal such as a street end, vista, tideland, or trail system.
- ~~D. Public access shall not be required for the following uses except as determined on a case-by-case basis in conjunction with the provisions of subsection A of this section and this subsection B:~~
- ~~E. Single-family residential development of four or fewer lots.~~
- ~~F. Dredging.~~
- ~~G. Forest practices.~~
- ~~H. Landfill and excavation.~~
- ~~I. Mining.~~
- ~~J. Private docks serving four or fewer dwelling units.~~
- ~~K. Instream structures.~~
- ~~L. Shoreline stabilization.~~
- ~~M. Ecological restoration or enhancement activities not associated with development when the purpose of the project would be undermined.~~

Commented [DOE-Req75]: Required Change – This change deletes this new exception to consideration of public access as it is inconsistent with the SMP Guidelines at WAC 173-26-211(4). Increased development within shoreline areas can provide a nexus for the need for increased locations and forms of public access proportionate to such impacts.

Commented [DOE-Req76]: Required Change – This change is necessary to ensure consistency with the SMP Guidelines at WAC 173-26-221(4) and clarifies the applicability of this exemption only if it had previously been analyzed through a broader development review such as a Planned Unit Development or other similar process.

Commented [CES77]: Combined existing text w/ WAC 173-26-221 text.

Commented [DOE-Req78]: Required Change – Utility development is not specifically exempted from the requirement to consider public access in the SMP Guidelines. The proposed change modifies this new exemption to require public access considerations if impacts to existing forms of public access provide such a nexus.

Commented [DOE-Req79]: Section restored. Required Change – This additional language added to the end of 23.60.060.A restores existing language proposed for deletion. The change is necessary for consistency with the SMP Guidelines at 173-26-221(4)(d)(B) which requires consideration of alternative methods of providing access when potential conflicts are identified with traditional forms of access.

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~~N. Agriculture.~~

C. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means ~~of to~~ view and/or physically ly approach ~~to~~ public waters, and may include interpretive centers and displays.

D. Where public access planning as described in WAC 173-26-221(4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, the County may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

Commented [CES80]: Language from WAC

~~G.E.~~ Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and the maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority.

Commented [AP81]: Added for consistency with WAC 173-26-221(4)(d)

~~P.F.~~ Alternate off-site provision of public access to shorelines may be used upon approval, as a means of offsetting identifiable on-site impacts. If public access is demonstrated to be infeasible or inappropriate on site due to significant interference to operations or hazards to life and property, alternative visual access opportunities ~~may be provided at a location not directly adjacent to the water~~ (such as a viewpoint, observation tower, or other areas serving as a means to view public waters (such as an interpretive center and displays explaining maritime history and industry) may be provided at a location not directly adjacent to the water; provided, that visual access to the water is provided.

G. Public access provided by shoreline street ends, public utilities, and rights-of-way shall not be diminished (RCW 35.79.035 and 36.87.130).

~~G.H.~~ Shoreline development by public entities shall include public access measures as part of each development project.

I. Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized.

Commented [DN82]: Moved from the Site Planning section.

J. Public access shall incorporate the following location and design criteria:

Commented [DOE-Req83]: Section restored. Required Change – This change restores existing standards necessary for meaningful implementation of the public access requirements as required by the SMP Guidelines at WAC 173-26-222(4)(d)(iii).

1. Where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological functions and/or processes, a public pedestrian access walkway parallel to the ordinary high water mark of the property is preferred. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the water's edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to five feet in width to reduce impacts to ecologically sensitive resources.
2. Public access shall be located adjacent to other public areas, accesses and connecting trails, connected to the nearest public street; and include provisions for differently-abled persons where feasible.
3. Where views of the water or shoreline are available and physical access to the water's edge is not present or appropriate, a public viewing area shall be provided.

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4. Design shall minimize intrusions on privacy by avoiding locations adjacent to windows and/or outdoor private open spaces or by screening or other separation techniques.
5. Design shall provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The administrator may authorize a public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.
6. Public amenities appropriate to the use of a public access area such as benches, picnic tables and sufficient public parking to serve the users shall be provided.
7. Commercial developments that attract a substantial number of persons and developments by government/public entities may be required to provide public restrooms, facilities for disposal of animal waste and other appropriate public facilities.
8. The minimum width of public access easements shall be 10 feet, unless the administrator determines that undue hardship would result. In such cases, easement widths may be reduced only to the extent necessary to relieve the hardship.
9. The requirement for public access on a specific site may be fulfilled by:
 - a. a-Participation in a public access plan incorporated in the program; or
 - b. b-Provision of facilities specified in a permit approval.
10. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
11. Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.
12. Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the county auditor's office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.
13. Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or nonprofit agency through a formal agreement recorded with the county auditor's office.
14. Public access facilities shall be available to the public 24 hours per day unless specific exceptions are granted through the shoreline permit process subject to the provisions of subsection (B)(1) of this section.
15. The standard state-approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.
16. Incentives for public access improvements such as density or bulk and dimensional bonuses shall be considered through applicable provisions of zoning and subdivision regulations.
- ~~23.390.090 Site planning.~~

Commented [DN84]: All non-repetitive regulations have been moved, so this section is no longer necessary.

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Policies:

Development and use should be designed in a manner that directs land alteration to the least sensitive portions of the site to maximize vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and wetland habitats; protect wildlife and habitats; protect archaeological, historic and cultural resources; and preserve aesthetic values. This may be accomplished by minimizing the project footprint, the use of clustering and other appropriate design approaches.

Low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including, but not limited to, porous paving blocks, porous concrete and other similar materials should be incorporated in developments where site conditions allow to maintain shoreline ecological functions and processes. Topographic modification, vegetation clearing, use of impervious surfaces and alteration of natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. An engineering geologist should be consulted prior to using infiltration practices on shore bluffs.

Accessory development or use that does not require a shoreline location should be located outside of shoreline jurisdiction unless such development is required to serve approved water-oriented uses and/or developments. When sited within shorelines jurisdiction, uses and/or developments such as parking, service buildings or areas, access roads, utilities, signs and storage of materials should be located inland away from the land/water interface and landward of water-oriented developments and/or other approved uses.

Development should be located, designed, and managed so that impacts on shoreline or upland uses are minimized through bulk and scale restrictions, setbacks, buffers, and control of proximity impacts such as noise or light and glare.

Shoreline uses should not deprive other uses of reasonable access to navigable waters. Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation should be preserved and enhanced. The rights of treaty tribes to resources within their usual and accustomed areas should be accommodated.

Regulations:

Where appropriate new development shall use clustering to minimize adverse impacts on shoreline ecological functions and processes.

An assessment of the existing ecological functions and/or processes provided by topographic, physical and vegetation characteristics of the site shall accompany development proposals; provided, that proposals for single family residences shall be exempt from this requirement.

Such assessments shall include the following general information:

Impacts of the proposed use/development on ecological processes with clear designation of existing and proposed routes for water flow, wildlife movement and other features.

Infrastructure requirements such as parking, services, lighting and other features, together with the effects of those infrastructure improvements on shoreline ecological functions and/or processes.

Commented [DN85]: Moved to Ecological Protection and Critical Areas Section (WCC 23.30.020).

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Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible. Elevated walkways should be utilized to cross wetlands.

Impervious surfacing for parking lot/space areas shall be minimized through the use of alternative surfaces where feasible, consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound.

Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.

Design of structures should conform to natural contours and minimize disturbance to soils and native vegetation. Foundations shall be tiered with earth retention incorporated into the structure.

Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.

Fencing, walls, hedges and similar features shall be designed in a manner that does not preclude or significantly interfere with wildlife movement to/from important habitat areas.

Accessory uses that do not require a shoreline location shall be sited away from the land/water interface and landward of the principal use and, unless otherwise specified, shall observe critical area regulations and buffers in Chapter 16.16 WCC.

Development shall be located, designed, and managed so that impacts on public use of the shoreline are minimized.

Public recreation activities such as fishing, clam digging, swimming, boating, and wading, and water-related recreation shall be protected through specific provisions to avoid impacts, or provide access as applicable.

Interior and exterior lighting shall be designed and operated to avoid illuminating nearby properties or public areas, prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas, and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening.

All facilities shall be located and designed to avoid impediments to navigation and to avoid depriving other properties of reasonable access to navigable waters. Review and approval by the U.S. Coast Guard may be required as a condition of issuance of building or development permits to assure compliance. All in-water structures shall be marked and lighted in compliance with U.S. Coast Guard regulations.

All shoreline use and development shall provide setbacks from adjacent properties in accordance with WCC Table 23.90.130(C). Setbacks shall be of adequate width to attenuate proximity impacts such as noise, light and glare, and may address scale and aesthetic impacts.

Fencing or landscape areas may be required to provide a visual screen.

Commented [DN86]: Moved to Transportation Section for Shoreline Uses and Modifications (WCC 23.40.190).

Commented [CES87]: Moved to Utilities section.

Commented [DN88]: Moved to 23.30.040 Vegetation Management.

Commented [DN89]: Moved to Water Quality section

Commented [AP90]: Removed to reduce redundancy. This is fully captured in the General Regulation provisions for Ecological Protection and Critical Areas (WCC 23.30.020).

Commented [DN91]: Moved to Ecological protection and critical areas section.

Commented [DN92]: Moved to the Public Access section

Commented [DN93]: This is more applicable as a policy rather than a regulation and is already included as a policy above under former subsection A)(5).

Commented [DN94]: Moved to Views and Aesthetics 23.30.030

Commented [DN95]: Moved to both the Boating facilities and the Moorage sections.

Commented [DN96]: This is more of a policy rather than a regulation and is already included above under former subsection A)(4). Dimensional standards already implement such a policy so this additional regulation is not necessary.

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Chapter ~~23.100~~23.40 Shoreline Use and Modification Regulations

Commented [AP97]: This chapter has been moved from later in the document (previously number 23.100).

~~23.100~~23.40 Shoreline Use and ~~Development~~ Modification.

A. All uses and modifications in shoreline areas shall be subject to the policies and regulations of this program.

B. Table 1. Shoreline Use by Environment Designation generally sets forth the permissible uses within the respective shoreline environment designations in the county. It should be read in close conjunction with the definitions in Chapter 23.60 (Definitions) and the other provisions in this program. The contents of Table 1 provisions are subject to limitations, conditions, and exceptions listed under of each of the categories of this chapter. Such text modifies the requirements of Table ~~14~~, and in the event there is a conflict between the use(s) identified in Table ~~23.100.010~~ Table 14 and the policies or regulations, the policies and regulations shall prevail.

C. Shoreline use and development shall be classified by the ~~administrator~~Director and regulated under one or more of the following applicable sections of WCC Chapter ~~23.100~~23.40 (Shoreline Use and Modification Regulations). ~~Unless otherwise stated, all use and development shall also comply with all of the general policies and regulations of Chapter 23.90 WCC and, if applicable, the policies of Chapter 23.40 WCC. A proposed development may contain different types of uses and/or modifications, and may be classified under and be subject to multiple categories (e.g., a marina may fall under and be subject to Marinas, Moorage, Commercial, and Industrial, depending on what is proposed).~~

D. ~~(b)~~In the Aquatic: shoreline environment designation, only ~~water-dependent~~ water-dependent uses shall be ~~allowed-only~~, subject to the use and development regulations of the abutting upland shoreline ~~area~~ environment designation.

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Table 1. WCC Table 23.100.010^(a)

Table 1. Shoreline Use by Environment Designation

Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point Mgmt Area
Agriculture										
<u>Agriculture – General</u>	P ⁽⁺⁾	X	P ⁽⁺⁾	P ⁽⁺⁾	P [*]	P	P	P⁽⁺⁾ [*]	X	<u>P</u>
<u>Liquid Manure Storage Facilities and Spreading</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Animal Feeding Operations and Confined Animal Feeding Operations (AFOs/CAFOs)</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>
Aquaculture										
<u>Aquaculture – General</u>	P	P ⁽⁺⁾	P	P ⁽⁺⁾	P ⁽⁺⁾	P	P	P⁽⁺⁾	<u>P see upland</u>	<u>P</u>
Commercial Salmon Net Pen Facilities	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	X ⁽⁺⁾	<u>X</u>
Commercial Geoduck Aquaculture	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C⁽⁺⁾</u>	<u>C</u>
Marinas and Launch Ramps/Boating Facilities										
<u>Marinas, including accessory structures</u>	P	P	C	P	P	<u>P⁽⁺⁾</u>	C	X	<u>P see upland</u>	<u>X</u>
<u>Launch ramps – Marina</u>	P	P	<u>P⁽⁺⁾</u>	P	P	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	X ⁽⁺⁾	<u>P see upland</u>	<u>X</u>
<u>Launch ramps – Public</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X/P[*]</u>	<u>see upland</u>	<u>P</u>
<u>Launch ramps – Residential</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>see upland</u>	<u>X</u>
<u>Accessory Structures</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>C</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>C</u>	<u>X</u>	<u>see upland</u>	

Commented [CES98]: Making consistent w/ policies for Natural

Commented [CES99]: Making consistent w/ policies for Natural

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point Mgmt Area
Covered Over-Water Structures	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	P ⁽⁺⁾	P ⁽⁺⁾
Commercial										
<u>Water-Dependent Commercial</u>	<u>P</u>	<u>P*</u>	<u>C*</u>	<u>P</u>	<u>P</u>	<u>P*</u>	<u>C*</u>	<u>X</u>	<u>see upland</u>	<u>P</u>
<u>Water-oriented-Related and Water-Enjoyment Commercial</u>	P	P ⁽⁺⁾	C ⁽⁺⁾	P	P	P ⁽⁺⁾	C ⁽⁺⁾	X	X ⁽⁺⁾	<u>P</u>
Non-Water-Oriented Commercial	C	C ⁽⁺⁾	C ⁽⁺⁾	C	C	C ⁽⁺⁾	C ⁽⁺⁾	X	X	<u>C</u>
Dredging and Dredge Material Disposal										
<u>Dredging</u>	C	C	C	C	C	C	C	X/ <u>P⁽⁺⁾</u>	C ⁽⁺⁾	X/ <u>C⁽⁺⁾</u>
<u>Maintenance Dredging</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P*</u>	<u>P*</u>
<u>Dredge Material Disposal</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>P⁽⁺⁾</u>	<u>X⁽⁺⁾</u>	<u>P</u>
Essential Public Facilities										
	C	C	C	C	C	C	C	X	C	<u>C</u>
Landfill and Excavation										
	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>P/*C</u>	<u>X/C⁽⁺⁾</u>
Flood Control-Hazard Reduction and Instream Structures										
<u>Flood Hazard Reduction and Instream Structures – General</u>	P	P	P	P	P	P	P	X	<u>see upland</u>	<u>P</u>

Commented [CES100]: Updated to comply with WAC 173-26-231(3)(c), which requires a CUP for fill waterward of the OHWM.

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point Mgmt Area
Channelization or Dams for Hazard Reduction Flood Control	P	P	X	P	C	C	X	X	see upland ^P	<u>P</u>
Forest Practices										
Outside of shorelines of statewide significance	X <u>P</u>	X <u>P</u>	X <u>P</u>	X <u>P</u>	P	P	P	C ⁽⁺⁾	see upland X	<u>P</u>
Within shorelines of statewide significance	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>
Industrial and Port										
Water-Dependent Industrial and Port Development	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u> [*]	<u>P/C</u> [*]	<u>X</u>	<u>X</u>	see upland	<u>P</u>
Water-oriented Related and Water-Enjoyment Industrial and Port development	P	X ⁽⁺⁾	X	X	P ⁽⁺⁾	P ⁽⁺⁾ / C [*]	X	X	P/C ⁽⁺⁾ <u>X</u>	P ⁽⁺⁾
Existing legal fossil-fuel refinery operations or existing legal fossil fuel transshipment facilities	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>P</u>
Expansion of existing legal fossil-fuel refinery operations or expansion of existing legal fossil fuel transshipment facilities	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>
New or expansion of existing legal renewable fuel refinery operations or renewable fuel transshipment facilities	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>

Commented [CES101]: Amended to be consistent w/ WAC 173-26-241(3)(e)

Commented [CES102]: Inserted per Council's pending draft fossil fuel amendments.

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point Mgmt Area
Non-Water-Oriented Industrial and Port Development	C	X	X	X	C	C ⁺	X	X	X	X
<u>Terminals for Passenger-Only Vessels</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>see upland</u>	<u>C</u>
<u>In-Water Log Storage</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>C⁺</u>	<u>X</u>
Dams, Diversion, and Tailrace Structures for Hydroelectric Power Generation	C	X	C	C	C	C	C	X	see upland	X
Institutional										
	C	C	C	C	C	C	C	X	X	X
Land Division										
<u>Boundary Line Adjustments and Lot Consolidation</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>
<u>Short Plats</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>
<u>Subdivisions</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>P</u>
Mining										
<u>Mining – General</u>	X	X	X	X	C	C	C	X	C⁺ <u>X*</u>	<u>C</u>
Surface oil or gas drilling	X	X	X	X	X	X	X	X	X	X
Moorage Structures: Docks, Piers, and Mooring Buoys										
<u>Private Individual Deck Moorage (other than mooring buoys) – Freshwater</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>see upland</u>	<u>X</u>

Commented [CES103]: Moved to Utilities

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Shoreline Uses	Shoreline Area Environment Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point Mgmt Area
<u>Private Individual Deck Moorage (other than mooring buoys) – Marine</u>	<u>P</u>	<u>C</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>X</u>	<u>see upland</u>	<u>X</u>
<u>Private Shared Deck Moorage</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>see upland</u>	<u>X</u>
Private and Shared Moorage	P	C	P(+)/C(+)	P	P	P	P(+)/C(+)	X(+)	P	
<u>Public Moorage (other than mooring buoys)</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	X <u>C</u> ⁽⁺⁾	<u>see upland</u> <u>P</u>	<u>X</u>
<u>Commercial Moorage (other than mooring buoys)</u>	<u>C</u>	X <u>C</u> ⁽⁺⁾	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u> ⁽⁺⁾	<u>see upland</u> <u>P</u>	<u>X</u>
<u>Industrial Moorage (other than mooring buoys)</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>X</u> ⁽⁺⁾	<u>see upland</u> <u>P</u>	Existing: P(+) New: X
<u>Covered Moorage Accessory to Permitted Moorage</u>	<u>CP</u>	<u>CP</u>	<u>X</u>	<u>CP</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>see upland</u> <u>P</u>	<u>C</u>
<u>Float Plane Moorage Accessory to Permitted Moorage</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>see upland</u> <u>P</u>	<u>C</u>
Recreational Mooring Buoys	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>see upland</u>	XP
Recreational										
<u>Water-Oriented Recreation</u>	<u>P</u>	<u>P</u>	<u>P</u> ⁽⁺⁾	<u>P</u>	<u>P</u>	<u>P</u> ⁽⁺⁾	<u>P</u> ⁽⁺⁾	<u>P</u> ⁽⁺⁾	<u>P</u> ⁽⁺⁾ / <u>C</u> ⁽⁺⁾	<u>P</u> ⁽⁺⁾
<u>Non-Water-Oriented Recreation</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>X</u>
Residential										

Commented [CES104]: Inserted per Council's pending draft fossil fuel amendments.

Commented [AP105]: Added new categories/rows to provide greater clarity.

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<u>Single-Family</u>	P	P	P ^{+/G}	P	P	P ^{+/+}	P ^{+/G}	C ^{+/+} X ^{+/+}	X	XP
<u>Duplex</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Multi-Family</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>X</u>	<u>C</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Over-Water Residences</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
Restoration and Enhancement										
	P	P	P	P	P	P	P	P	P	P
Shoreline Stabilization*										
<u>Groins</u>	C ^{+/X}	C ^{+/X}	X	C ^{+/X}	C ^{+/X}	C ^{+/X}	X	X	C ^{+/X}	X
Breakwaters and Jetties	C ^{+/+}	C ^{+/+}	C ^{+/+} ⁽⁺⁾	C ^{+/+}	C ^{+/+}	C ^{+/+}	C ^{+/+} ⁽⁺⁾	X	C ^{+/+}	C ^{+/+} ⁽⁺⁾
Bulkheads and <u>Revetments</u>	P ^{+/+}	P ^{+/+}	C ^{+/+}	P ^{+/+}	P ^{+/+}	P ^{+/+}	C ^{+/+}	X ^{+/+}	X ⁽⁺⁾	C ^{+/+}
<u>Drift Sills</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>X</u>	See upland	<u>C</u>
Gabions	X ^{/C*}	X ^{/C*}	X ^{/C*}	X ^{/C*}	X ^{/C*}	X ^{/C*}	X ^{/C*}	X	X	X ^{/C*}
<u>Revetments</u>	X ^{/C*}	X ^{/C*}	X ^{/C*}	X ^{/C*}	X ^{/C*}	X ^{/C*}	X ^{/C*}	<u>X</u>	X [*]	X ^{/C*}
Bioengineering Approaches & other Soft-Shore Measures	P	P	P	P	P	P	P	P ^{+/+} ⁽⁺⁾	P ^{+/+} ⁽⁺⁾	P
Signs										
	P	P	P	P	P	P	P	X ⁽⁺⁾	P ^{+/+} ⁽⁺⁾	P

Commented [CES106]: Changed to prohibited in favor of using drift sills, which is an added modification, below.

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Transportation										
<u>Transportation Facilities serving a specific approved use*</u>	P	P	P(+)	P	P	P	P(+)	X ⁽⁺⁾	P(-)/-C*(-)	P(+)
Transportation Facilities not serving a specific approved use*	C	C	X	C	C	C	X	X	C	X
Utilities										
<u>Accessory Utilities</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>
Local <u>Utilities</u> distribution facilities	P(+)(+)	P(+)(+)	P(-)(+/-)C*(-)	P(+)(+)	P(+)(+)	P(+)(+)	P(+)(+/-)C*(-)	X ⁽⁺⁾	P(+)(+/-)C*(-)(+/-)X*	P(+)(+)
Regional <u>transmission facilities</u> <u>utilities</u>	C(+)(+)	C(+)(+)	C(+)(+)	C(+)(+)	C(+)(+)	C(+)(+)	C(+)(+)	X ⁽⁺⁾	C(+)(+/-)X*	C(+)(+)
Desalinization Facilities	C(+)	C(+)	C(+)	C(+)	C(+)	C(+)	C(+)	X ⁽⁺⁾	<u>C</u> P(+)	<u>C</u> (+)
<u>Dams, Diversion, and Tailrace Structures for Hydroelectric Power Generation</u>	<u>C</u>	<u>X</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>X</u>	<u>see upland</u>	<u>X</u>

P = Permitted, ~~may be~~ subject to policies and regulations of this program ~~and subject to shoreline substantial development permit requirements.~~

C = Shoreline conditional use, subject to policies and regulations of this program ~~and may be subject to shoreline substantial development permit requirements.~~

~~(-) Subject to limitations.~~

~~(+) Subject to conditions.~~

X = Prohibited.

N/A = Not applicable.

* = Refer to the regulations under this use and modification category for certain caveats.

Commented [AP107]: Revised per Scoping Document, Item #17i.

Commented [CES108]: Moved from Industrial and Port

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~~(*) Subject to exceptions.~~

~~(a) In the event that there is a conflict between the use(s) identified in Table 23.1040.010 and the policies or regulations in Chapters 23.230, 23.390, or 23.4100 WCC, the policies and regulations shall apply.~~

~~(b) Aquatic: Water dependent use only, subject to the use and development regulations of the abutting upland shoreline area designation.~~

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23.4100.020 Shoreline Bulk Provisions – Buffers, Setbacks, Height, Open Space and Impervious Surface Coverage.

~~A. Policies. Standards for density, setbacks, height, and other provisions should ensure no net loss of shoreline ecological functions and/or processes and preserve the existing character of the shoreline consistent with the purpose of the shoreline area designation.~~

~~B. Regulations.~~

~~A. Table 2. Bulk Regulations for Shoreline Development. Table of Bulk Regulations. WCC Table 23.90.130(C) establishes the minimum required dimensional requirements for development, uses, and activities including all structures and substantial alteration of natural topography. Dimensional standards relating to critical areas are governed by the provisions of WCC Chapter 16.16. Dimensional standards specified in this program shall not exceed the geographic limit of the Act's jurisdiction. Additional standards may be established in WCC, Chapter 23.10023.40 (Shoreline Use and Modification Policies and Regulations).~~

~~B. Where the bulk provisions of other County regulations (e.g., Title 20, Zoning) differ, the stricter shall apply.~~

~~A.C. All measurements except height and area shall be measured outward on the horizontal plane and in the direction that results in the greatest dimension from property lines, or from other features specified.~~

~~A. Except as otherwise stated, the Whatcom County Comprehensive Plan, zoning regulations, critical areas regulations, flood control regulations, subdivision regulations, health regulations and other adopted regulatory provisions apply within shoreline jurisdiction. In the event the provisions of this program conflict with provisions of other county regulations, the more protective of shoreline resources shall prevail.~~

~~B. All use and development activities shall conform to all applicable plans, policies, standards, guidelines and regulations of other agencies with jurisdiction in shoreline areas.~~

D. Setbacks.

1. Setbacks shall be pursuant to Table 2; except as allowed by subsection (D)(2).

~~Common Line Setback for Single Family Residences. For the purpose of accommodating views to be adequate and similar, but not necessarily equivalent, for new residences while protecting predominant shoreline views of the water from legally existing primary residences in developed residential areas, the shoreline (critical area) buffer may be modified for primary residential structures in the Urban, Shoreline Residential, and Rural environments (only), consistent with the following. The presence of nearby sheds, or dilapidated structures does not constitute the existence of a residence, nor can such structures be used to determine a common line setback.~~

~~Where there are legally established single-family residential primary structures within 150 feet on both sides of the proposed residence, the setback shall be determined as the greater of either:~~

~~— A common line drawn between the nearest corners of the foundation closest to the sideyard property line of the proposed residence to each adjacent residence, or~~

Commented [AP109]: Moved from the General Regulations section (previously WCC 23.90.130).

Commented [CES110]: Incorporated from former Appendix F of Title 23.

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- ~~— A common line calculated by the average of both adjacent residences' existing setbacks;~~
- ~~— Where there is a legally established single family residential primary structure within 150 feet on only one side of the proposed residence, the common line setback shall be determined as the greater of either:~~
 - ~~— A common line drawn between nearest corner of the foundation closest to the sideyard property line of the proposed residence to the adjacent residence and the nearest point of the standard buffer on the adjacent vacant lot; or~~
 - ~~— A common line calculated by the average of the adjacent residence's setback and the standard buffer for the adjacent vacant lot.~~
- ~~— When the use of a common line setback is allowed, compliance with buffer width reduction and mitigation pursuant to WCC 23.30.010 (Ecological Protection) shall be required.~~
- ~~— In no case shall development be located waterward of the common line setback or a minimum of 50 feet from the ordinary high water mark, unless approved to be closer as part of a constrained lot review WCC 23.40.170(B).~~
- ~~— The lot shall not be subject to landslide hazard areas, or riverine or coastal erosion hazard areas or associated buffers (see WCC 16.16.310).~~

2. Sideyard setbacks shall be measured from all property lines that intersect the shore side of a lot or tract; provided, that for development not requiring a wider **shoreline (critical area)** buffer, five feet of the total required sideyard setbacks may be provided on one side and the balance on the other side.

1. ~~and provided further, that, for a single family residence or duplex on a nonconforming lot that does not provide sufficient area to meet the standard dimensional requirements for buffers and setbacks, the nonconforming provisions of WCC 23.50.070 apply.~~

B-F. Height. ~~Table 2 23.90.130(C)~~ establishes the maximum allowed building height for all primary and accessory structures **within the shoreline jurisdiction**. Height is measured according to the definition in WCC 23.60.080(78)~~110~~; provided, that:

1. ~~provided further, that, pursuant to RCW 90.58.320, and except as allowed by subsections (2 - 4) of this section,~~ no permit may be issued for any ~~new or expanded~~ building or structure more than 35 feet above average grade level that will obstruct the view of a substantial number of residences on or adjoining such shorelines except where the program does not prohibit such development and only when overriding considerations of the public interest will be served. The applicant/proponent shall be responsible for providing sufficient information ~~to the administrator~~ to determine ~~that such development will not obstruct the view of a substantial number of residences on or adjoining such shorelines whether this standard is met.~~
2. In the Urban Resort ~~shorelines designation only~~, commercial and multifamily ~~unit~~ residential development more than 100 feet from the ordinary high water mark may exceed the standard height limit, **up to a maximum height of 75 feet** when approved **with-through** a shoreline conditional use permit, ~~up to a maximum height of 75 feet~~; provided, that specific location design and other conditions may be imposed to meet the policies and regulations of this program;

Commented [ECY Req'd111]: This change removes the common-line setback standard to avoid confusion with the existing language at 23.40.020.D.2.c which requires compliance with the ecological protection standards in WCC 16.16. This includes WCC 16.16.640.C.1.c and WCC 16.16.740.C.1.c which limits reduction of standard buffers to 25%. According to Whatcom County staff, requiring compliance with the ecological protection standards in WCC 16.16 is intended to limit common-line setback reductions to 25% of the standard buffer widths consistent with the sections cited above.

The SMP Guidelines require that shoreline master programs be sufficient in scope and detail to ensure proper implementation [WAC 173-26-191(2)(a)(ii)(A)]. In this case, the common-line setback provisions in 23.40.020.D.2 are confusing, as they read as though a reduction can be achieved simply by drawing a line between adjacent structures and buffers on vacant lots. The reader must go to 16.16 to find that such reductions are limited to 25% percent of the standard buffer. If application of the common-line results in the same setback reductions allowed per WCC 16.16.640.C.1.c and 16.16.740.C.1.c, striking this section will avoid appeals and lead to greater consistency of implementation.

Commented [DN112]: Now covered by nonconforming lot section (23.50.030)

Amended pursuant to Resolution 2022-027 and incorporating ECV's Required Amendments

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3. In the Urban Resort shoreline environment designation, lodging developments over 35 feet in height may be allowed. However, due to the potential for adverse impacts upon adjacent uses and the community from such development, special consideration must be given to the following factors during review of such proposals:
 - a. Urban services, including sanitary sewers, public water supply, fire protection, storm drainage, and police protection, must be provided at adequate levels to protect the public health, safety, and welfare.
 - b. Circulation, parking areas, and outdoor storage or loading areas should be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas should be screened from open space areas by landscaping, fences or similar structures, or grade separation.
 - c. Recreational needs of building clientele must be provided for through on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases.
4. In the Cherry Point Management Area, cranes, gantries, mobile conveyors, light standards, and similar equipment necessary for the functions of water-dependent uses or the servicing of vessels may extend above the applicable maximum height limit provided in Table 1, provided that such structures shall be designed to minimize view obstruction.
5. Residential accessory structures that are not waterward of the primary structure may be built to the maximum height for the environment designation.
6. Residential structures that share a common wall with the primary structure shall be considered an extension of the primary structure (i.e., an attached garage) and may be built to the maximum height for the designation.
7. In the Rural, Resource, or Conservancy shoreline environments, accessory structures that are 150 feet or greater from the OHWM of the Nooksack or Sumas Rivers may be built to the maximum height for the designation.
- F. **Open Space.** Open space shall be provided for certain types of development, use, or activities. The amount of open space, as a percentage of lot coverage, shall be as provided in Table 2, below.
- G. **Uses Allowed in Buffers and Setbacks.** The following development activities are ~~not subject to~~ allowed in buffers and setbacks; provided, that they are constructed and maintained in a manner that minimizes adverse impacts on shoreline functions and processes; and provided further, that they comply with all the applicable regulations in WCC Chapter 16.16, including mitigation:
 1. Those portions of approved private water-dependent development or public water-oriented development that require a location waterward of the ordinary high water mark of streams, rivers, lakes, ponds, marine shorelines, associated wetlands, and/or within their associated buffers.
 2. ~~Accessory and u~~nderground utilities.
 3. Necessary power poles and transmission towers are not subject to height limits but shall not be higher than necessary to achieve the intended purpose.

Commented [CES113]: Moved from 23.40.040 (Commercial)

Commented [CES114]: Added to accommodate equipment necessary for operations of permitted uses.

Commented [CES115]: Moved up from below

Commented [DOE-Req116]: Required Changes – These changes are required for consistency with the SMP Guidelines governing principle that SMP regulations must be designed to achieve no net loss of ecological functions (WAC 173-26-186(8)). The changes add appropriate sideboards to allow a limited and predictable list of common residential developments that may be located within regulated buffers. The changes include more emphasis on the required mitigation sequence including avoidance, minimization and mitigation of impacts to buffers [WAC 173-26-201(2)(e)]

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4. Modifications to existing development that are necessary to comply with environmental requirements of any state or federal agency, when otherwise consistent with this program; provided, that the decision maker determines that the facility cannot meet the dimensional standard and accomplish the purpose for which it is intended and the facility is located, designed, and constructed to meet specified dimensional standards to the maximum extent feasible, and the modification is in conformance with the provisions of Chapter WCC 23.50.070 (Nonconforming Uses, Structures, and Lots) ~~for nonconforming development and uses.~~
5. Roads, railways, and other essential public facilities that must cross shorelines and are necessary to access approved water-dependent development.
6. Stairs and walkways no greater than four feet in width and no higher than 18 inches in height ~~above grade~~, except for railings: provided, that where ADA requirements apply, such facilities may be increased to five feet in width and the height requirement may be waived to provide for site-specific ADA compliance. Stairways shall conform to the existing topography to the extent feasible and minimize impervious surfaces.
7. Shared moorages ~~shall not be subject to sideyard setbacks~~ when located on or adjacent to a property line shared in common by the project proponents and where appropriate easements or other legal instruments have been executed providing for ingress and egress to the facility.
8. Retaining walls or similar slope stabilization structures, when associated with an approved shoreline use or development consistent with the provisions of this program and demonstrated to be necessary for the approved use or development through a geotechnical analysis.
9. Where permitted, fences, walls other than those allowed by 23.70.020(G)(8) above ~~retaining walls~~, hedges and other similar structures shall be limited to four feet in height within shoreline setbacks and six feet in height outside of shoreline setbacks; provided, that the Director may exempt security fencing from this requirement as required by federal or state regulations.
10. Signs.
 - a. On publicly owned park properties, interpretive, wayfinding, and park identification signs.
 - b. Signage required by state or federal security requirements.
11. Passive recreation facilities that are part of a non-motorized trail system or environmental education program, including walkways, wildlife viewing structures, or public education trails; provided, that all the criteria in WCC 23.40.160(A)(6) (Recreation) are met.
12. Residential accessory structures that are not waterward of the primary structure may be built to the maximum height for the designation. Accessory structures, as allowed by 16.16.720(G)(4) Habitat Conservation Areas—Use and Modification. When located in the shoreline jurisdiction, residential water-oriented recreational accessory structures—such as a boat equipment storage shed, an small uncovered boat storage rack, a fire pit, and a pathway leading to the shoreline—may be permitted in an HCA buffer; provided,
 - a. Such structures are located as far from the shoreline as feasible and on previously-impacted buffer areas;
 - b. The maximum area, inclusive of existing lawfully-established accessory structures, They shall be limited to 10% of the buffer's area or 500 square feet, whichever is less;

Commented [AP117]: Revised per Parks comment (Scoping Document Items #13b, 13c, and 14a)

Commented [AP118]: Added per Scoping Document, Item #17e.

Commented [AP119]: Added for clarity per Scoping Document, Item #17e.

Commented [AP120]: Added per Scoping Document, Item #16b.

Commented [AP121]: Revised per Scoping Document, Item #13d.

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- c. No more than 20% of the linear length of shoreline is occupied by a building or structure;
- d. Individual structures shall be limited to a total footprint area of 100-square feet and 10-feet in height; and
- e. The shoreline is 75% or at ratios outlined in WCC 16.16.760, whichever is greater, planted (or replanted) with native vegetation to a minimum depth of 15 feet landward from the ordinary high water mark.
- f. This provision shall not apply to residential developments authorized using the constrained lot provisions of WCC 23.40.150(B).

~~Residential structures which share a common wall with the primary structure shall be considered an extension of the primary structure (i.e., an attached garage) and may be built to the maximum height for the designation.~~

~~Height limits contained in this program for accessory structures in the Rural, Resource, or Conservancy shoreline environments, accessory structures that are 150 feet or greater from the OHWM of the Nooksack or Sumas Rivers may be built to the maximum height for the designation, shall not apply within shoreline jurisdiction of the Nooksack and Sumas Rivers beyond 150 feet from the OHWM.~~

Commented [DOE-Req122]: Required Changes – These changes are required for consistency with the SMP Guidelines governing principle that SMP regulations must be designed to achieve no net loss of ecological functions (WAC 173-26-186(8)). The changes add appropriate sideboards to allow a limited and predictable list of common residential developments that may be located within regulated buffers. The changes include more emphasis on the required mitigation sequence including avoidance, minimization and mitigation of impacts to buffers [WAC 173-26-201(2)(e)]

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Table 2. Bulk Regulations for Shoreline Development~~WCC Table 23.30.130(C) Buffer, Setbacks, Height, Open Space, and Impervious Surface Coverage Standards for Shoreline Development~~

Shoreline Uses	Shoreline Environment Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Agriculture										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Side Setback ^(2,3)	20'	N/A	20'	20'	20'	20'	20'	N/A	N/A	20'
Maximum Height Limit ^(4,5) (a/b)	35'	N/A	35' / 35'	35' / 35'	35' / 35'	35' / 35'	35' / 35'	N/A	N/A	35'
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Aquaculture										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Side Setback ^(2,3)	10'	10'	10'	10'	10'	10'	15'	N/A	N/A	20'
Maximum Height ^(4,5) Height Limit (a/b)	25' / 35'	25' / 35'	20' / 30'	25' / 35'	20' / 30'	20' / 30'	15' / 25'	N/A	10'	20' / 30'
Open Space %	30%	40%	50%	30%	50%	50%	60%	N/A	N/A	30%
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Commercial										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
Side Setback ^(2,3,6)	5' ±	5' ±	10' ±	10' ±	10' ±	10' ±	15' ±	N/A	N/A	15'
Maximum Height ^(4,5) Height Limit (a/b/g)	25' / 35'	25' / 35'	20' / 30'	25' / 35'	20' / 30'	20' / 30'	15' / 25'	N/A	15'	35'
Open Space % (c/d)	30% / 15%	40% / 20%	60% / 30%	30% / 15%	50% / 25%	50% / 25%	60% / 30%	N/A	N/A	30% / 15%
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		
Boating Facilities: Marinas and Launch Ramps										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									

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Shoreline Uses	Shoreline <u>Environment Area</u> Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Side Setback ^(2,3)	10'	10'	10'	10'	10'	10'	15'	N/A	N/A	<u>20'</u>
<u>Maximum Height</u> ^(4,5) <u>Height Limit</u> (a/b)	25' / 35'	25' / 35'	25' / 35'	25' / 35'	20' / 25'	20' / 25'	15' / 25'	N/A	N/A	<u>25' / 35'</u>
Open Space % (c/d)	15%	30%	50%	15%	30%	30%	50%	N/A	N/A	<u>15%</u>
Impervious Surface Coverage	Per the underlying zone district , WCC Title <u>20</u> .					◇◇ 10% ⁽⁹⁾	◇◇ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title <u>20</u> .		
Mining										
<u>Shoreline Buffer</u> ⁽¹⁾ <u>Setback</u>	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <u>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</u>									
Side Setback ^(2,3)	N/A	N/A	N/A	N/A	50'	50'	100'	N/A	N/A	<u>50'</u>
Open Space %	N/A	N/A	N/A	N/A	50%	50%	50%	N/A	N/A	<u>50%</u>
Impervious Surface Coverage	Per the underlying zone district , WCC Title <u>20</u> .					◇◇ 10% ⁽⁹⁾	◇◇ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title <u>20</u> .		
Industrial and Port Development										
<u>Shoreline Buffer</u> ⁽¹⁾ <u>Setback</u>	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u> <u>Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</u>									
Side Setback ^(2,3)	30'	10'	30'	30'	40'	40'	60'	N/A	N/A	<u>40'</u>
<u>Maximum Height</u> ⁽⁵⁾ <u>Height Limit</u> (a/b)	35' / 35'	15' / 25'	20' / 30'	35' / 35'	25' / 35'	25' / 35'	25' / 35'	N/A	20'	<u>25' / 35'</u>
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	<u>30%</u>
Impervious Surface Coverage	Per the underlying zone district , WCC Title <u>20</u> .					◇◇ 10% ⁽⁹⁾	◇◇ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title <u>20</u> .		
<u>Land Division</u>										
<u>Shoreline Buffer</u> ⁽¹⁾	<u>Per Shoreline Buffer Standards in WCC 23.30.040</u>									
<u>Side Setback</u> ^(2,3)	<u>Based on shoreline use</u>									
<u>Maximum Height</u> ⁽⁵⁾ <u>(a/b)</u>	<u>Based on shoreline use</u>									
<u>Open Space %</u>	<u>30%</u>	<u>40%</u>	<u>50%</u>	<u>30%</u>	<u>50%</u>	<u>50%</u>	<u>60%</u>	<u>N/A</u>	<u>N/A</u>	<u>30%</u>
<u>Impervious Surface Coverage</u>	<u>Per the underlying zone, WCC Title 20.</u>					<u>10%⁽⁹⁾</u>	<u>10%⁽⁹⁾</u>	<u>Per the underlying zone, WCC Title 20.</u>		
Recreation										

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Shoreline Uses	Shoreline <u>Environment</u> Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Shoreline Buffer ⁽¹⁾ Setback	<u>Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</u>									
▲Side Setback ^(2,3)	10'	10'	15'	10'	15'	15'	20'	20'	N/A	<u>20'</u>
▲Maximum Height ^(4,5) Height Limit (a/b)	25' / 35'	25' / 35'	20' / 35'	25' / 35'	20' / 35'	20' / 35'	15' / 25'	10' / 15'	15'	<u>20' / 35'</u>
Open Space % (c/d)	30% / 25%	40% / 40%	50% / 60%	30% / 25%	50% / 60%	50% / 60%	60% / 75%	95%	N/A	<u>30% / 25%</u>
Impervious Surface Coverage	Per the underlying zone district , WCC Title <u>20</u> .					◆◆ 10% ⁽⁹⁾	◆◆ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title <u>20</u> .		
Residential – Single-Family and Duplex										
Shoreline Buffer ⁽¹⁾ Setback	<u>Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</u>									
◆Maximum Density ⁽⁸⁾	6:1 ac.	22:1 ac.	6:1 ac.	6:1 ac.	1:1 ac.	1:20 ac.	1:1 ac.	N/A	N/A	<u>1:1 ac</u>
▲Side Setback ^(2,3)	5'	5'	10'	5'	10'	10'	15'	15'	N/A	<u>20'</u>
▲Maximum Height ^(4,5) Height Limit (a/b)	30' / 30'	30' / 30'	30' / 35'	30' / 30'	30' / 35'	30' / 35'	30' / 35'	30' / 35'	N/A	<u>30' / 35'</u>
Impervious Surface Coverage	Per the underlying zone district , WCC Title <u>20</u> .					◆◆ 10% ⁽⁹⁾	◆◆ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title <u>20</u> .		
Residential – Multifamily (3 – 6 units)										
Shoreline Buffer ⁽¹⁾ Setback	<u>Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</u>									
◆Maximum Density ⁽⁸⁾	6:1 ac.	22:1 ac.	6:1 ac.	6:1 ac.	1:1 ac.	1:20 ac.	1:1 ac.	N/A	N/A	<u>N/A</u>
▲Side Setback ^(2,3,6) (e/f)	5' +	5' +	15' +	5' +	15' +	15' +	20'	N/A	N/A	<u>N/A</u>
▲Maximum Height ^(4,5) Height Limit (a/b/g)	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A	<u>N/A</u>
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	<u>N/A</u>
Impervious Surface Coverage	Per the underlying zone district , WCC Title <u>20</u> .					◆◆ 10% ⁽⁹⁾	◆◆ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title <u>20</u> .		<u>N/A</u>
Residential – Multifamily (7+ units)										
Shoreline Buffer ⁽¹⁾ Setback	<u>Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers</u>									
◆Maximum Density ⁽⁸⁾	6:1 ac.	22:1 ac.	6:1 ac.	6:1 ac.	1:1 ac.	1:20 ac.	1:1 ac.	N/A	N/A	<u>N/A</u>

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Shoreline Uses	Shoreline Environment Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Side Setback ^(2,3,6) (e/f)	5'±	5'±	15'±	5'±	15'±	15'±	20'	N/A	N/A	N/A
Maximum Height ^(4,5) Height Limit (a/b/g)	30' / 40'	30' / 40'	30' / 35'	30' / 40'	30' / 35'	30' / 35'	30' / 35'	N/A	N/A	N/A
Open Space	30%	40%	50%	30%	50%	50%	60%	N/A	N/A	N/A
Impervious Surface Coverage	Per the underlying zone district , WCC Title <u>20</u> .					◇◇ 10% ⁽⁹⁾	◇◇ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title <u>20</u> .		N/A
Residential – Decks and Accessory Structures										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter <u>16.16</u> WCC, Buffers									
Side Setback ^(2,3)	5'	5'	10'	5'	10'	10'	15'	15'	N/A	
Height Limit ⁽⁴⁾	15'	15'	15'	15'	15'	15'	15'	15'	N/A	
Transportation Facilities										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter <u>16.16</u> WCC, Buffers									
Signs										
Shoreline Buffer ^(1,7) Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter <u>16.16</u> WCC, Buffers									
Side Setback ^(1,2,3)	5'	5'	10'	5'	10'	10'	15'	N/A	N/A	<u>10'</u>
Maximum Height ^(4,5) Height Limit (a/b)	10' / 15'	10' / 15'	6' / 10'	10' / 15'	6' / 10'	6' / 10'	6' / 10'	N/A	10'	<u>6' / 10'</u>
Utilities										
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040Per Whatcom County Critical Areas Ordinance, Chapter <u>16.16</u> WCC, Buffers									
Side Setback ^(1,2,3)	5'	5'	10'	5'	10'	10'	15'	N/A	N/A	<u>10'</u>
Maximum Height ^(4,5) Height Limit (a/b)	20' / 35'	20' / 35'	20' / 20'	20' / 35'	20' / 20'	20' / 20'	20' / 20'	N/A	N/A	<u>20' / 20'</u>
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	<u>50%</u>
Impervious Surface Coverage	Per the underlying zone district , WCC Title <u>20</u> .					◇◇ 10% ⁽⁹⁾	◇◇ 10% ⁽⁹⁾	Per the underlying zone district , WCC Title <u>20</u> .		
All Other Development										

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Shoreline Uses	Shoreline Environment Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic	Cherry Point Mgmt Area
Shoreline Buffer ⁽¹⁾ Setback	Per Shoreline Buffer Standards in WCC 23.30.040 Per Whatcom County Critical Areas Ordinance, Chapter 16.16 WCC, Buffers									
*Side Setback ^(2,3)	10'	10'	10'	10'	15'	15'	20'	N/A	N/A	
*Maximum Height ^(4,5) Height Limit (a/b)	25' / 35'	25' / 35'	25' / 35'	20' / 30'	20' / 30'	20' / 30'	20' / 30'	N/A	N/A	
Open Space %	30%	40%	60%	30%	50%	50%	60%	N/A	N/A	
Impervious Surface Coverage	Per the underlying zone district , WCC Title 20.					10% ⁽⁹⁾	10% ⁽⁹⁾	Per the underlying zone district , WCC Title 20.		

Footnotes:

(1) = Water dependent development shall have a buffer of zero feet. Unless specifically exempted from setback requirements in WCC 23.40.020, minimum required setbacks for permanent freestanding signs are 50 feet from the OWHM where not subject to critical areas or buffers. Other non-water dependent uses that may be allowed within the shoreline (critical area) buffer are identified in WCC 23.40.020(G).

(2) = Roof overhangs or other architectural features shall not project further than 18 inches into the side setbacks.

(3) = A side setback of 5 feet applies to residential decks and accessory structures ~~15 feet tall or less.~~

(4) = Maximum height for accessory structures is 15 feet, except as provided in WCC 23.40.020(E).

(5) = Maximum height is as shown, except as provided in WCC 23.40.020(E).

(6) = Add five feet of setback for each five feet of height over 15 feet.

(7) = See WCC 23.40.200 (Signs) for additional allowances and restrictions.

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

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

(a/b) = "a" Applies to structures within 100 feet of OWHM or wetland edge; ~~:-~~

"b" ~~a~~ Applies to structures more than 100 feet from OWHM or wetland edge.

(c/d) = "c" ~~a~~ Applies to development that includes overnight lodging; ~~:-~~

"d" ~~a~~ Applies to development that does not include overnight lodging.

(e/f) ~~e~~ = "e" ~~a~~ Applies to structures not more than 35 feet high; ~~:-~~

"f" ~~a~~ Applies to structures more than 35 feet high.

g = Height limit may be increased to 75 feet via conditional use permit – see WCC 23.90.130(B)(5).

* = ~~Add five feet of setback for each five feet of height over 15 feet.~~

Commented [Co/C123]: Amended pursuant to Resolution 2022-027

Amended pursuant to Resolution 2022-027 and incorporating ECV's Required Amendments

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~~* – Maximum height for accessory buildings is 15 feet.~~

~~** – See WCC 23.100.140(B)(10) through (14).~~

~~* – Roof overhangs or other architectural features shall not project further than 18 inches into the side yard setbacks.~~

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

~~◇ ◇ – Where the maximum total impervious surface percentage does not allow 2,500 square feet of total impervious surface area, 2,500 square feet shall be allowed.~~

N/A = Not applicable.

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23.40.030 General Shoreline Use and Modification Regulations

A. ~~Proposed uses and developments shall limit the number and extent of shoreline modifications.~~

Commented [CES124]: From WAC 173-26-231(2)(b)

B. Shoreline uses and developments that are water-dependent shall be given priority. Permit conditions may limit the range of uses or sites developed for such uses.

~~B-C.~~ Interim non-water-dependent uses authorized as a shoreline conditional use may be allowed to respond to short-term market conditions; provided, that permit conditions are placed on such uses to provide for a specific timetable or review process to ensure water-dependent use of the development in the long term.

~~C-D.~~ Shoreline uses and developments shall be located, designed, and managed so that other appropriate uses are neither subjected to substantial or unnecessary adverse impacts, nor deprived of reasonable, lawful use of navigable waters, other publicly owned shorelines, or private property.

~~D-E.~~ Navigable waters shall be kept free of obstructions for the general benefit of the region, state, and nation. No use or development shall be allowed to effectively exclude other appropriate uses from navigable waters.

F. Shoreline uses and developments shall be located in a manner so that shoreline stabilization is not likely to become necessary in the future.

Commented [DN125]: Moved from the General Regulations section since this pertains specifically to uses and mods.

G. ~~Accessory uses and structures that do not require a shoreline location shall be sited away from the land/water interface and not placed waterward of the principal use unless otherwise allowed by this Program.~~

Commented [DOE-Req126]: Recommended Change – The added language clarifies that there are exceptions to this general regulation (See 16.16.720.G.4

~~E-H.~~ Nothing in the ~~policies or~~ regulations may be construed as to impinge on tribal treaty rights exercised within usual and accustomed areas.

Commented [CES127]: Moved from 23.90.030 Ecological Protection

I. ~~No flood control works or instream structures~~ shoreline use or development may commence without the ~~proponent/developer~~ having obtained all applicable federal, state, and local permits and approvals, including but not limited to a Hydraulic Permit Application (HPA) from the State Department of Fish and Wildlife.

Commented [AP128]: Moved from Aquaculture section.

J. ~~Use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Motor vehicle use, except for vessels and float planes, is prohibited waterward of the ordinary high water mark, on tidelands, public or private beaches, wetlands and/or their associated buffers; except as necessary for public health and safety or permitted maintenance activities associated with approved developments or as otherwise permitted.~~

Commented [AP129]: Moved and revised to apply more universally.

K. ~~Buildings, fencing, walls, hedges, and similar features shall be designed, located, and constructed in a manner that does not preclude or significantly interfere with wildlife movement to or from important habitat areas consistent with the applicable provisions of this program; provided, that the Director may exempt security fencing associated with residential, industrial, and/or commercial developments from this requirement on a case-by-case basis.~~

Commented [CES130]: Moved from 23.90.030 30.010 Ecological Protection

23.4100.030-040 Agriculture.

A. ~~Policies.~~

Commented [CES131]: Moved from 23.90.030 30.010 Ecological Protection

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

~~B. Regulations.~~

A. General.

1. Agricultural activities within shorelines are governed by the critical areas regulations in WCC Chapter 16.16, including the conservation program on agricultural lands (CPAL) provided for in ~~therein~~ WCC 16.16.290.
- ~~1.2.~~ 2. Accessory uses and buildings shall observe critical area buffer requirements ~~as defined in (see~~ WCC Chapter 16.16); except that utility development associated with an approved agriculture activity or development may encroach on critical area buffers where it can be demonstrated that the proposed utility development is essential to the agriculture activity or development and that such development complies with the general provisions of WCC Chapter 16.16; such utilities shall be placed underground where feasible.
- ~~2.3.~~ 3. Intentional discharge of any manure storage facility into ground or surface water is prohibited.
- ~~3.4.~~ 4. Feedlots are prohibited in critical areas ~~and their~~ as defined in (see WCC Chapter 16.16).
- ~~4.5.~~ 5. Conversion of agricultural uses to other uses shall comply with the provisions of WCC Chapter 16.16 and this program for the proposed use.

B. Regulations for Specific Shoreline Environment Designations.

- ~~5.1.~~ 1. In the Natural shoreline environment, only low-intensity agricultural activities are permitted; provided, that the use does not expand or alter agricultural practices in a manner inconsistent with the purpose of this designation.

~~C. Shoreline Area Regulations.~~

- ~~1. Urban. Agricultural activities are permitted subject to policies and regulations of this program, except that new liquid manure storage facilities and liquid manure spreading are not permitted.~~
- ~~2. Urban Resort. New agricultural activities are prohibited.~~
- ~~3. Urban Conservancy. Agricultural activities are permitted subject to policies and regulations of this program, except that new animal feeding operations/concentrated animal feeding operations (AFO/CAFOs) are not permitted.~~
- ~~4. Shoreline Residential. Agricultural activities are permitted subject to policies and regulations of this program, except that new liquid manure storage facilities and liquid manure spreading are not permitted.~~
- ~~5. Rural. Agricultural activities are permitted subject to policies and regulations of this program.~~

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- ~~6. Resource. Agricultural activities are permitted subject to policies and regulations of this program.~~
- ~~7. Conservancy. Agricultural activities are permitted subject to policies and regulations of this program.~~
- ~~8. Natural. Low intensity agricultural activities are permitted subject to policies and regulations of this program; provided, that the use does not expand or alter agricultural practices in a manner inconsistent with the purpose of this designation. All other agricultural activities are prohibited.~~
- ~~Aquatic. New agricultural activities are prohibited. Farming of fin fish, shellfish and management of other aquatic products are subject to the policies and regulations for aquaculture under WCC 23.100.030.~~

Commented [CES132]: Addressed in use table now.

23.4100.040-050 Aquaculture.

~~Aquaculture in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

Commented [CES133]: Most amendments shown herein are to make this section consistent w/ WAC 173-26-241(3)(b)

~~Nothing in these policies or regulations may be construed as to impinge on tribal treaty rights exercised within usual and accustomed areas. See also the policy in subsection (A)(8) of this section and the regulation in subsection (B)(1)(u) of this section.~~

Commented [AP134]: Moved to Use and Mods General Regs

A. Policies.

- ~~A. Aquaculture is a water dependent use and, when consistent with control of pollution and avoidance of adverse impacts to the environment and preservation of habitat for resident native species, is a preferred use of the shoreline (WAC 173-26-241(3)(b)).~~
- ~~B. Potential locations for aquaculture activities are relatively restricted because of specific requirements related to water quality, temperature, oxygen content, currents, adjacent land use, wind protection, commercial navigation, and salinity. The technology associated with some forms of aquaculture is still experimental and in formative states. Therefore, some latitude should be given when implementing the regulations of this section; provided, that potential impacts on existing uses and shoreline ecological functions and processes should be given due consideration.~~
- ~~C. Preference should be given to those forms of aquaculture that involve lesser environmental and visual impacts and lesser impacts to native plant and animal species. In general, projects that require no structures, submerged structures or intertidal structures are preferred over those that involve substantial floating structures. Projects that involve little or no substrate modification are preferred over those that involve substantial modification. Projects that involve little or no supplemental food sources, pesticides, herbicides or antibiotic application are preferred over those that involve such practices.~~
- ~~D. Community restoration projects associated with aquaculture should be reviewed and permitted in a timely manner.~~
- ~~E. Aquaculture activities should be designed, located and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions~~

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and processes. Aquaculture should not be permitted where it would result in a net loss of shoreline ecological functions; adversely affect the quality or extent of habitat for native species including eelgrass, kelp, and other macroalgae; adversely impact other habitat conservation areas; or interfere with navigation or other water-dependent uses.

F. Aquaculture that involves significant risk of cumulative adverse effects on water quality, sediment quality, benthic and pelagic organisms, and/or wild fish populations through potential contribution of antibiotic resistant bacteria, or escapement of nonnative species, or other adverse effects on ESA-listed species should not be permitted.

G. The county should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate federal, state and local agencies; the Lummi Nation, Nooksack Tribe, and other affected tribes; and the general public regarding potential adverse impacts. Comments of nearby residents or property owners directly affected by a proposal should be considered and evaluated, especially in regard to use compatibility and aesthetics.

H. The rights of treaty tribes to aquatic resources within their usual and accustomed areas should be addressed through the permit review process. Direct coordination between the applicant/proponent and the tribe should be encouraged.

I. Consideration should be given to both the potential beneficial impacts and potential adverse impacts that aquaculture development might have on the physical environment; on other existing and approved land and water uses, including navigation; and on the aesthetic qualities of a project area.

J. Legally established aquaculture enterprises, including authorized experimental projects, should be protected from incompatible uses that may seek to locate nearby. Use or developments that have a high probability of damaging or destroying an existing aquaculture operation may be denied.

K. Experimental aquaculture projects in water bodies should be limited in scale and should be approved for a limited period of time. Experimental aquaculture means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in the state of Washington.

~~B. Regulations.~~

A. ~~General Site Design and Operation.~~

~~1. Aquaculture activities proposed within Shorelines of Statewide Significance shall be subject to, first, the policies contained in Chapter 23.40 WCC, Shorelines of Statewide Significance, and, second, the policies and regulations contained in this section.~~

~~2.1~~ Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant/proponent shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible aquaculture operations at the site.

~~3.2~~ The installation of submerged structures, intertidal structures, and floating structures shall be allowed only when the applicant/proponent demonstrates that no alternative method of operation is feasible.

Commented [CES135]: Covered by general use & mod regs.

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4.3. Aquaculture proposals that involve substantial substrate modification or sedimentation through dredging, trenching, digging, mechanical clam harvesting, or other similar mechanisms, shall not be permitted in areas where the proposal would adversely impact ~~existing kelp beds or other macroalgae, eelgrass beds~~ critical saltwater habitat, or other fish and wildlife habitat conservation areas.

5.4. Aquaculture activities, ~~which that~~ would have a significant adverse impact on natural, dynamic shoreline processes or ~~which that~~ would result in a net loss of shoreline ecological functions, shall be prohibited.

6. ~~Aquaculture uses and facilities shall be located at least 600 feet from any national wildlife refuge lands; except that:~~

i. ~~Projects involving substantial substrate modification and/or fish net pens, if authorized, shall be located 1,500 feet or more from such areas.~~

ii. ~~Lesser distances may be authorized by permit if it is demonstrated by the applicant/proponent that the wildlife resource will be protected and if the change is supported by the WDFW, the Lummi Nation and/or Nooksack Tribe.~~

iii. ~~Greater distances may be required if supported by the reviewing resource agencies and/or where there is sound evidence demonstrating that a greater distance is required.~~

7.5. Unless otherwise provided in the shoreline permit issued by the County, repeated introduction of an approved organism in the same location shall require approval by the County only at the time the initial aquaculture use permit is issued. Introduction, for purposes of this section, shall mean the placing of any aquatic organism in any area within the waters of Whatcom County regardless of whether it is a native or resident organism within the county and regardless of whether it is being transferred from within or without the waters of Whatcom County.

8.6. The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the applicant/proponent and the affected tribe(s) through the permit review process.

B. Site Design and Operation.

1. Aquaculture ~~practices~~ shall be designed to minimize use of artificial substances and shall use chemical compounds that are least persistent and have the least impact on plants and animals.
2. Aquaculture structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and/or equipment shall be removed or repaired promptly by the owner, including when a business ceases operations. Where any structure might constitute a potential hazard to the public in the future, the County shall require the posting of a bond commensurate with the cost of removal or repair. The County may abate an abandoned or unsafe structure, following notice to the owner, if the owner fails to respond in 30 days and may impose a lien on the related shoreline property or other assets in an amount equal to the cost of the abatement. Bonding requirements shall not duplicate requirements of other agencies.
3. All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.

Commented [AP136]: Removed, since these rules are identified in Ecology's guidance as an "obsolete net pen recommendation."

Local governments should use caution relying on other recommendations of the 1986 interim net pen guidelines and related environmental impact statement (Washington Department of Fisheries, 1990). The interim guidelines document is largely out of date. Ecology has reviewed the original rationale for the 1986 guidelines and found many recommendations are obsolete, unnecessary or inadequate given today's operations (Appendix 4).

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4. Predator control shall not involve the killing or harassment of birds or mammals. Approved controls include, but are not limited to, double netting for seals, overhead netting for birds, and three-foot-high fencing or netting for otters. The use of other nonlethal, non-abusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.
 5. Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (Chapter 90.48 RCW). No garbage, wastes, or debris shall be allowed to accumulate at the site of any aquaculture operation.
 6. No processing of any aquaculture product, except for the sorting or culling of the cultured organisms and the washing or removal of surface materials or organisms after harvest, shall occur in or over the water unless specifically approved by permit. All other processing and processing facilities shall be located on land and shall be subject to the ~~policies of the Whatcom County Comprehensive Plan Chapter 11 (Shorelines) and~~ regulations of WCC ~~23.40.100~~ 23.40.120 (Industrial and Port Development), in addition to the regulations in this section.
 7. For aquaculture projects using over-water structures, storage of necessary tools and apparatus waterward of the ordinary high water mark shall be limited to containers of not more than three feet in height, as measured from the surface of the raft or dock; provided, that in locations where the visual impact of the proposed aquaculture structures will be minimal, the County may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant/proponent. Materials ~~which that~~ are not necessary for the immediate and regular operation of the facility shall not be stored waterward of the ordinary high water mark.
 8. The County shall reserve the right to require aquaculture operations to carry liability insurance in an amount commensurate with the risk of injury or damage to any person or property as a result of the project. Insurance requirements shall not ~~be required to~~ duplicate requirements of other agencies.
 9. Where aquaculture activities are authorized to use ~~public-County~~ facilities, such as boat launches or docks, the County shall reserve the right to require the applicant/proponent to pay a portion of the cost of maintenance and any required improvements commensurate with the use of such facilities.
- C. Additional Standards for Net Pens.
1. Fish net pens and rafts shall meet the following criteria in addition to the other applicable regulations of this section:
 - a. Fish net pens shall meet, at a minimum, state-approved administrative guidelines for the management of net pen cultures. In the event there is a conflict in requirements, the more restrictive requirement shall prevail.

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- b. Fish net pens shall not occupy more than two surface acres of water area, excluding booming and anchoring requirements. Anchors that minimize disturbance to substrate, such as helical anchors, shall be employed. Such operations shall not use chemicals or antibiotics.
- c. Aquaculture proposals that include net pens or rafts shall not be located closer than one nautical mile to any other aquaculture facility that includes net pens or rafts; provided, that a lesser distance may be authorized if the applicant/proponent can demonstrate that the proposal will be consistent with the environmental and aesthetic policies ~~and objectives~~ of the Whatcom County Comprehensive Plan Chapter 11 (Shorelines). If a lesser distance is requested, the burden of proof shall be on the applicant/proponent to demonstrate that the cumulative impacts of existing and proposed operations would not be contrary to the policies of the Comprehensive Plan and regulations of this program.
- d. Net cleaning activities shall be conducted on a frequent enough basis so as not to violate state water quality standards. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing, or hand washing.
- e. In the event of a significant fish kill at the site of a net pen facility, the fin fish aquaculture operator shall submit a timely report to the Whatcom County Health Department, Environmental Health division, and the Whatcom County Planning and Development Services Department stating the cause of death and shall detail remedial action(s) to be implemented to prevent recurrence.

2. ~~Commercial salmon net pen facilities shall not be located in Whatcom County waters, except for limited nonprofit penned cultivation of wild salmon stocks during a limited portion of their lifecycle to enhance restoration of native stocks when such activities involve minimal supplemental feeding and no use of chemicals or antibiotics.~~ shall not be considered commercial salmon net pen facilities and may be permitted.

Commented [AP137]: This prohibition is already covered by the Use Table, so it has been removed from the text here. The language for the exception to the prohibition remains.

D. Additional Standards for Commercial Geoduck Aquaculture.

1. Commercial geoduck aquaculture shall only be allowed where sediments, topography, land, and water access support geoduck aquaculture operations without significant clearing or grading.

Commented [AP138]: Updated per Periodic Review Checklist, Item 2011.b, and Scoping Document, Item #1f.

2. Shoreline conditional use permits are required for new commercial geoduck aquaculture and existing aquaculture being converted to commercial geoduck aquaculture. However, shoreline conditional use permits must take into account that commercial geoduck operators have a right to harvest geoduck once planted and all subsequent cycles of planting and harvest shall not require a new shoreline conditional use permit.

3. A substantial development permit is not required for the planting, growing, and harvesting of farm-raised geoduck clams unless a specific project or practice causes substantial interference with normal public use of the surface waters.

Commented [AP139]: Revised language for clarity.

~~Shoreline conditional use permits must take into account that commercial geoduck operators have a right to harvest geoduck once planted.~~

4. A single shoreline conditional use permit application 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 under the County's shoreline permitting jurisdiction.

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E. Additional Standards for Experimental Aquaculture.

1. If uncertainty exists regarding potential impacts of a proposed aquaculture activity, and for all experimental aquaculture activities, baseline and periodic operational monitoring by a County-approved consultant (unless otherwise provided for) may be required, at the applicant's/proponent's expense, and shall continue until adequate information is available to determine the success of the project and/or the magnitude of any probable significant adverse environmental impacts. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant adverse environmental impacts that cannot be adequately mitigated.
2. Aquaculture developments, not including net pens, approved on an experimental basis shall not exceed five acres in area (except land-based projects and anchorage for floating systems) and three years in duration; provided, that the County may issue a new permit to continue an experimental project as many times as is deemed ~~necessary and~~ appropriate.
3. ~~New~~ Aquatic species that are not previously cultivated in Washington State shall not be introduced into Whatcom County salt ~~waters~~ or freshwaters without prior written approval of the Director of the Washington State Department of Fish and Wildlife and the Director of the Washington Department of Health. In saltwaters, the County shall not issue permits for projects that include the introduction of such organisms until it has also received written comment from the Marine Resources Committee, the Lummi Nation, and the Nooksack Tribe; provided, that such comment is received in a timely manner. This regulation does not apply to Pacific, Olympia, Kumamoto, Belon, or Virginica oysters; Manila, Butter, or Littleneck clams; or geoduck clams.

B.F. Supplemental Application Requirements – General Aquaculture.

1. In addition to the minimum application requirements specified in WCC Title 22 (Land Use and Development), Applications for aquaculture use or development shall include ~~in their applications~~ all information necessary to conduct a thorough evaluation of the proposed aquaculture activity, including but not limited to the following:
 - a. A site plan map including:
 - i. The perimeter of the proposed aquaculture operations area.
 - ii. Existing bathymetry depths based on mean lower low water (MLLW datum).
 - iii. Adjacent upland use, vegetation, presence of structures, docks, bulkheads and other modifications. If there are shore stabilization structures, provide the beach elevation at the toe of the structure and the top of the structure (MLLW datum).
 - iv. Areas where specific substrate modification will take place or structures will be constructed or installed.
 - v. Access provisions for barges or track equipment.
 - vi. Location of storage or processing structures or facilities.
 - b. A baseline description of existing conditions, including best available information on:
 - i. Water quality.
 - ii. Tidal variations.
 - iii. Prevailing storm wind conditions.

Commented [CES140]: All general application requirements have been moved into one general section. Subsections have items specific to that to Pic.

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- iv. Current flows.
 - v. Flushing rates.
 - vi. Littoral drift.
 - vii. Areas of differing substrate composition.
 - viii. Areas of aquatic, intertidal, and upland vegetation complexes. A vegetation habitat survey must be conducted. WDFW must be contacted prior to the survey to ensure it is conducted according to their most current eelgrass/macroalgae survey guidelines.
 - ix. Existing shoreline or water uses and structures.
 - x. Aquatic and benthic organisms. Information must include an assessment of aquatic species, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site.
 - ~~xi. A vegetation habitat survey must be conducted. The WDFW must be contacted prior to the survey to ensure it is conducted according to the most current WDFW eelgrass/macroalgae survey guidelines.~~
 - ~~xii. Assessment of aquatic species, including forage fish, and spawning and other lifecycle use of, or adjacent to, the site.~~
- Further baseline studies including surveys and sampling may be required depending upon the adequacy of available information, existing conditions, and the nature of the proposal.
- c. A detailed description of the project proposal including:
 - i. Species to be reared.
 - ii. Substrate modification or vegetation removal.
 - iii. Planting, harvest and processing location, method and timing, including work proposal and construction techniques proposed (list all hand tools, machinery used (such as track hoes, trucks or barges), type of work, frequency, and duration.
 - d. Anticipated use of any feed, pesticides, herbicides, antibiotics, vaccines, growth stimulants, antifouling agents, or other chemicals, and an assessment of predicted impacts. Approvals for the use of ~~No~~ such materials shall be ~~used until approval is~~ obtained from all appropriate state and federal agencies, including but not limited to the U.S. Food and Drug Administration, and the Washington State Departments of Ecology, Fish and Wildlife, and Agriculture, as required, and ~~proof thereof is~~ submitted to the County. ~~Compounds with the least persistence shall be used.~~ An annual report of antibiotic use shall be submitted to the Whatcom County Department of Health, Environmental Health division. The report shall indicate the type and amount of antibiotics used during the previous calendar year. Actual usage data for all chemicals and antibiotics shall be maintained for review by County inspectors at all times.
 - e. Number of employees/workers necessary for the project, including average and peak employment.
 - f. Methods of waste disposal and predator control.
 - g. Methods to address pollutant loading, including biological oxygen demand (BOD).

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

G. Supplemental Application Requirements – Commercial Geoduck Aquaculture.

1. In addition to the general application requirements of WCC Title 22 (Land Use and Development), subsection F, above, and chapter 173-27 WAC, applications for new geoduck aquaculture use or development shall include all information necessary to conduct a thorough evaluation of the proposed activity, including but not limited to the following:

Commented [CES141]: Amended based on public comment (TSF07)

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- 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; and
- c. Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.

H. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Resort, Shoreline Residential, and Rural shoreline environments, proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.
- 1-2. In the Natural shoreline environment, aquaculture activities that do not require structures, facilities, or mechanized harvest practices and that will not result in the alteration of natural systems or features are permitted.

C. Shoreline Area Regulations.

- A. Urban. Aquaculture activities are permitted subject to policies and regulations of this program.
- B. Urban-Resort. Aquaculture activities are permitted subject to policies and regulations of this program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.
- C. Urban-Conservancy. Aquaculture activities are permitted subject to policies and regulations of this program.
- D. Shoreline Residential. Aquaculture activities are permitted subject to policies and regulations of this program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis. Other types of floating culture facilities may be located within 1,500 feet of the OHWM but in such cases a visual analysis shall be mandatory.
- E. Rural. Aquaculture activities are permitted subject to policies and regulations of this program. Proposals containing net pen facilities shall be located no closer than 1,500 feet from the OHWM of this environment, unless a specific lesser distance is determined to be appropriate based upon a visual impact analysis.
- F. Resource. Aquaculture activities are permitted subject to policies and regulations of this program.
- G. Conservancy. Aquaculture activities are permitted subject to policies and regulations of this program.

Commented [AP142]: Updated per Periodic Review Checklist, Item 2011.b, and Scoping Document, Item #1f.

Commented [AP143]: Reorganized and revised for clarity.

Commented [CES144]: The below are addressed in the use table or above now.

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~~H. Natural. Aquaculture activities that do not require structures, facilities or mechanized harvest practices and that will not result in the alteration of natural systems or features are permitted subject to policies and regulations of this program.~~

~~23.4100.050060~~ **Boating Facilities—Marinas and Launch Ramps.**

~~A. Policies.~~

~~A. Boating facilities, including marinas and launch ramps, are water-dependent uses and should be given priority for shoreline location. Boating facilities should also contribute to public access and enjoyment of waters of the state. Shorelines particularly suitable for marinas and launch ramps are limited and should be identified and reserved to prevent irreversible commitment for other uses having less stringent site requirements.~~

~~B. Regional needs for marina and boat launch facilities should be carefully considered in reviewing new proposals as well as in allocating shorelines for such development. Such facilities should be coordinated with park and recreation plans and, where feasible, collocated with port or other compatible water-dependent uses. Review of such facilities should be coordinated with recreation providers, including cities, adjacent counties, port districts, the Whatcom County parks and recreation department, the Washington State Parks and Recreation Commission, and the Washington State Department of Natural Resources to avoid unnecessary duplication and to efficiently provide recreational resources while minimizing adverse impacts to shoreline ecological functions and processes.~~

~~C. Upland boat storage is preferred over new in-water moorage. Mooring buoys are preferred over docks and piers. Boating facilities that minimize the amount of shoreline modification are preferred.~~

~~D. Boating facilities should provide physical and visual public shoreline access and provide for multiple use, including water-related use, to the extent compatible with shoreline ecological functions and processes and adjacent shoreline use.~~

~~E. Accessory uses at marinas or launch ramps should be limited to water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public.~~

~~F. New or expanding boating facilities including marinas, launch ramps, and accessory uses should only be sited where suitable environmental conditions are present and should avoid critical saltwater habitat including kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sandlance); subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.~~

~~G. Boating facilities should be located and designed to avoid adverse effects upon coastal, riverine, and nearshore processes such as erosion, littoral or riparian transport, and accretion, and should, where feasible, enhance degraded, scarce, and/or valuable shore features including accretion shoreforms.~~

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

~~B. Regulations:~~

A. Marinas and Launch Ramps – General.

- Boating facilities, including marinas and launch ramp development, in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. This section applies to marinas and public boat launches, though the moorage structures of such facilities shall also comply with WCC 23.40.150 (Moorage Structures). For ~~Docks~~ moorage structures serving four or fewer single-family residences ~~users, only~~ are subject to the policies and regulations of WCC 23.40.150 ~~100.090, (Moorage~~ Moorage Structures) applies ~~—Docks, piers, and mooring buoys.~~
- Accessory uses shall be limited to those that are water-dependent, related to boating, and necessary for facility operation, or which provide physical or visual shoreline access to substantial numbers of the general public. Accessory uses shall be consistent in scale and intensity with the marina and/or launch ramp and surrounding uses.
- All developments shall provide boater education addressing boater impacts on water quality and other shoreline resources, boater safety, and requirements for boater use of sewage pump-outs.

B. Marinas – Location Standards.

- When marina sites are considered, sufficient evidence must be presented to show there is a regional demand and existing marinas are inadequate and cannot be expanded to meet regional demand.
- Marinas shall be sited to prevent any restrictions in the use of commercial and recreational shellfish beds or commercial aquaculture operations. The specific distance shall be determined in conjunction with the Washington State Department of Health, the Washington State

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Department of Ecology, and other agencies with expertise. Criteria for determining the specific distance may include:

- a. The size and depth of the waterbody;
- b. Tidal flushing action in the project area;
- c. Size of the marina and projected intensity of use;
- d. Whether fuel will be handled or stored;
- e. Location of a sewer hook-up; and
- f. Expected or planned changes in adjacent land uses that could result in additional water quality impacts or sanitary treatment requirements.

3. Marinas shall be allowed only on stable shoreline areas where water depth is adequate to eliminate or minimize the need for channel dredging (for construction or maintenance), soil disposal, filling, beach enhancement, and other harbor and channel maintenance activities.

4. Marinas shall be located only in areas where there is adequate water mixing and flushing and shall be designed so as not to reduce or negatively influence flushing characteristics.

5. Fixed breakwaters are discouraged.

6. Marinas shall be clearly separated from beaches commonly used for swimming and shall provide signage and protection measures to ensure the safety of swimmers.

7. Marinas shall not be located at or along:

- a. Significant littoral drift cells, including resource material areas, such as feeder bluffs and accretion beaches, barrier beaches, points, sand spits and hooks; or
- b. Wetlands, marshes, bogs, swamps and lagoons; or
- c. Mud flats and salt marshes; or
- d. Fish and shellfish spawning and rearing areas.

8. Solid structures shall not be permitted to extend without openings from the shore to zero tide level (mean lower low water, or MLLW), but shall stop short to allow sufficient shallow fringe water for fish passage.

C. Marinas – Site Design.

1. Proposals for marinas shall include public launch facilities unless the applicant can demonstrate that providing such facilities is not feasible.

2. Marinas shall be designed, constructed, and maintained to:

- a. Provide thorough flushing of all enclosed water areas and shall not restrict the movement of aquatic life requiring shallow water;
- b. Minimize interference with geo-hydraulic processes and disruption of existing shore forms;
- c. Be aesthetically compatible with existing shoreline features and uses;
- d. Avoid adverse proximity impacts such as noise, light, and glare;
- e. Include vegetative screening for parking, and upland storage areas and facilities consistent with landscaping standards prescribed in WCC 20.80.300, et seq. (Landscaping); and,
- f. Include public restrooms, accessory parking, or other recreational uses according to the scale of the facility.

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3. Short-term loading/unloading areas and hand-launch storage areas may be located at ramps or near berthing areas and should be constructed of pervious material.
4. Public access, both visual and physical, such as viewpoints or walkways, shall be an integral part of all marina design and development commensurate with the particular proposal and must meet the standards of WCC 23.30.0760 (Public Access).
5. Innovative construction techniques and construction methods of foreshore marinas may be allowed when demonstrated to the satisfaction of the Director that the design will prevent degradation of fish migration, critical saltwater habitat, and/or shellfish resources.
- D. Operations and Management.
 1. The discharge of sewage and/or toxic material from boats and/or shore installations is prohibited. The responsibility for the adequate and approved collection and disposal of marina-originated sewage, solid waste, and petroleum waste is that of the marina operator. An emergency spill kit and use instructions shall be provided for tenants in an easy-to-access area and be accessible twenty-four (24) hours a day.
 2. Commercial fish or shellfish processing and the discharge or discarding of unused bait, scrapfish, or viscera shall be prohibited.
 3. Swimming shall be prohibited within marina facilities unless the swimming area is adequately separated, protected, and posted.
 4. If dredging at marina entrances changes the littoral drift processes and adversely affects adjacent shores, the marina operator shall be required to periodically replenish these shores with the appropriate quantity and quality of aggregate as determined by a geohydraulic study, paid for by the operator or owner and completed to the satisfaction of the Director.
 5. Temporary vacant moorage spaces shall be made available for "transient moorage" (less than two-week stay) when at least one of the following applies:
 - a. The marina is owned, operated, or franchised by a governmental agency for use by the public;
 - b. The marina provides more than three thousand (3,000) lineal feet of moorage; or
 - c. The marina is part of a mixed-use development which includes restaurants or other water-enjoyment uses.
 6. Marina operators shall execute a lease, contract, or deed that establishes permission to use a slip for a stated period of time and that establishes conditions for use of the slip, including the requirement that all boats meet applicable sanitation regulations.
 7. Marinas shall meet the following before occupancy:
 - a. Marinas that dispense fuel shall have adequate facilities and post procedures for fuel handling and storage to prevent/minimize accidental spillage.
 - b. Marinas shall have facilities, equipment, such as emergency spill kits, and post procedures for containment, recovery, and mitigation of spilled petroleum, sewage, and toxic products.
 - c. Marina operators shall post signs where they are readily visible to all marina users describing regulations:
 - i. Pertaining to handling and disposal of waste, wastewater, toxic materials, and recycling;

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- 1 ii. Prohibiting the discharge of marine toilets (i.e., no untreated sewage discharge);
- 2 iii. Prohibiting the disposal of fish and shellfish cleaning wastes; and
- 3 iv. Describing best management practices (BMPs) for boat maintenance and repairs on site.
- 4 d. Garbage or litter receptacles shall be provided and maintained by the marina operator at
- 5 several locations convenient to users in sufficient numbers to properly store all solid waste
- 6 generated on site.
- 7 e. Marina docks shall be equipped with adequate lifesaving equipment, such as:
 - 8 i. Life rings, hooks, ropes and ladders, or equivalent, on the end of fingers; and/or
 - 9 ii. One ladder (per side) either every one hundred (100) linear feet of the dock, or every six
 - 10 (6) slips whichever is greater. This regulation does not apply to a float which is less than
 - 11 one hundred (100) feet from a shoreline; or
 - 12 iii. At least one ladder to serve a float with six (6) or more slips and is one hundred (100)
 - 13 linear feet in length or less.
- 14 E. Additional Standards for Boat Launches.
 - 15 1. Boat launches are prohibited in:
 - 16 a. Significant littoral drift cells, including resource material areas such as feeder bluffs and
 - 17 accretion beaches, points, spits and hooks;
 - 18 b. Wetlands, marshes, bogs, swamps, and lagoons;
 - 19 c. Mud flats and salt marshes; and
 - 20 d. Fish spawning and rearing areas and commercial or recreational shellfish areas.
 - 21 2. Launch ramps shall be:
 - 22 a. Located on stable shorelines where water depths are adequate to eliminate or minimize the
 - 23 need for:
 - 24 i. Offshore or foreshore channel construction dredging; or
 - 25 ii. Maintenance dredging; or
 - 26 iii. Spoil disposal; or
 - 27 iv. Filling; or
 - 28 v. Beach enhancement; or
 - 29 vi. Other harbor and channel maintenance activities.
 - 30 b. Located in areas where there is adequate water mixing and flushing.
 - 31 c. Designed so as not to negatively influence flushing characteristics.
 - 32 3. Innovative or hinged boat launches may be permitted on marine accretion shoreforms, provided
 - 33 that continual grading is not required. When grading is permitted it must not adversely affect
 - 34 ecological functions and ecosystem-wide processes. Accessory facilities shall be located out of
 - 35 critical areas.
 - 36 4. Boat launches may be allowed on stable banks where current deflectors or other stabilization
 - 37 structures will not be necessary.
 - 38 5. Boat launches shall not be permitted where the upland within twenty-five (25) feet of the
 - 39 OHWM has a slope that exceeds twenty-five percent (25%) grade and/or where substantial
 - 40 cutting, grading, filling, or defense works is necessary.

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6. Boat launches, minor accessory buildings, and haul-out facilities shall be designed to be in character and scale with the surrounding shoreline.
7. Boat launches shall be built from flexible, hinge-segmented pads that can adapt to changes in beach profiles, unless a solid structure is demonstrated to be more appropriate for the intended level of use.
8. Boat launches shall be placed and kept near flush with the foreshore slope to minimize the interruption of geo-hydraulic processes and impacts to critical saltwater habitats.
9. Marine rails for boat launching shall be located the minimum distance necessary above existing grade to minimize impact on littoral drift and navigation along the shoreline.
10. Boat launch facilities shall be clearly separated from beaches commonly used for swimming and shall provide signage and protection measures to ensure the safety of swimmers.
- F. Additional Standards for Live-Aboard Vessels.
 1. Live-aboard vessels are only allowed in marinas and only as follows:
 - a. Vessels must be for residential use only;
 - b. Slips occupied by live-aboard vessels shall not exceed 10 percent of the total slips in the marina;
 - c. Vessels shall be owner-occupied; and
 - d. Vessels must be operational for cruising.
 2. Live-aboard vessels must comply with all marine regulations, policies, and procedures of the U.S. Coast Guard, and any other federal and state government agencies that pertain to health, safety and/or environmental protection. Proof of seaworthiness of the vessel and the adequacy of the mooring arrangement must be provided and laws governing all the citizens of Whatcom County must be obeyed.
- A.G. Additional Standards for Boat Storage.
 1. Marinas shall provide dry upland boat storage with a launch mechanism to protect shoreline ecological functions and processes, efficiently use shoreline space, and minimize consumption of public water surface area unless:
 - a. No suitable upland locations exist for such facilities; or
 - b. It can be demonstrated that wet moorage would result in fewer impacts to ecological functions and processes; or
 - c. It can be demonstrated that wet moorage would enhance public use of the shoreline.
 2. Dry moorage and other storage areas shall be located away from the shoreline and be landscaped pursuant to WCC 20.80.300, et seq. (Landscaping) with native vegetation to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas.
- B.H. Additional Standards for Parking and Vehicle Access.
 1. Parking facilities shall meet County zoning design and location standards; provided, that at a minimum, one vehicle space shall be maintained for every four moorage spaces and for every 400 square feet of interior floor space devoted to accessory retail sales or service use. Bicycle parking shall be provided commensurate with the anticipated demand.

Commented [AP149]: Added per Scoping Document, Item #17].

From WAC 332-30-171:

(b) Upon the effective date of this rule, the ten percent limit can be changed by local government, through amendments to the local shoreline master program and/or issuance of a shoreline substantial development conditional use permit, if all of the following conditions are met:

- (i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use are expressly addressed and required; and
- (ii) Specific locations for residential use slips do not adversely impact habitat or interfere with water-dependent uses.

The County can opt to set a different limit, though 10 percent is in line with DNR regulations.

Per the Port of Bellingham Harbor Rules, Regulations, and Rates Handbook – 2019, at Squalicum Harbor there are currently 100 designated Live-aboard licenses and 50 Live-aboard licenses at Blaine Harbor. However, it is unclear what percentage of slips these numbers represent. May want to confirm that a proposed regulation here will not conflict with the Port's current regulations.

Blaine Harbor – 629 slips total (~8% live-aboard)
Squalicum Harbor – 1,400+ slips total (~7% live-aboard)

As such, the proposed provision should not conflict with the Port's regulations.

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2. ~~Public or quasi-public~~ Launch ramps shall provide trailer spaces, at least 10 feet by 40 feet, commensurate with projected demand.
3. Parking ~~that does not require a shoreline location in order to carry out its functions~~ shall:
 - a. Be sited away from the land/water interface unless no feasible alternative location exists outside of the shoreline;
 - b. Be planted or landscaped pursuant to WCC 20.80.300, et seq. (Landscaping) preferably with native vegetation, to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas; and
 - ~~c. Observe critical area buffers in Chapter 16.16 WCC; and~~
 - ~~d. c.~~ Be designed to incorporate low impact development practices, such as pervious surfaces, and bioswales, ~~to the extent feasible~~ pursuant to WCC 20.80.630, et seq. (Stormwater and drainage).
- ~~c. l.~~ Supplemental Application Requirements. In addition to the general application requirements of WCC Title 22 (Land Use and Development), applications for marinas or launch ramps shall include all information necessary to conduct a thorough evaluation of the proposed activity, including but not limited to the following:
 1. ~~Applications for new boating facilities, including marinas and launch ramps, shall be approved only if enhanced public access to public waters outweighs the potential adverse impacts of the use. Applications shall b~~ Provide ~~accompanied by supporting application materials~~ a level of service needs analysis that documents the market demand for such facilities, including:
 - a. The total amount of moorage proposed;
 - b. The proposed supply, as compared to the existing supply within the service range of the proposed facility, including vacancies or waiting lists at existing facilities;
 - c. The expected service population and boat ownership characteristics of the population;
 - d. Existing approved facilities or pending applications within the service area of the proposed new facility.
 - ~~2. New marinas with in-water moorage and expansion of in-water moorage facilities in existing marinas shall be approved only when:~~
 - ~~3. Opportunities for upland storage sufficient to meet the demand for moorage are not available on site; and~~
 - ~~4. Expansion of upland storage at other existing marinas is not feasible.~~
 5. 2. Applications shall ~~d~~ document that a preferred method of providing moorage facilities is not feasible. Review of proposals involving public aquatic lands may be required to include an analysis of other alternative sites not controlled by the applicant/proponent.
 6. 3. Applications for launch ramps shall ~~Provide a critical area assessment report pursuant to WCC 16.16 (Critical Areas), including contain:~~
 - ~~7. A habitat survey.~~
 - ~~8. 4. A slope bathymetry map.~~
 - ~~9. 5. Evaluation of effects on littoral drift.~~

Commented [AP150]: Removed since there's already have a section that says the CAO applies in the shoreline jurisdiction.

Commented [CES151]: Moved, as this is an approval criterion, not an application requirement.

Commented [DN152]: Moved to application requirements

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~~10-6.~~ Applications for marinas, launch ramps, and accessory uses shall include Provide a assessment of existing water-dependent uses in the vicinity including, but not limited to, navigation, fishing, shellfish harvest, pleasure boating, swimming, beach walking, picnicking, and shoreline viewing, and shall document potential impacts and mitigating measures. Impacts on these resources shall be considered in review of proposals and specific conditions to avoid or minimize impacts may be imposed.

~~11-7.~~ Marina and launch ramp proposals may be required to prepare a Provide a visual assessment of views from surrounding residential properties, public viewpoints, and the view of the shore from the water surface, if required.

~~D. Tabular Regulations—Setbacks, Height and Open Space for Marinas and Launch Ramp Development. Minimum required setbacks from shorelines and side property lines, maximum height limits, and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions—Buffers, setbacks, height, open space, and impervious surface coverage.~~

J. Regulations for Specific Shoreline Environment Designations.

1. In the Natural shoreline area environment, mMarinas or launch ramps are prohibited; except that primitive ramps to facilitate hand launching of small craft are permitted if materials and design are compatible with the site.

2. In the Aquatic shoreline area environment, covered over-water structures may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water.

2. Site Design and Operation.

a. Marinas or launch ramps shall not be permitted on the following marine shores unless it can be demonstrated that interference with littoral drift and/or degradation or loss of shoreline ecological functions and processes, especially those vital to maintenance of nearshore habitat, will not occur. Such areas include:

b. Feeder bluffs exceptional.

c. High energy input driftways.

d. Marinas or launch ramps shall not be permitted within the following marine shoreline habitats because of their scarcity, biological productivity, and sensitivity unless no alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this program:

e. Marshes, estuaries and other wetlands;

f. Tidal pools on rock shores;

g. Kelp beds, eelgrass beds, spawning and holding areas for forage fish (such as herring, surf smelt and sand lance);

h. Subsistence, commercial and recreational shellfish beds; and

i. Other critical saltwater habitats.

j. Marinas or launch ramps shall not be permitted on the following marine accretion shoreforms unless it can be demonstrated that no other alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the

Commented [AP153]: Carried over from removed 'Shoreline Area Regulations.'

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- proposal is otherwise consistent with this program. Hoists are preferred over dredged marinas or launch ramps at such locations:
- k. Open points;
 - l. Spits and hooks;
 - m. Tomboles;
 - n. Open bay barrier beaches;
 - o. Accretional pocket beaches.
- b. Foreshore marinas or launch ramps may be permitted on low erosion rate marine feeder bluffs or on low energy input erosional driftways if the proposal is otherwise consistent with this program. Foreshore marinas or launch ramps are prohibited on accretional lake shores because these natural features are uncommon on lakes and are highly valuable for recreation.
- c. Backshore marinas and launch ramps may be permitted on closed accretional points, closed accretional bluff and bay barrier beaches, or low energy input driftways, except where wetlands are present or it can be demonstrated that a foreshore location would result in fewer impacts to shoreline ecological functions and processes, natural features and uses.
- d. Marinas or launch ramps may be permitted on low bank lake shores where backshore wetlands are protected, or where wetlands are not present, if most of the beach and backshore are preserved in a natural condition for public or quasi-public recreation.
- e. Marinas shall not be permitted in low gradient, broad meander stream channel reaches, except where located on outer, concave bends or straight, moderately eroding or stable banks, so that dredging and/or shore protection will not be necessary.
- f. Marina basins or structures shall not be permitted on river point bars or other accretional beaches. A limited number of launch ramps may be permitted on accretion shoreforms; provided, that any necessary grading will not adversely affect shoreline ecological functions or fluvial processes, and any accessory facilities are located out of the floodway.
- g. Marinas shall not be permitted in areas of active channel migration, where channel dredging will be required, if a flood hazard will be created, or if valuable shoreline ecological functions and processes will be degraded.
- h. Launch ramps may be located immediately downstream of accretion shoreforms, or on other non-erosional banks, where no or a minimum number of current deflectors will be necessary.
- i. Floating piers shall be required in rivers and streams unless it can be demonstrated that fixed piers will result in substantially less impact on geohydraulic processes and flood hazards can be minimized or mitigated.
- j. Where foreshore marinas are permitted:
- i. Open pile or floating breakwater designs shall be used unless it can be demonstrated that riprap or other solid construction would not result in any greater net impacts to shoreline ecological functions or processes or shore features.
 - ii. Solid structures shall not be permitted to extend without openings from the shore to zero tide level (mean lower low water, or MLLW), but shall stop short to allow sufficient shallow fringe water for fish passage.

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- 1 k. ~~Foreshore and backshore marinas shall be designed to allow the maximum possible circulation~~
- 2 ~~and flushing of all enclosed water areas.~~
- 3 ~~New or expanding marinas with dredged entrances that adversely affect littoral drift to the~~
- 4 ~~detriment of other shores and their users shall be required to periodically replenish such shores~~
- 5 ~~with the requisite quantity and quality of aggregate as determined by professional coastal~~
- 6 ~~geologic engineering studies.~~
- 7 l. ~~All facilities shall be located and designed to avoid impediments to navigation and to avoid~~
- 8 ~~depriving other properties of reasonable access to navigable waters. Review and approval by~~
- 9 ~~the U.S. Coast Guard may be required as a condition of issuance of building or development~~
- 10 ~~permits to assure compliance. All in-water structures shall be marked and lighted in compliance~~
- 11 ~~with U.S. Coast Guard regulations.~~
- 12 m. ~~Design and other standards for physical improvement of docks and piers are found in~~
- 13 ~~WCC 23.100.090, Moorage – Docks, piers and mooring buoys.~~
- 14 E. ~~Public Access.~~
- 15 ~~New launch ramps shall be approved only if they provide public access to public waters, which~~
- 16 ~~are not adequately served by existing access facilities, or if use of existing facilities is~~
- 17 ~~documented to exceed the designed capacity. Prior to providing ramps at a new location,~~
- 18 ~~documentation shall be provided demonstrating that expansion of existing launch facilities~~
- 19 ~~would not be adequate to meet demand.~~
- 20 a. ~~Public access areas shall provide space and facilities for physical and/or visual access to water~~
- 21 ~~bodies, including feasible types of public shore recreation.~~
- 22 b. ~~Marinas and boat launches shall provide public access for as many water-dependent~~
- 23 ~~recreational uses as possible, commensurate with the scale of the proposal. Features for such~~
- 24 ~~access could include, but are not limited to, docks and piers, pedestrian bridges to offshore~~
- 25 ~~structures, fishing platforms, artificial pocket beaches, and underwater diving and viewing~~
- 26 ~~platforms.~~
- 27 3. ~~Site Considerations.~~
- 28 a. ~~Marinas, launch ramps, and accessory uses shall be designed so that lawfully existing or planned~~
- 29 ~~public shoreline access is not unnecessarily blocked, obstructed nor made dangerous.~~
- 30 b. ~~Public launch ramps and/or marina entrances shall not be located near beaches commonly used~~
- 31 ~~for swimming, valuable fishing and shellfish harvest areas, or sea lanes used for commercial~~
- 32 ~~navigation unless no alternative location exists, and mitigation is provided to minimize impacts~~
- 33 ~~to such areas and protect the public health, safety and welfare.~~
- 34 c. ~~Marinas and accessory uses shall be located only where adequate utility services are available,~~
- 35 ~~or where they can be provided concurrent with the development.~~
- 36 d. ~~Marinas, launch ramps, and accessory uses shall be located where water depths are adequate to~~
- 37 ~~avoid the need for dredging and minimize potential loss of shoreline ecological functions or~~
- 38 ~~processes.~~

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- e. ~~Marinas, launch ramps, and accessory uses shall be located and designed with the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft from floods, abnormally high tides, and/or destructive storms.~~
4. ~~Boat Storage.~~
 3. ~~Marinas shall provide dry upland boat storage with a launch mechanism to protect shoreline ecological functions and processes, efficiently use shoreline space, and minimize consumption of public water surface area unless:~~
 - i. ~~No suitable upland locations exist for such facilities; or~~
 - ii. ~~It can be demonstrated that wet moorage would result in fewer impacts to ecological functions and processes; or~~
 - iii. ~~It can be demonstrated that wet moorage would enhance public use of the shoreline.~~
 4. ~~Dry moorage and other storage areas shall be located away from the shoreline and be landscaped with native vegetation to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas.~~
 - ~~New covered moorage for boat storage is prohibited.~~
 5. ~~Covered over water structures may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water.~~
5. ~~Waste Disposal.~~
 1. ~~Marinas shall provide pump out, holding, and/or treatment facilities for sewage contained on boats or vessels.~~
 2. ~~Discharge of solid waste or sewage into a water body is prohibited. Marinas and boat launch ramps shall provide adequate restroom and sewage disposal facilities in compliance with applicable health regulations.~~
 3. ~~Garbage or litter receptacles shall be provided and maintained by the operator at several locations convenient to users.~~
 4. ~~Disposal or discarding of fish or shellfish cleaning wastes, scrap fish, viscera, or unused bait into water or in other than designated garbage receptacles is prohibited.~~
 5. ~~Marina operators shall post all regulations pertaining to handling, disposal, and reporting of waste, sewage, fuel, oil, or toxic materials where all users may easily read them.~~
1. ~~Oil Product Handling, Spills, and Wastes. Fail-safe facilities and procedures for receiving, storing, dispensing, and disposing of oil or hazardous products, as well as a spill response plan for oil and other products, shall be required of new marinas and expansion or substantial alteration of existing marinas. Compliance with federal or state law may fulfill this requirement. Handling of fuels, chemicals or other toxic materials must be in compliance with all applicable federal and state water quality laws as well as health, safety and engineering requirements. Rules for spill prevention and response, including reporting requirements, shall be posted on site.~~
6. ~~Parking and Vehicle Access.~~
 1. ~~Parking facilities shall meet County zoning standards; provided, that at a minimum, one vehicle space shall be maintained for every four moorage spaces and for every 400 square feet of~~

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interior floor space devoted to accessory retail sales or service use. Bicycle parking shall be provided commensurate with the anticipated demand.

2. Public or quasi-public launch ramps shall provide trailer spaces, at least 10 feet by 40 feet, commensurate with projected demand.

3. Parking that does not require a shoreline location in order to carry out its functions shall:

e. Be sited away from the land/water interface unless no feasible alternative location exists outside of the shoreline;

f. Be planted or landscaped preferably with native vegetation, to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas;

g. Observe critical area buffers in Chapter 16.16 WCC; and

h. Be designed to incorporate low impact development practices, such as pervious surfaces, and bioswales, to the extent feasible.

a. Connecting roads between marinas and public streets shall have all weather surfacing, and be satisfactory to the County Engineer in terms of width, safety, alignment, sight distance, grade and intersection controls.

7. Launch Ramp Design.

a. Preferred ramp designs, in order of priority, are:

i. Open grid designs with minimum coverage of beach substrate.

ii. Seasonal ramps that can be removed and stored upland.

iii. Structures with segmented pads and flexible connections that leave space for natural beach substrate and can adapt to changes in beach profile.

b. Ramps shall be placed and maintained near flush with the foreshore slope.

8. Accessory Uses.

a. Accessory uses at marinas or launch ramps shall be limited to those water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public. Accessory development includes, but is not limited to, parking, open air storage, waste storage and treatment, stormwater management facilities, utility, and upland transportation development.

b. Water-oriented accessory uses reasonably related to marina operation may be located over water or at the water's edge by conditional use if an over-water or water's edge location is essential to the operation of the use or if opportunities are provided for public access for a substantial number of persons.

a. Application Requirements.

12. Applications for new boating facilities, including marinas and launch ramps, shall be approved only if enhanced public access to public waters outweighs the potential adverse impacts of the use. Applications shall be accompanied by supporting application materials that document the market demand for such facilities, including:

i. The total amount of moorage proposed;

ii. The proposed supply, as compared to the existing supply within the service range of the proposed facility, including vacancies or waiting lists at existing facilities;

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- 1 ~~iii. The expected service population and boat ownership characteristics of the population;~~
- 2 ~~iv. Existing approved facilities or pending applications within the service area of the~~
- 3 ~~proposed new facility.~~
- 4 ~~13. New marinas with in-water moorage and expansion of in-water moorage facilities in~~
- 5 ~~existing marinas shall be approved only when:~~
- 6 ~~14. Opportunities for upland storage sufficient to meet the demand for moorage are not~~
- 7 ~~available on site; and~~
- 8 ~~15. Expansion of upland storage at other existing marinas is not feasible.~~
- 9 ~~16. Applications shall document that a preferred method of providing moorage facilities is~~
- 10 ~~not feasible. Review of proposals involving public aquatic lands may be required to include~~
- 11 ~~an analysis of other alternative sites not controlled by the applicant/proponent.~~
- 12 ~~17. Applications for launch ramps shall contain:~~
- 13 ~~(A) A habitat survey.~~
- 14 ~~(B) A slope bathymetry map.~~
- 15 ~~(C) Evaluation of effects on littoral drift.~~
- 16 ~~18. Applications for marinas, launch ramps, and accessory uses shall include a/an~~
- 17 ~~assessment of existing water dependent uses in the vicinity including, but not limited to,~~
- 18 ~~navigation, fishing, shellfish harvest, pleasure boating, swimming, beach walking, picnicking~~
- 19 ~~and shoreline viewing and document potential impacts and mitigating measures. Impacts on~~
- 20 ~~these resources shall be considered in review of proposals and specific conditions to avoid~~
- 21 ~~or minimize impacts may be imposed.~~
- 22 ~~19. Marina and launch ramp proposals may be required to prepare a visual assessment of~~
- 23 ~~views from surrounding residential properties, public viewpoints and the view of the shore~~
- 24 ~~from the water surface.~~
- 25 ~~9. Tabular Regulations – Setbacks, Height and Open Space for Marinas and Launch Ramp Development.~~
- 26 ~~Minimum required setbacks from shorelines and side property lines, maximum height limits, and~~
- 27 ~~open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions – Buffers,~~
- 28 ~~setbacks, height, open space, and impervious surface coverage.~~
- 29 ~~C. Shoreline Area Regulations.~~
- 30 ~~1. Urban. Marinas and launch ramps are permitted subject to policies and regulations of this~~
- 31 ~~program.~~
- 32 ~~2. Urban Resort. Marinas and launch ramps are permitted subject to policies and regulations of~~
- 33 ~~this program.~~
- 34 ~~3. Urban Conservancy. Launch ramps are permitted subject to policies and regulations of this~~
- 35 ~~program. Marinas may be permitted as a conditional use.~~
- 36 ~~4. Shoreline Residential. Marinas and launch ramps are permitted subject to policies and~~
- 37 ~~regulations of this program.~~
- 38 ~~5. Rural. Marinas and launch ramps are permitted subject to policies and regulations of this~~
- 39 ~~program.~~

Commented [CES154]: Moved above and reorganized.

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- ~~6. Resource. Marinas and launch ramps are permitted subject to policies and regulations of this program.~~
- ~~7. Conservancy. Launch ramps are permitted subject to policies and regulations of this program. Marinas may be permitted as a conditional use.~~
- ~~8. Natural. Marinas or launch ramps are prohibited; except that primitive ramps to facilitate hand launching of small craft are permitted if materials and design are compatible with the site.~~
- ~~9. Aquatic.~~
 - a. ~~Marinas and launch ramps are permitted subject to the use and development regulations of the abutting upland shoreline area designation.~~

~~23.100.060-23.40.070~~ **Commercial Uses.**

~~Commercial development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

- ~~A. In securing shoreline locations for commercial use, preference should be given first to water-dependent commercial uses, then to water-related and water-enjoyment commercial uses.~~
- ~~B. Restoration of impaired shoreline ecological functions and processes should be encouraged as part of commercial development.~~
- ~~C. Commercial development should ensure visual compatibility with adjacent noncommercial properties.~~
- ~~D. Commercial uses located in the shoreline should provide public access in accordance with constitutional or other legal limitations unless such improvements are demonstrated to be infeasible or present hazards to life and property.~~

~~B. Regulations.~~

~~General.~~

- ~~A. Allowed Use. Commercial uses that result in no net loss of shoreline ecological functions and processes are allowed subject to the policies and regulations of WCC 23.90.030 and the specific criteria below. Prior to approval of an application, the Director shall review a proposal for design, layout, and operation of the use and determine whether the proposed use is water-dependent, water-related, water-enjoyment, or a non-water-oriented commercial use.~~
 - ~~1. Water-dependent commercial uses shall be given first preference over non-water dependent water-related and water-enjoyment commercial uses. Prior to approval of water-dependent uses, the administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-dependent use.~~
 - ~~2. Water-related commercial uses may shall not be approved if they displace existing water-dependent uses. Prior to approval of a water-related commercial use, the administrator shall review a proposal for design, layout and operation of the use and shall make specific findings that the use qualifies as a water-related use.~~
 - ~~3. Water-enjoyment commercial uses may shall be not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or~~

Commented [CES155]: Amended to be consistent w/ WAC 173-26-241(3)(d)

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- 1 water-related use identified in a substantial development permit or other approval. ~~Prior to~~
2 ~~approval of water enjoyment uses, the administrator shall review a proposal for design, layout~~
3 ~~and operation of the use and shall make specific findings that the use qualifies as a water-~~
4 ~~enjoyment use.~~
- 5 4. ~~Non-water oriented commercial uses may be permitted as a conditional use where located on a~~
6 ~~site physically separated from the shoreline by another property in separate ownership or a~~
7 ~~public right of way such that access for water oriented use is precluded; provided, that such~~
8 ~~conditions were lawfully established prior to the effective date of this program. All other non-~~
9 water-oriented commercial uses are prohibited in the shoreline unless the use provides
10 significant public benefit with respect to the objectives of the Act and ~~is the proposed use:~~
11 a. ~~Is part of a mixed use project that includes a water-oriented use; or~~
12 ~~b. Is on a site where navigability is severely limited; or,~~
13 c. ~~Does not occupy space designated for water-dependent or water-related use identified in a~~
14 ~~project permit approval; or,~~
15 ~~b-d. In areas designated for commercial use and the site is physically separated from the~~
16 ~~shoreline by another property or public right of way.~~
- 17 5. ~~When permitted, non-water-oriented commercial uses shall provide public access in~~
18 ~~accordance with the provisions of WCC 23.30.060 (Public Access).~~
- 19 5-6. ~~Non-water oriented commercial uses shall provide public access and/or restoration as follows:~~
20 a. ~~Non-water oriented commercial uses shall provide public access shall be in the form of~~
21 ~~unrestricted open space. The administrator shall determine the amount of access in~~
22 ~~accordance with the provisions of WCC 23.90.080 on a case-by-case basis.~~
23 b. If no water-oriented commercial uses are located on or adjacent to the water as part of a
24 mixed use development, 80% of the shoreline and associated buffers shall be preserved or
25 restored to provide shoreline ecological functions that approximate the functions provided
26 by the site in natural conditions.
27 c. The requirements ~~in subsections (B)(1)(e)(i) and (ii)~~ of this section may be modified when:
28 i. The site is designated as a public access area by a shoreline public access plan, in which
29 case public access consistent with that plan element shall be provided; or
30 ii. Specific findings are made demonstrating that the size of the parcel and the presence of
31 adjacent uses preclude restoration of shoreline ecological functions. Where on-site
32 restoration is infeasible, equivalent off-site restoration shall be provided ~~consistent with~~
33 ~~the policies and regulations of this program.~~
34 d. Where restoration is proposed, buffers shall be designed as appropriate to protect shoreline
35 resources based on a ~~site-specific restoration plan assessment and may differ from the~~
36 ~~standard critical area buffer dimensions provided in Chapter 16.16 WCC; provided, that the~~
37 ~~building envelope for the proposed non-water oriented use shall be based on current site~~
38 ~~conditions.~~

Commented [AP156]: Language revised for greater clarity and consistency with the use table.

Commented [CES157]: Added to be consistent w/ WAC 173-26-241(3)(d)

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~~i. The requirements of this subsection (B)(1)(c) shall not apply to those non-water-oriented commercial uses located on a site physically separated from the shoreline where access to the land/water interface is precluded.~~

~~6.7.~~ If water-oriented commercial uses are located on or adjacent to the water, the remaining undeveloped water frontage that is not devoted to water-dependent use shall be preserved in a substantially undeveloped condition until such time that an appropriate water-dependent use has been identified for the area. If the site has been previously altered by past development, the balance of the site may be reserved for future water-related use.

B. Site Design and Operation.

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

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

3. Over-Water Structures.

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

4. Marine rails shall be located the minimum distance necessary above existing grade to minimize impact on littoral drift and navigation along the shoreline.

~~4. Building Height.~~

~~a. As mandated by the Act (RCW 90.58.320), no permit may be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where this program does not prohibit such development and only when overriding considerations of the public interest will be served.~~

~~b. Lodging developments over 35 feet in height may be allowed in resort communities within the Urban Resort shoreline area designation, subject to the requirements of WCC 23.90.130(5). However, due to the potential for adverse impact upon adjacent uses and the community from such development, special consideration must be given to the following factors during review of such proposals:~~

- ~~Urban services, including sanitary sewers, public water supply, fire protection, storm drainage, and police protection, must be provided at adequate levels to protect the public health, safety, and welfare.~~

Commented [PDS158]: Already covered by 23.40.020(E)(1).

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ii. ~~Circulation, parking areas, and outdoor storage or loading areas should be adequate in size and designed so that the public safety and local aesthetic values are not diminished. Such areas should be screened from open space areas by landscaping, fences or similar structures, or grade separation.~~

iii. ~~Recreational needs of building clientele must be provided for through several on site recreation facilities and access to shorelines. The variety and number of on site recreation facilities should increase proportionately as density increases.~~

Commented [PDS159]: Moved to 23.40.020(E)(1).

~~C. Tabular Regulations—Setbacks, Height and Open Space for Commercial Development. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions—Buffers, setbacks, height, open space and impervious surface coverage.~~

C. Regulations for Specific Shoreline Environment Designations.

1. ~~In the Conservancy and Urban Conservancy shoreline environments, only low intensity commercial use and development—either water-oriented or non-water-oriented, and limited to resort, campground, and similar facilities—may be permitted as a shoreline conditional use. Non-water-oriented uses are subject to the criteria for such uses of this section.~~
2. ~~In the Urban Resort shoreline environment, water-oriented resort-oriented commercial use and developments are permitted. Non-water-oriented commercial uses and developments may be permitted as a shoreline conditional use subject to the criteria for such uses in this section. Commercial uses in this shoreline environment are permitted either by themselves or as part of a structure or development also containing residential uses.~~
3. ~~In the Resource shoreline environment, water-oriented commercial use and development related to natural resource products predominantly produced on site is permitted. Non-water-oriented commercial related to natural resource products predominantly produced on site may be permitted as a shoreline conditional use subject to the criteria for such uses in this section.~~

1. ~~Shoreline Area Regulations.~~

Commented [CES160]: Addressed in use table now.

~~Urban. Water oriented commercial use and development is permitted subject to policies and regulations of this program. Non water oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Urban Resort. Water oriented resort oriented commercial use and development is permitted subject to policies and regulations of this program. Non water oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section. Commercial uses allowed in this designation are permitted either by themselves or as part of a structure or development also containing residential uses, subject to policies and regulations of this program.~~

~~Urban Conservancy. Low intensity water oriented commercial use and development limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use. Low intensity non water oriented commercial limited to resort, bed and breakfast, campgrounds and similar~~

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~~facilities may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Shoreline Residential. Water-oriented commercial use and development is permitted subject to policies and regulations of this program. Non-water-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Rural. Water-oriented commercial use and development is permitted subject to policies and regulations of this program. Non-water-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Resource. Water-oriented commercial use and development related to natural resource products predominantly produced on-site is permitted subject to policies and regulations of this program. Non-water-oriented commercial related to natural resource products predominantly produced on-site may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Conservancy. Low intensity water-oriented commercial use and development limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use. Low intensity non-water-oriented commercial limited to resort, bed and breakfast, campgrounds and similar facilities may be permitted as a conditional use subject to the criteria for such uses in subsection (B)(1)(d) of this section.~~

~~Natural. Commercial use and development is prohibited.~~

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

23.4100.070-080 Dredging and Dredge Material Disposal.

A. Policies.

- ~~1. Dredging should be permitted for water-dependent uses of economic importance to the region and/or essential public facilities only when necessary and when alternatives are infeasible or less consistent with this program.~~
- ~~2. Dredging to provide water-oriented recreation should not be permitted.~~
- ~~3. Minor dredging as part of ecological restoration or enhancement, beach nourishment, public access or public recreation should be permitted if consistent with this program.~~
- ~~4. New development should be sited and designed to avoid or, where avoidance is not possible, to minimize the need for new maintenance dredging.~~
- ~~5. Dredging of bottom materials for the primary purpose of obtaining material for landfill, construction, or beach nourishment should not be permitted.~~
- ~~6. Spoil disposal on land away from the shoreline is generally preferred over open water disposal.~~

Commented [AP161]: This section has been moved from the General Regulations section (previously WCC 23.90.120). Added to title for clarity of section contents and consistency with WAC 173-26-231.

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~~7. Long term cooperative management programs that rely primarily on natural processes, and involve land owners and applicable local, state and federal agencies and tribes, should be pursued to prevent or minimize conditions which make dredging necessary.~~

~~B. Regulations.~~

A. General.

~~8.1.~~ Dredging shall only be permitted for the following activities:

- a. Development of approved ~~wet moorages, harbors, ports and~~ water-dependent uses of economic importance to the region and/or essential public facilities industries of economic importance to the region only when there are no feasible alternatives.

~~b. Development of essential public facilities when there are no feasible alternatives.~~

~~8.2.~~ Maintenance dredging for the purpose of restoring a lawfully established development or the previously permitted or authorized hydraulic capacity of streams.

~~8.3.~~ Maintenance of irrigation reservoirs, drains, canals, or ditches for agricultural purposes.

~~8.4.~~ Establishing, expanding, relocating, or reconfiguring navigation channels where necessary to assure safe and efficient accommodation of existing navigational uses. Maintenance dredging of established navigation channels and basins shall be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

~~8.5.~~ Removal of gravel for flood management purposes consistent with an adopted flood hazard reduction plan and only after a biological and geomorphological study demonstrates that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of shoreline ecological functions and processes, and is part of a comprehensive flood management solution.

~~8.6.~~ Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.

~~8.7.~~ Minor in-water trenching to allow the installation of necessary underground pipes or cables if no alternative, including boring, is feasible, and:

- i. Impacts to fish and wildlife habitat are avoided to the maximum extent possible.
- ii. The utility installation shall not increase or decrease the natural rate, extent, or opportunity of channel migration.
- iii. Appropriate best management practices are employed to prevent water quality impacts or other environmental degradation.

~~8.8.~~ Dredging for the purpose of obtaining ~~land~~ fill material is prohibited, except that:

~~i.~~ Hlimited bar scalping of gravel in streams is permitted subject to policies of the Whatcom County Comprehensive Plan and regulations for mining under WCC ~~23.100.080~~ 23.40.140 (Mining), and WCC Title 20 (Zoning).

~~ii.~~ Dredging to obtain fill for restoration projects is permitted for approved MTCA/CERCLA projects and may be approved as a shoreline conditional use for other restoration projects.

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- 1 ~~9.2.~~ The physical alignment and ecological functions and processes of streams, lakes, or marine
2 shorelines shall be maintained, except to improve hydraulic function, water quality, fish or
3 wildlife habitat, or fish passage.
- 4 ~~3.~~ ~~Limitations on To protect public safety and compatibility with surrounding uses,~~ dredge or
5 disposal operations may be ~~conditioned~~ imposed to reduce proximity impacts, protect the public
6 safety and assure compatibility with the interests of other shoreline users. Conditions may
7 include to limits on periods and hours of operation, and type of machinery, and may require
8 provision of landscaped buffers strips and/or fencing to address noise and visual impacts at land
9 disposal or transfer sites.
- 10 ~~10.4.~~ Regular maintenance of an approved barge landing site shall not be considered
11 dredging.
- 12 ~~A.B.~~ Additional Standards for ~~Spoil~~ Dredge Material Disposal.
- 13 1. Any dredge material disposal shall be used as part of a program to restore or enhance shoreline
14 ecological functions and processes, unless found to be infeasible.
- 15 ~~1.2.~~ Dredge material Spoil disposal on uplands away from the within shoreline jurisdiction is
16 permitted only under the following conditions:
- 17 a. Shoreline ecological functions and processes will be preserved, including protection of
18 surface and ground water.
- 19 b. Erosion, sedimentation, floodwaters, or runoff will not increase adverse impacts to
20 shoreline ecological functions and processes or property.
- 21 c. Sites will be adequately screened from view of local residents or passersby on public rights-
22 of-way.
- 23 3. Disposal of dredge material on shorelands or wetlands within a river's channel migration zone
24 shall be discouraged. In the limited instances where it is allowed for restoration or enhancement
25 of shoreline ecological functions and processes, such disposal shall require a shoreline
26 conditional use permit.
- 27 4. Dredge material Spoil disposal is prohibited on marine shorelines between the line of extreme
28 low tide and below the ordinary high water mark, on lake shorelines or beds, and in streams;
29 except that:
- 30 a. ~~d~~ Dredge spoil material may be used in approved projects for the restoration or
31 enhancement of shoreline ecological functions and processes, such as beach nourishment.
- 32 b. Spoil disposal in open waters may be approved only in accordance with the Puget Sound
33 Dredged Disposal Analysis (PSDDA) evaluation procedures for managing in-water disposal of
34 dredged material; when approved by applicable agencies, which may include the U.S. Army
35 Corps of Engineers pursuant to Section 10 (Rivers and Harbors Act) and Section 404 (Clean
36 Water Act) permits, and Washington State Department of Fish and Wildlife hydraulic project
37 approval (HPA); and when found to meet the following conditions:
- 38 c. Land disposal is infeasible, less consistent with this program, or prohibited by law.
- 39 d. Nearshore disposal as part of a program to restore or enhance shoreline ecological functions
40 and processes is not feasible.

Commented [CES162]: This provision applies to upland areas within shoreline jurisdiction, away from the OHWM. Revised language for greater clarity.

Commented [DN163]: This language is pulled directly from WAC 173-26-231. Revised language to clarify that restoration and enhancement is the only instance in which this would be permitted.

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- ~~e. Offshore habitat will be protected, restored, or enhanced.~~
~~f. Adverse effects on water quality or biologic resources from contaminated materials will be mitigated.~~
~~g. Shifting and dispersal of spoil will be minimal.~~
~~Water quality will not be adversely affected.~~
~~h-b. Dredge material disposal at an open water disposal site approved through the auspices of the Dredged Material Management Program (RCW 79.105.500) is allowed and shall not require a shoreline permit.~~

C. Supplemental Application Requirements.

1. In addition to the minimum application requirements specified in ~~WCC 23.60.050~~ WCC Title 22 (Land Use and Development), applications for dredging and material disposal use or development shall include all information necessary to conduct a thorough evaluation of the proposed activity, including but not limited to the following:
 - a. A description of the purpose of the proposed dredging and an analysis of compliance with the policies and regulations of this program and WCC Title 20 (Zoning).
 - b. A detailed description of the existing physical character, shoreline geomorphology, and biological resources provided by the area proposed to be dredged, including:
 - i. A site plan map outlining the perimeter of the proposed dredge area. The map must also include the existing bathymetry depths based on mean lower low water (MLLW) and have data points at a minimum of two-foot depth increments.
 - ii. A habitat survey must be conducted and WDFW must be contacted to ensure the survey is conducted according to the most recent WDFW eelgrass/macroalgae survey guidelines.
 - iii. Information on stability of bedlands adjacent to proposed dredging and spoils disposal areas.
 - c. A detailed description of the physical, chemical and biological characteristics of the dredge spoils to be removed.
 - i. Physical analysis of material to be dredged: material composition and amount, grain size, organic materials present, source of material, etc.
 - ii. Chemical analysis of material to be dredged: volatile solids, chemical oxygen demand (COD), grease and oil content, mercury, lead and zinc content, etc.
 - iii. Biological analysis of material to be dredged.
 - d. A description of the method of materials removal, including facilities for settlement and movement.
 - i. Dredging procedure: length of time it will take to complete dredging, method of dredging and amount of materials removed.
 - ii. Frequency and quantity of project maintenance dredging.
 - e. Detailed plans for dredge spoil disposal, including specific land disposal sites and relevant information on the disposal site, including but not limited to:
 - i. Spoils disposal area:

Commented [CES164]: Don't need this, since it doesn't need a shoreline permit

Commented [AP165]: Added per Periodic Review Checklist, Item 2019.b, and Scoping Document Item #2i.

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- (A) Physical characteristics including location, topography, existing drainage patterns, surface and ground water;
 - (B) Size and capacity of disposal site;
 - (C) Means of transportation to the disposal site;
 - (D) Proposed dewatering and stabilization of spoils;
 - (E) Methods of controlling erosion and sedimentation; and
 - (F) Future use of the site and conformance with land use policies and regulations.
- ii. Total initial spoils volume.
 - iii. Plan for disposal of maintenance spoils for at least a 50-year period.
- f. Hydraulic modeling studies sufficient to identify existing geohydraulic patterns and probable effects of dredging.

D. Regulations for Specific Shoreline Environment Designations.

- 2.1. In the Natural shoreline ~~area environment~~, dredging is prohibited except ~~that dredging is permitted~~ as an essential element of an approved shore restoration or enhancement plan, ~~subject to policies and regulations of this program.~~
- 2. In the Aquatic shoreline ~~area environment~~:
 - a. Dredging may be permitted as a ~~shoreline~~ conditional use subject to the use and development regulations of the abutting upland shoreline ~~area environment~~ designation.
 - b. ~~Dredging for a mutually designated reach of river with a provided, that the conditional use permit requirement may be waived upon county County and Ecology approval of a sediment management plan component for a mutually designated reach of river is permitted subject to the use and development regulations of the abutting upland shoreline area environment designation.~~
 - c. Maintenance dredging pursuant to WAC 173-27-140 is permitted ~~subject to the policies of and regulations of this program without a conditional use permit~~, provided the original constructed bottom contours have been established and documented in a prior shoreline permit or authorization.

C. ~~Shoreline Area Regulations.~~

- A. ~~Urban. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~
- B. ~~Urban Resort. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~
- C. ~~Urban Conservancy. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~
- D. ~~Shoreline Residential. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

Commented [AP166]: Carried over from removed 'Shoreline Area Regulations.'

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~~E. Rural. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

~~F. Resource. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

~~G. Conservancy. Dredging may be permitted as a conditional use subject to policies and regulations of this program.~~

~~H. Natural. Dredging is prohibited except that dredging is permitted as an essential element of an approved shore restoration or enhancement plan, subject to policies and regulations of this program.~~

~~I. Aquatic. Dredging may be permitted as a conditional use subject to the use and development regulations of the abutting upland shoreline area designation; provided, that the conditional use permit requirement may be waived upon county and Ecology approval of a sediment management plan component for a mutually designated reach of river. Maintenance dredging pursuant to WCC 23.60.022(B) is permitted subject to the policies and regulations of this program without a conditional use permit, provided the original constructed bottom contours have been established and documented in a prior shoreline permit or authorization.~~

Commented [CES167]: Addressed by use table now.

23.100.11023.40.090 Landfill and Excavation.

A. Policies.

~~A. Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.~~

~~B. Landfill in water bodies, floodways, and/or wetlands should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity. Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with this program.~~

~~C. Fill should not be allowed where shore stabilization works would be required to maintain the materials placed.~~

~~D. Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.~~

~~E. The predicted economic benefits of landfills and excavation should be weighed against long-term cumulative impacts on ecological processes and functions.~~

A. Regulations.

Commented [AP168]: This section is re-located from the General Regulations section (previously WCC 23.90.100) and revised to distinguish between fill and dredge material disposal, dredging, excavation, or mining.

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A. General.

1. ~~Landfill~~ Fill and excavation shall be avoided to the extent feasible, and shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with this program. Where necessary, fill in shoreline jurisdiction shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.

Commented [CES169]: Added pursuant to WAC 173-26-231(3)(c)

~~1-2.~~ Excavation waterward of the OHWM or within wetlands shall be considered dredging or ~~gravel bar scalping~~ mining for purposes of this program.

3. Fill materials shall only be clean sand, gravel, soil, rock, or similar material. Use of polluted dredge spoils or other solid or dangerous wastes is prohibited.

~~2-4.~~ Landfill and excavation within wetlands or waterward of the ordinary high water mark shall only be permitted through a shoreline conditional use permit in limited instances for the following purposes ~~only~~, with due consideration given to specific site conditions, and only along with approved shoreline use and development activities ~~that are consistent with this program:~~

Commented [CES170]: By definition, excavation in water is considered dredging and is covered in that section.

Commented [CES171]: Updated to comply with WAC 173-26-231(3)(c)

- a. ~~Port development for~~ Water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports, are infeasible.
- b. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.

c. Ecological restoration, mitigation, or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.

d. Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan.

~~e-e.~~ Public access.

d. ~~Maintenance of lawfully established development.~~

e. ~~Development of shore stabilization projects, flood control, and instream structures.~~

f. ~~Except for landfill for county approved ecological restoration, fill and excavation waterward of the OHWM or in a wetland may only be authorized as a conditional use.~~

Commented [CES172]: Amended to be consistent w/ WAC 173-26-231(3)(c)

5. Fill shall not be used to create land to serve residential development.

~~3-6.~~ Landfills or excavation shall not be located where shore stabilization will be necessary to protect materials placed or removed. Disturbed areas shall be immediately stabilized and revegetated, as applicable.

~~4.~~ On marine shores, fill may be permitted in the foreshore where located at drift sector ends in low energy driftways, or on erosional pocket beaches for restoration and enhancement programs where the effect of the landfill's interruption of the littoral process can be mitigated.

~~5-7.~~ Landfills, beach nourishment, and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long-term appropriate use including lawful access and enjoyment of scenery.

~~6.~~ Perimeter banks shall generally be sloped no steeper than one foot vertical for every three feet horizontal unless a specific engineering analysis has been provided, and the administrator determines that the landfill blends physically and visually with existing topography.

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7-8. Fill shall be designed to avoid water quality impacts in accordance with local, state and federal regulations. A temporary erosion and sediment control (TESC) plan shall be ~~provided~~ required for all proposed ~~land~~fill and excavation activities.

~~23.40.090~~ **23.100 Flood Hazard Reduction Control Works and Instream Structures.**

~~c. Flood control works and instream structures in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

~~A. Purpose and Need.~~

~~b. New or expanding development or uses in the shoreline, including subdivision of land, that would likely require structural flood control works within a stream, channel migration zone, or floodway should not be allowed.~~

~~c. Flood control works and instream structures should be planned and designed to be compatible with appropriate multiple uses of stream resources over the long term, especially in shorelines of statewide significance.~~

~~d. Flood control works should only be allowed in the shoreline if they are necessary to protect existing development and where nonstructural flood hazard reduction measures are infeasible.~~

~~e. Flood control works to protect existing development should be permitted only when the primary use being protected is consistent with this program, and the works can be developed in a manner that is compatible with multiple use of streams and associated resources for the long term, including shoreline ecological functions, fish and wildlife management, and recreation.~~

~~A. Design Considerations.~~

~~f. Flood control works should incorporate native vegetation to enhance ecological functions, create a more natural appearance, improve ecological processes, and provide more flexibility for long term shoreline management. Such features include vegetated berms; vegetative stabilization including brush matting and buffer strips; and retention of existing trees, shrubs and grasses on stream banks.~~

~~g. Flood control works and instream structures should be located, designed, constructed and maintained so their resultant effects on geohydraulic shoreline processes will not cause significant damage to other properties or valuable shoreline resources, and so that the physical integrity of the shoreline process corridor is maintained.~~

~~h. To minimize flood damages and to maintain natural resources associated with streams, overflow corridors and other alternatives to traditional bank levees, revetments and/or dams should be considered. Setback levees and similar measures should be employed where they will result in lower flood peaks and velocities, and more effective conservation of resources than with high bank levees.~~

~~i. Recognizing the large number of physical variables to be considered in properly locating and designing flood control works and instream structures, such as dams and weirs, and the high probability that poorly located and inadequately designed works will fail and/or adversely affect~~

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- properties and shore features, such works should be sited and designed consistent with appropriate engineering principles and WCC Title 17.
- j. Nonstructural and nonregulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged as an alternative to structural flood control works and instream structures. Nonregulatory and nonstructural methods may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.
- k. Design of flood control works should incorporate continued long term multiple use of shoreline resources by all appropriate user groups.
- ~~l.a. Design of flood control works should provide access to public shorelines whenever possible, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, security problems, unmitigatable ecological impacts, unavoidable conflicts with proposed uses, or unreasonable cost. At a minimum, flood control works should not decrease public access or use potential of shorelines.~~

A. Coordination.

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

24A. Regulations:

A. Purpose and Need-General.

1. **Applicability.** This section applies to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and stormwater management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Additional relevant critical area provisions are in WAC 173-26-221(2).
2. Development in floodplains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has been adopted after 1994 and approved by the Department of Ecology.
3. New development or new uses in shoreline jurisdiction should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway.

Commented [CES173]: Language from WAC 173-26-221(3)(a).

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- 1 4. The following uses and activities may be appropriate and/or necessary within the channel
2 migration zone or floodway:
- 3 a. Actions that protect or restore the ecosystem-wide processes or ecological functions.
4 b. Forest practices in compliance with the Washington State Forest Practices Act and its
5 implementing rules.
6 c. Existing and ongoing agricultural practices, provided that no new restrictions to channel
7 movement occur.
8 d. Mining when conducted in a manner consistent with the environment designation and with
9 the provisions of Chapter 23.40.140 (Mining).
10 e. Bridges, utility lines, flood Hazard Reduction works, and other public utility and
11 transportation structures where no other feasible alternative exists or the alternative would
12 result in unreasonable and disproportionate cost. Where such structures are allowed,
13 mitigation shall address impacted functions and processes in the affected section of
14 watershed or drift cell.
15 f. Repair and maintenance of an existing legal use, provided that such actions do not cause
16 significant ecological impacts or increase flood hazards to other uses.
17 g. Development with a primary purpose of protecting or restoring ecological functions and
18 ecosystem-wide processes.
19 h. Modifications or additions to an existing nonagricultural legal use, provided that channel
20 migration is not further limited and that the new development includes appropriate
21 protection of ecological functions.
22 i. Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion
23 rate exceeds that which would normally occur in a natural condition, that the measure does
24 not interfere with fluvial hydrological and geomorphological processes normally acting in
25 natural conditions, and that the measure includes appropriate mitigation of impacts to
26 ecological functions associated with the river or stream.
- 27 ~~4-5.~~ Structural flood hazard reduction ~~control~~ works shall be permitted only when it is demonstrated
28 by engineering and scientific evaluations that:
- 29 a. They are necessary to protect health/safety and/or existing development;
30 b. Nonstructural flood hazard reduction measures are infeasible; and
31 c. Measures are consistent with an adopted comprehensive flood hazard management plan
32 that evaluates cumulative impacts to the watershed system ~~or otherwise approved by~~
33 ~~Whatcom County Public Works' River and Flood Division.~~
- 34 ~~2-6.~~ Place new structural flood hazard reduction measures landward of the associated wetlands, and
35 designated vegetation conservation areas, except for actions that increase ecological functions,
36 such as wetland restoration, or as noted below. Provided that such flood hazard reduction
37 projects be authorized if it is determined that no other alternative to reduce flood hazard to
38 existing development is feasible. The need for, and analysis of feasible alternatives to, structural
39 improvements shall be documented through an ~~geotechnical~~ analysis performed by a qualified
40 professional.

Commented [CES174]: Updated text from WAC 173-26-221((3)(c))

Commented [DOE-Req175]: Required Change – There is nothing within the SMP Flood Hazard Reduction Guidelines (WAC 173-26 221(3)) that allow a local government entity to override when new structural flood hazard reduction measures should be allowed within shoreline jurisdiction.

Commented [RCE176]: Updated text from WAC 173-26-221((3)(c))

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3-7. ~~New flood hazard reduction control~~ works are prohibited on estuarine shores, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.

4-8. Revetments ~~shall only be permitted for public projects, and~~ shall not be placed waterward of the OHWM ~~except for weirs and current deflectors where necessary to protect bridges and roads.~~

5. ~~Revetments and levees shall be designed consistent with appropriate engineering standards and WCC Title 17. Height shall be limited to the minimum required to protect the adjacent lands from the designed flood and demonstrated through hydraulic modeling that the height will not adversely impact shoreline ecological functions and processes.~~

9. Weirs and current deflectors are permitted only when necessary to protect public bridges, roads, and levees.

6-10. Channelization projects that damage fish and wildlife resources, degrade recreation and aesthetic resources, or result in high flood stages and velocities shall not be permitted when feasible alternatives are available.

7-11. Flood ~~hazard reduction control~~ works and instream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The County may require reasonable conditions such as setbacks, buffers, or storage basins to achieve this objective.

8-12. Flood hazard reduction works ~~should~~ shall provide access to public shorelines whenever possible, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, security problems, unmitigatable ecological impacts, unavoidable conflicts with proposed uses, or unreasonable cost. At a minimum, flood hazard reduction works should not decrease public access or use potential of shorelines.

Commented [DOE-Req177]: Required Change – The consideration for public access associated with new flood hazard reduction measures is a requirement of the SMP Guidelines at WAC 173-26-221(3)(c)(iv).

Commented [CES178]: Moved from above.

B. Site Design and Operation.

1. The County shall require professionally engineered design of any proposed flood ~~hazard reduction control~~ works or instream structure.
2. The design of all dams and the suitability of the proposed site for dam construction shall be certified by a professional engineer licensed in the state of Washington. The professional design shall include a maintenance schedule.
3. For all dams that are not regulated by either the Federal Energy Regulatory Commission licensing procedures, or the State Department of Ecology reservoir permit requirements, a maintenance agreement and construction bond for 150% of the cost of the structure shall be filed with the director of the Public Works Department prior to construction. The maintenance agreement shall specify who is responsible for maintenance, shall incorporate the maintenance schedule specified by the design engineer, shall require annual inspections by a civil engineer licensed in the state of Washington and shall stipulate abandonment procedures which shall include, where appropriate, provisions for site restoration.
4. Natural instream features such as snags, uprooted trees, or stumps should be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages.

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5. Flood ~~hazard reduction control~~ works and instream structures shall allow for normal groundwater movement and surface runoff.
6. Flood ~~hazard reduction control~~ works and instream structures shall preserve valuable recreation resources and aesthetic values such as point and channel bars, islands, and braided banks.
- 6.7. ~~New~~ Structural flood ~~hazard reduction control~~ works shall be placed landward of associated wetlands, and designated habitat conservation areas, except for works that improve ecological functions, such as wetland restoration.
- 7.8. Where flood ~~hazard reduction control~~ works are necessary, they shall be set back at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. Levees that have already cut off point bars should be relocated where feasible to lower flood stages and current velocities.
- 8.9. Where levees are necessary to protect floodway fringe areas, they shall be located and designed to protect shoreline ecological functions and processes. Such works should be located near the tangent to outside meander bends so that the stream can maintain normal meander progression and ~~utilize~~ use most of its natural flood water storage capacity.
- 9.10. No motor vehicles, appliances, other similar structures or parts thereof; nor structure demolition debris; nor any other solid waste shall be used for flood ~~hazard reduction control~~ works.
11. Cut-and-fill slopes and back-filled areas shall be stabilized with brush matting and buffer strips and revegetated with native grasses, shrubs, or trees to prevent loss of shoreline ecological functions and processes.
- A. ~~Shoreline Area Regulations.~~
 1. ~~Urban. Flood control works and instream structures are permitted subject to policies and regulations of this program.~~
 2. ~~Urban-Resort. Flood control works and instream structures are permitted subject to policies and regulations of this program.~~
 3. ~~Urban-Conservancy. Flood control works and instream structures are permitted subject to policies and regulations of this program; provided, that channelization or dams for flood control are prohibited.~~
 4. ~~Shoreline Residential. Flood control works and instream structures are permitted subject to policies and regulations of this program.~~
 5. ~~Rural. Flood control works and instream structures are permitted subject to policies and regulations of this program; provided, that channelization or dams for flood control may be permitted as a conditional use.~~
 6. ~~Resource. Flood control works and instream structures are permitted subject to policies and regulations of this program; provided, that channelization or dams for flood control may be permitted as a conditional use.~~
 7. ~~Conservancy. Flood control works and instream structures are permitted subject to policies and regulations; provided, that channelization or dams for flood control are prohibited.~~

Commented [CES179]: Covered by use table now.

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~~8. Natural. Flood control works and instream structures are prohibited except for normal maintenance and repair.~~

~~9. Aquatic. Flood control works and instream structures are permitted subject to the use and development regulations of the abutting upland shoreline area designation.~~

23.4100.090-110 Forest Practices.

~~A. Policies.~~

~~A. Forest lands should be reserved for long term forest management and such other uses as are compatible with the dominant use. Other more intensive and incompatible uses tending to impair the dominant use should be discouraged from locating on forest lands.~~

~~B. Forest practices should maintain high levels of water quality, as well as surface and ground water movement patterns.~~

~~C. Forest practices should minimize damage to wetlands, fish and wildlife species and habitats, especially aquatic habitats.~~

~~D. Extreme caution must be observed whenever chemicals are to be used along shorelines; such use should be avoided altogether if possible.~~

~~E. Forest practices should maintain or improve the quality of soils and minimize erosion.~~

~~F. Where slopes are extremely steep or soils are subject to sliding, rapid erosion or high water table, special practices should be employed to minimize damage to shoreland and water features, and adjacent properties.~~

~~B. Regulations.~~

~~A. General.~~

~~1. All forest practices undertaken on shorelines shall comply with the applicable policies and provisions of the Forest Practices Act, Chapter 76.09 RCW as amended, and any regulations adopted pursuant thereto (WAC Title 222), as administered by the Department of Natural Resources.~~

~~2. Unless otherwise stated, the vegetation conservation management regulations of this program do not apply to commercial forest practices as defined by this program when such activities are covered under the Washington State Forest Practices Act (Chapter 76.09 RCW), except where such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority. For the purposes of this program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, and WCC Chapter 16.16 (Critical Areas), and shall be limited to the minimum necessary to accommodate an approved use.~~

~~3. A forest practice that only involves timber cutting is not a development under the Act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit, as required by WAC 222-50-020.~~

Commented [AP180]: This section has been moved from the General Regulations section (previously WCC 23.90.110).

Commented [CES181]: Revised section per Scoping Document, Item #17g.

Commented [AP182]: Moved from Vegetation Management section (WCC 23.30.040).

Commented [CES183]: Added per Periodic Review Checklist, Item 2017.e, and Scoping Document Item #2b. This has also been addressed in the definitions section.

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4. ~~For the purposes of this program, preparatory work associated with the Any conversion of land to a non-forestry uses and/or development use not compatible with forestry shall not be considered forest practices and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, including vegetation conservation, and shall be must:~~
 - a. ~~Comply with the applicable policies and regulations of this program;~~
 - b. ~~Limited the conversion to the minimum necessary, while complying with the purpose of the shoreline environment designation, general policies and regulations, and specific shoreline use and modification policies and regulations on the subject property;~~
 - c. ~~Ensure no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources, and values provided for in RCW 90.58.020, such as navigation, recreation, and public access.~~
- ~~1. Forest practices roads are prohibited on marine or lake shores where slopes exceed 35 percent except when necessary to obtain access to road networks on land outside the Act's jurisdiction.~~
- ~~2. Cutting of more than 30 percent of the merchantable trees over a 10-year period within 50 feet of the bank rim on feeder bluffs and landslide hazard areas is prohibited. Only selective thinning methods that minimize erosion potential shall be employed.~~
5. ~~Per RCW 90.58.150, W~~with respect to timber situated within shoreline jurisdiction along shorelines of statewide significance, only selective commercial timber cutting may be permitted so that no more than 30 percent of the merchantable timber may be harvested in any 10-year period; provided ~~that:~~
 - a. ~~Other timber harvesting methods may be permitted as a conditional use permit in those limited instances where topography, soil conditions, or silviculture practices necessary for regeneration render selective logging ecologically detrimental; and~~
 - b. ~~Timber removal that is to the minimum necessary for the conversion of land for other uses may be permitted.~~
- A. ~~Shoreline Area Regulations:~~
 - ~~3. Urban. Forest practices are prohibited.~~
 - ~~4. Urban Resort. Forest practices are prohibited.~~
 - ~~5. Urban Conservancy. Forest practices are prohibited.~~
 - ~~6. Shoreline Residential. Forest practices are prohibited.~~
 - ~~7. Rural. Forest practices are permitted subject to policies and regulations of this program and critical areas buffer regulations.~~
 - ~~8. Resource. Forest practices are permitted subject to policies and regulations of this program and critical areas buffer regulations.~~
 - ~~9. Conservancy. Forest practices are permitted subject to policies and regulations of this program and critical areas buffer regulations.~~

Commented [CES184]: Addressed by use table now.

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~~23.100.170-40.120~~ Industrial and Port Development.

~~a. Industrial and port development in shoreline areas outside of the Cherry Point management area shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

Cherry Point Management Area. All industrial and port development in shorelines within the Cherry Point management area as defined in Chapter 23.110 WCC shall be subject to the policies and regulations found in WCC 23.100.170 instead of the policies and regulations of this section, unless otherwise specified therein.

A. Policies.

~~A. Shoreline sites particularly suitable for development such as deep water harbors with access to adequate rail, highway and utility systems should be reserved for water-dependent or water-related industrial and port development.~~

~~B. In order to provide adequate shoreline for future water-dependent and water-related uses, industrial or port development at deep water sites should be limited to those uses that produce the greatest long-term economic base. Industrial and port development that is consistent with this program should be protected from encroachment or interference by incompatible uses with less stringent siting requirements, such as residential or commercial uses. Mixed use development, including non-water-dependent uses, should only be allowed when they include and support water-dependent uses.~~

~~C. Regional needs for port facilities should be carefully considered in reviewing new port proposals and in allocating shorelines for such development. Such reviews or allocations should be coordinated with port districts, adjacent counties and cities, and the state. Existing, officially designated State Harbor Areas should be used for new port development to the maximum extent whenever possible.~~

~~D. Multiple use of industrial and port facilities is encouraged to limit duplicative facilities and reduce adverse impacts. Multiple use should be implemented in the following manner:~~

~~b. Cooperative use of piers, cargo handling, storage, parking and other accessory facilities among private or public entities should be required in industrial or port facilities whenever feasible. New facilities for water-dependent uses should be allowed only after assessment of the potential for shared use of existing facilities.~~

~~c. Industrial and port developments should provide opportunities for physical and/or visual public shoreline access in accordance with the public access policies, including recreational use of undeveloped shorelines not needed for port or industry operations; provided, that such uses are safely compatible with facility operations.~~

~~A. Industrial and port development in the shoreline should be located and designed to avoid significant adverse impacts to other shoreline uses, resources, and values, including shoreline geomorphic processes, water quality, fish and wildlife habitat, commercial aquaculture, and the aquatic food chain.~~

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

Commented [P/C185]: P/C voted 9-0 to make 23.40.125 a subset of these rules, so that 23.40.120 applies to all industrial and port development and 23.40.125 are additional rules for the CPMA; and to remove redundancies.

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~~B. Regulations.~~

A. ~~Purpose and Need~~General.

~~1. Water dependent industrial and port uses designed, developed and operated consistent with the policies and regulations of this program shall be given preference over all other uses on the shoreline.~~

1. Prior to approval of an application~~water dependent industrial or port uses~~, the ~~administrator~~Director shall review a proposal for design, layout, and operation of the proposed use and shall determine whether~~make specific findings that~~ the use qualifies as a~~is~~ water-dependent, water-related, water-enjoyment or non-water-oriented industrial and port use.

2. All harbor areas, established pursuant to Article XV of the Washington State Constitution, that have reasonable commercial navigational accessibility and necessary support facilities such as transportation shall be reserved for water-dependent and water-related uses that are associated with commercial navigation unless a specific finding is made in the permit review process that adequate shoreline is reserved for navigation use elsewhere in the affected harbor area.

3. Industrial and port uses ~~that result in no net loss of shoreline ecological functions and processes~~ are allowed subject to ~~the policies and regulations of WCC 23.90.030 and the~~ specific criteria below:

a. ~~Water-dependent industrial and port uses shall be given first preference over non-water dependent water-related and water-enjoyment industrial and port uses. Prior to approval of water dependent industrial or port uses, the administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water dependent use.~~

~~a-b.~~ Water-related industrial and port uses shall be given second preference over non-water dependent industrial and port uses.

~~b-c.~~ Water-related industrial and port uses may not be approved if they displace existing water-dependent uses. ~~Prior to approval of water related industrial or port uses, the administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water related use.~~

~~c-d.~~ Water-enjoyment industrial and port uses may not be approved if they displace existing water-dependent or water-related uses or if they occupy space designated for water-dependent or water-related use identified in a substantial development permit or other approval. ~~Prior to approval of water enjoyment industrial or port uses, the administrator shall review a proposal for design, layout and operation of the proposed use and shall make specific findings that the use qualifies as a water enjoyment use.~~

~~d-e.~~ Non-water-oriented industrial and port uses may be permitted where located on a site physically separated from the shoreline by another property in separate ownership or a public right-of-way such that access for water-oriented use is precluded. All other non-water-oriented industrial and port uses are prohibited in the shoreline, except for those

Commented [CES186]: To be consistent w/ WAC 173-26-241(3)(f)

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identified above; provided that ~~unless~~ the use provides significant public benefit with respect to the objectives of the Act and ~~the following is:~~

i. ~~The proposal is part of a mixed use project that includes a water-oriented use; or~~

ii. ~~The proposal is on a site where navigability is severely limited; or~~

~~iii. The proposal does not occupy space designated for water-dependent or water-related use identified in a project permit approval.~~

f. ~~Water-oriented industrial and port uses shall provide public access in accordance with the provisions of WCC 23.30.060 (Public Access).~~

~~e.g. When permitted, a~~ ~~Non-water-oriented industrial and port uses shall provide public access~~ and/or restoration as follows:

i. ~~Non water oriented industrial and port uses shall provide public access shall be in the form of unrestricted open space. The administrator shall determine the amount of required access in accordance with the provisions of WCC 23.90.080 on a case-by-case basis.~~

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

iii. The requirements ~~in subsections (B)(1)(c)(v)(A) and (B)~~ of this section may be modified when:

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

(B) Specific findings are made demonstrating that the size of the parcel and the presence of adjacent uses preclude restoration of shoreline ecological functions.

Where on-site restoration is infeasible, equivalent off-site restoration shall be provided ~~consistent with the policies and regulations of this program.~~

iv. Buffers shall be designed as appropriate to protect shoreline resources based on a ~~site-specific restoration assessment plan, and may differ from the standard critical area buffer dimensions provided in Chapter 16.16 WCC; provided, that the building envelope for the proposed non-water-oriented use shall be based on current site conditions.~~

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

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

Commented [AP187]: Updated per Commercial example.

Commented [CES188]: To be consistent w/ WAC 173-26-241(3)(f)

Commented [CES189]: Updated for clarity.

Commented [AP190]: Updated per Commercial example.

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~~f.h.~~ Interim use of facilities approved and/or permitted for water-dependent use for non-water-dependent uses may be approved by a [shoreline](#) conditional use permit under the following conditions:

- i. A specific occupancy plan has been approved that allows interim uses for a specific period while the market for water-dependent uses is being developed, and the proposed interim use is consistent with the occupancy plan.
- ii. The period of interim lease or commitment of the space shall not exceed five years. At the end of five years, a new application for interim use shall be submitted.
- iii. A good faith effort to obtain water-dependent uses has been made and suitable tenants were not found. The period of the search for water-dependent uses, the notice of availability, listing or advertising employed, and any inquiries received shall be documented.
- iv. No permanent improvements will be made to the space that requires more than five years of occupancy to repay the investment. No permanent improvements will be made that will reduce the suitability of the space for water-dependent use.

4. Required setback areas shall not be used for storage of industrial equipment or materials, or waste disposal, but may be used for outdoor recreation. Portions of such setbacks may be used for motor vehicle parking if design of such facilities is consistent with this program and critical area regulations in WCC Chapter 16.16.
5. Disposal or storage of solid or other industrial wastes is not permitted on shorelines; except that liquid waste treatment facilities may be permitted as a [shoreline](#) conditional use if it is demonstrated that a shoreline location is required or where it is demonstrated that an alternative site outside of the shoreline is not feasible; and further excepted, that land application of waters used in the processing of fruits and vegetables within the shoreline is permitted as a [shoreline](#) conditional use.

6. Marine rails shall be located the minimum distance necessary above existing grade to minimize impact on littoral drift and navigation along the shoreline.

~~b. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions—Buffers, setbacks, height, open space and impervious surface coverage.~~

A.B. Additional Standards for Log Rafts and Storage.

1. Storage of logs is prohibited in water-bodies, except where an upland location is not feasible; provided, that no ~~new~~ log storage may be allowed in marine or estuarine waters or tidelands.
2. Log rafting shall be allowed in cases where overland transportation of logs would produce unacceptable transportation impacts, or for transportation of logs from islands or from other locations in Puget Sound. Areas for assembly and disassembly of log rafts shall meet all standards below for log storage.
3. Offshore log storage shall only be allowed on a temporary basis, and should be located where natural tidal or current flushing and water circulation are adequate to disperse polluting wastes.
4. Log rafting or storage operations are required to implement the following, whenever applicable:

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- ~~b-a.~~ Logs shall not be dumped, stored, or rafted where grounding will occur.
- ~~c-b.~~ Easy let-down devices shall be provided for placing logs in water.
- ~~d-c.~~ Bark and wood debris controls and disposal shall be implemented at log dumps, raft building areas, and mill-side handling zones. Accumulations of bark and other debris on the land and docks around dump sites shall be fully contained and kept out of the water.
- ~~e-d.~~ Where water depths will permit the floating of bundled logs, they shall be secured in bundles on land before being placed in the water. Bundles shall not be broken again except on land or at mill sites.
5. Impervious pavement is required for log yards where the wet season water table is less than four feet below surface level in order to reduce waste buildup and impacts on ground ~~water~~ and surface water.
6. Stormwater management facilities shall be provided to protect the quality of affected waters.
7. Log storage facilities shall be located upland and properly sited to avoid fish and wildlife habitat conservation areas.
8. Log storage facilities must be sited to avoid and minimize the need for dredging in order to accommodate ~~new~~ barging activities at the site.
9. Log storage facilities shall be located in existing developed areas to the greatest extent feasible. If a ~~new~~ log storage facility is proposed along an undeveloped shoreline, an alternatives analysis shall be required.
10. A berm must be located around the outer edge of the upland sort surface using rocks, or other suitable materials to prevent loss of wood debris into the water.
11. Log booming shall only be allowed offshore in sub-tidal waters in order to maintain unimpeded nearshore migration corridors for juvenile salmonids and to minimize shading impacts from log rafts. Log booming activities include the placement in or removal of logs and log bundles from the water, and the assembly and disassembly of rafts for water-borne transportation.
12. A debris management plan describing the removal and disposal of wood waste must be developed and submitted to the County. Debris monitoring reports shall be provided, when ~~ne~~ stipulated.
13. Existing in-water log storage and log booming facilities in critical habitats ~~utilized~~ used by threatened or endangered species classified under ESA shall be reevaluated if use is discontinued for two years or more, or if substantial repair or reconstruction is required. The evaluation shall include an alternatives analysis in order to determine if logs can be stored upland and out of the water, or if the site should be used for other purposes that would have lesser impacts on ESA-listed species. The alternatives analysis shall include evaluation of the potential for moving all, or portions of, log storage and booming to uplands.

~~B. Hydropower Development~~

- ~~b. Hydropower facilities shall be located, designed, and operated to minimize impacts to fish and wildlife resources including spawning, nesting, and rearing habitat, and migratory routes, and critical areas. Mitigation measures to achieve no net loss of shoreline ecological functions and processes shall be implemented in accordance with WCC.~~

Commented [CES191]: Moved to Utilities section

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~~e. Hydropower facilities shall be located, designed, and operated to protect and minimize impacts to geohydraulic processes; waterfalls; erosion and accretion shoreforms; agricultural land; scenic vistas; recreation sites; and sites having significant historical, cultural, scientific, or educational value.~~

~~d. Hydropower facilities shall accommodate public access to, and multiple use of, the shoreline.~~

~~e. For all dams that are not regulated by either the Federal Energy Regulatory Commission licensing procedures, or the State Department of Ecology reservoir permit requirements, a maintenance agreement and construction bond for 150 percent of the cost of the structure shall be filed with the director of the Public Works Department prior to construction. The maintenance agreement shall specify who is responsible for maintenance, shall incorporate the maintenance schedule specified by the design engineer, shall require annual inspections by a civil engineer licensed in the state of Washington and shall stipulate abandonment procedures which shall include, where appropriate, provisions for site restoration.~~

~~f. The design of all dams and the suitability of the proposed site for dam construction shall be certified by a professional engineer licensed in the state of Washington. The professional design shall include a maintenance schedule.~~

C. Regulations for Specific Shoreline Environment Designations.

1. In the Rural shoreline environment, permitted water-oriented port development and industrial facilities are limited to those used for processing, manufacturing, and storage of finished or semi-finished goods.

2. In the Resource shoreline environment, water-oriented facilities for the processing, manufacturing, and storage of natural resource products are permitted. Other water-oriented industrial or port use and development may be permitted as a shoreline conditional use. Non-water-oriented oriented facilities for the processing, manufacturing, and storage of natural resource products may be permitted as a shoreline conditional use subject to the criteria for such uses in this section.

3. In the Aquatic shoreline environment, water-dependent industrial or port use and development are permitted, subject to the use and development regulations of the abutting upland shoreline environment designation.

4. In the Cherry Point Management Area, WCC 23.40.125 shall also apply. Where this section differs from WCC 23.40.125, the regulation(s) of that section shall govern.

A. Shoreline Area Regulations.

1. Urban. Water-oriented industrial and port use and development are permitted subject to policies and regulations of this program. Non-water-oriented industrial or port use and development may be permitted as a conditional use, subject to criteria for such uses in subsection (B)(1)(c)(iv) of this section. Dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.

2. Urban Resort. Port development limited to passenger terminals is permitted. All other industrial or port use and development is prohibited.

Commented [CES192]: Moved from 'Shoreline Area Regulations.'

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- ~~3. Urban Conservancy. Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
- ~~4. Shoreline Residential. Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
- ~~5. Rural.~~
 - ~~a. Water-oriented port development and industrial facilities for processing, manufacturing, and storage of finished or semi-finished goods are permitted.~~
 - ~~b. Non-water-oriented industrial or port use and development may be permitted as a conditional use, subject to criteria for such uses in subsection (B)(1)(c)(iv) of this section.~~
 - ~~c. Dams, diversion and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
- ~~6. Resource.~~
 - ~~a. Water-oriented facilities for processing, manufacturing, and storage of natural resource products are permitted subject to the policies and regulations of this program.~~
 - ~~b. Non-water-oriented facilities for processing, manufacturing and storage of natural resource products, subject to criteria for such uses in subsection (B)(1)(c)(iv) of this section, and other water-oriented industrial or port use and development may be permitted as a conditional use.~~
 - ~~c. Dams, diversion and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
 - ~~d. Other non-water-oriented industrial or port use and development are prohibited.~~
- ~~7. Conservancy. Industrial or port use and development are prohibited, except that dams, diversion, and tailrace structures and accessory development for hydroelectric power generation may be permitted as a conditional use.~~
- ~~8. Natural. Industrial or port use and development are prohibited.~~
- ~~9. Aquatic. Water-dependent industrial or port use and development are permitted, subject to the use and development regulations of the abutting upland shoreline area designation. Log storage may be permitted as a conditional use.~~

23.4100.210-125 Cherry Point Management Area.

A. Policies.

B. Purpose and Intent.

C. The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and balances the special port, industrial and natural resource needs associated with the development of this marine resource. This section identifies policies and regulations for water-dependent industrial activities that apply in addition to specific other elements of this program as referenced herein.

Commented [AP193]: Moved from 23.40.220.

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- 1 ~~D. Washington State natural resource agencies and Whatcom County have identified certain portions~~
2 ~~of the Cherry Point management area as providing herring spawning habitat and other key habitat~~
3 ~~characteristics that warrant special consideration due to their importance to regional fisheries and~~
4 ~~other elements of the aquatic environment.~~
- 5 ~~E. Development of the Cherry Point major port/industrial urban growth area will accommodate uses~~
6 ~~that require marine access for marine cargo transfer, including oil and other materials. For this~~
7 ~~reason, water dependent terminal facilities are encouraged as the preferred use in the Cherry Point~~
8 ~~management area. Due to the environmental sensitivity of the area, it is the policy of Whatcom~~
9 ~~County to limit the number of piers to one pier, in addition to those in operation or approved as of~~
10 ~~January 1, 1998.~~
- 11 ~~F. Whatcom County should consider participation with local, state, and federal agencies, tribal~~
12 ~~governments and other stakeholders in the development of a plan to address integrated~~
13 ~~management of the uplands and public aquatic lands within the Cherry Point management area. The~~
14 ~~development of such a plan could provide a forum and process for addressing aquatic resources by~~
15 ~~all stakeholders. Elements of the plan could be adopted as future amendments to this program as~~
16 ~~appropriate.~~
- 17 ~~G. All development that is to be located within the Cherry Point management area, as defined in~~
18 ~~Chapter 23.110 WCC, shall be subject to the policies and regulations found in this section, and shall~~
19 ~~not be subject to the policies and regulations found in WCC 23.100.010 through 23.100.160, nor~~
20 ~~Chapter 23.90 WCC, unless otherwise referenced in this section. The policies and regulations found~~
21 ~~in this section are applicable only within the geographic boundaries of the Cherry Point~~
22 ~~management area and do not apply elsewhere in the county. In the event that the provisions of this~~
23 ~~section conflict with other applicable referenced provisions of this program, the policies and~~
24 ~~regulations that are most protective of shoreline resources shall prevail.~~
- 25 ~~H. Water Dependent Industrial Development. Only water dependent facilities that serve industrial~~
26 ~~facilities should be allowed in the Cherry Point management area. Industry within the major~~
27 ~~port/industrial urban growth area, as designated in the County Comprehensive Plan, which is not~~
28 ~~water dependent should locate away from shoreline jurisdiction.~~
- 29 ~~I. Multiple Use Facilities. Facilities that allow for multiple use of piers, cargo handling, storage, parking~~
30 ~~and other accessory facilities are encouraged.~~
- 31 ~~J. Public Access.~~
- 32 ~~K. Where appropriate, industrial and port development within the Cherry Point management area~~
33 ~~should provide public beach and shoreline access in a manner that does not cause interference with~~
34 ~~facility operations or present hazards to life and property. This may be accomplished through~~
35 ~~individual action or by joint, coordinated action with other developers and landowners, for example,~~
36 ~~by setting aside a common public access area.~~
- 37 ~~L. Special emphasis should be given to providing public beach and shoreline access for recreational~~
38 ~~opportunities including but not limited to crabbing, small craft launching, surf fishing, picnicking,~~
39 ~~clamming, and beach walking.~~

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- 1 ~~M. Public access within the Cherry Point management area should be consistent with the Whatcom~~
2 ~~County Parks and Recreation Open Space Plan.~~
- 3 ~~N. Shoreline Ecological Functions and Processes. In recognition of the diverse and vital ecological~~
4 ~~resources in the Cherry Point management area, consideration of probable effects of all~~
5 ~~development proposals on shoreline ecological functions and processes should be assessed with the~~
6 ~~other long-term statewide interests. New port development that requires dredge and fill should not~~
7 ~~be permitted in the Cherry Point management area due to potential adverse effects on ecological~~
8 ~~functions, including fish and shellfish habitat and geohydraulic processes.~~
- 9 ~~Q. Aesthetics. All development should be designed to avoid or minimize negative visual impacts on the~~
10 ~~scenic character of the area and to ensure visual compatibility with adjacent nonindustrial-zoned~~
11 ~~properties.~~
- 12 ~~P. Site Development. All development should be constructed and operated in a manner that, while~~
13 ~~permitting water-dependent uses, also protects shoreline resources, their ecological functions and~~
14 ~~processes, and that incorporates the following:~~
- 15 ~~Q. Low impact development approaches to avoid or minimize adverse impact to topography,~~
16 ~~vegetation, water quality, fish and wildlife habitat, and other natural site conditions;~~
- 17 ~~R. Adequate temporary and permanent management measures to control erosion and sediment~~
18 ~~impacts during construction and operation; and~~
- 19 ~~S. Adequate stormwater management facilities.~~
- 20 ~~T. Regulations.~~
- 21 A. All uses and modifications within the Cherry Point Management Area shall be subject to the
22 regulations found in this section (as well as those of Title 20, Zoning), and not those of WCC
23 23.40.120 (Industrial and Port Development). Where this section differs from WCC 23.40.120, the
24 regulation(s) of this section shall govern.
- 25 ~~A.B. Allowed Uses.~~
- 26 1. Water-dependent industrial and port uses are allowed within the Cherry Point management
27 area only upon finding; provided, that specific findings are made in a shoreline substantial
28 development permit or conditional use permit that:
- 29 a. Policies for optimum implementation of the statewide interest have been achieved through
30 protection of shoreline ecological functions and processes;
- 31 b. The long-term statewide benefits of the development have been considered with the
32 potential adverse impacts on ecological functions; and
- 33 c. Proposed mitigation measures to achieve no net loss of ecological functions and processes
34 are incorporated in the proposal.
- 35 2. Fuel Uses – Shoreline Permits and Requirements:
- 36 a. Existing legal fossil or renewable fuel refinery operations or existing legal fossil or renewable
37 fuel transshipment facilities [as of XXX effective date] are considered permitted shoreline
38 substantial developments.
- 39 b. Expansions of existing legal fossil-fuel refineries or expansions of existing legal fossil-fuel
40 transshipment facilities shall require a shoreline conditional use permit.

Commented [CES194]: To do: need to add date once it's finalized.

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c. New or expansion of existing legal renewable fuel refinery or renewable fuel transshipment facility shall require a shoreline conditional use permit.

~~2.3.~~ Water-related and water-enjoyment uses are allowed only as part of public access and public recreation development, subject to the findings criteria in subsection (B)(1)(a) of this section.

~~3.4.~~ Accessory development uses, which does not require a shoreline location in order to carry out ~~its~~ their support functions, shall be sited away from the land/water interface and landward of the principal use. Accessory development uses shall observe critical area buffers in WCC Chapter 16.16. Accessory development uses includes, but areis not limited to, parking, warehousing, open air storage, waste storage and treatment, stormwater control facilities, utility and land transport ~~development~~.

~~4.5.~~ Road, railway and utility facilities serving approved waterfront facilities related to water-dependent uses that are located and designed to minimize shoreline alteration are permitted.

6. Waste water disposal/treatment facilities for storage or disposal of industrial or domestic waste water are prohibited, except that elements such as conveyances and outfalls shall be allowed if alternate inland sites have been demonstrated to be infeasible. Waste water conveyance systems for ships at berth shall be permitted.

~~5.7.~~ Liquid manure storage facilities and spreading and animal feeding operations and confined animal feeding operations shall be prohibited.

B-C. Public Access.

1. Public access shall be provided in accordance with WCC 23.930.0780 (Public Access) unless it is demonstrated that public access poses significant interference with facility operations or hazards to life or property.
2. If public access meeting the criteria above is demonstrated to be infeasible or inappropriate, alternative access may be provided in accordance with WCC 23.930.0780 at a location not directly adjacent to the water such as a viewpoint, observation tower, or other areas serving as a means to view public waters. Such facilities may include interpretive centers and displays that explain maritime history and industry; provided, that visual access to the water is also provided.
3. As an alternative to on-site public access facilities, public access may be provided in accordance with a public access plan adopted as an element of the Whatcom County Parks and Recreation Open Space Plan.

C-D. **Critical Areas.** In addition to meeting the provisions of WCC 23.30.01090.030, (Ecological Protection) ~~and critical areas~~, development and alteration shall not be located or expanded within critical areas designated pursuant to WCC Chapter 16.16 except where the site is approved for water-dependent use, and the following are met:

1. Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with WCC 23.930.0130 (Ecological Protection).
2. Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade the existing water quality within the wetland.

Commented [DN195]: Added per Council's pending draft fossil fuel amendments.

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3. The minimum required setback from the OHWM for all industrial and port facilities, including development components, which do not require a water's edge or water surface location shall be 150 feet; provided, that bluffs and banks greater than 10 feet in height and sloping greater than 30 percent and wetland shorelines shall have such setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.
4. Development and alteration other than recreation development for public and quasi-public shoreline access is prohibited on the accretion shoreforms identified on the map in Appendix C of this title, ~~subject to the regulations in this section and consistent with the conservancy and aquatic shoreline area designation policies and regulations of Chapters 23.90 and 23.100 WCC;~~ provided, that lawfully established uses or developments may be maintained subject to the provisions of WCC ~~23.50.070~~ Chapter 23.50 (Nonconforming Uses, Structures, and Lots).

~~D.~~E. Location and Design.

1. Piers.

a. Due to the environmental sensitivity of the area, Whatcom County shall limit the number of piers to ~~one pier, in addition to~~ those in operation as of January 1, 1998.

a-b. Piers shall be designed to accommodate only the necessary and intrinsic activities associated with the movement of material and cargo from land to water and water to land. The length of piers shall not extend beyond that which is necessary to accommodate the draft of the vessels intending to use the facility.

b-c. Piers shall be designed to minimize interference in the intertidal zone and adverse impacts to fish and wildlife habitats.

c-d. Piers shall be designed to minimize impacts on steep shoreline bluffs.

d-e. All pilings in contact with water shall be constructed of materials such as concrete, steel, or other materials that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited; provided, that replacement of existing wood pilings with chemically treated wood is allowed for maintenance purposes where use of a different material such as steel or concrete would result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds 20 percent of the existing pilings over a 10-year period, such pilings shall conform to the standard construction provisions of this section.

e-f. All piers on piling structures shall have a minimum vertical clearance of one foot above extreme high water.

f-g. Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers, except for temporary storage under emergency situations, including oil spill cleanup. Bulk storage means non-portable storage in fixed tanks. Secondary containment shall be provided for portable containers.

Commented [CES196]: Deleted per Council's pending draft fossil fuel amendments.

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- g-h. All piers shall be located and designed to avoid impediments to navigation and to avoid depriving other properties of reasonable access to navigable waters. All piers shall be marked with navigational aids and approved for compliance with U.S. Coast Guard regulations.
2. Dredging.
- a. Dredging to accommodate water access to, or construction of, new development is prohibited. New development shall be located and designed to avoid the need for dredging. Dredging for existing development shall be the minimum necessary and shall minimize interference in the intertidal zone and impacts to fish and wildlife habitats.
- ~~b. Dredging operations, including spoil disposal, shall be conducted in accordance with policies and regulations in WCC 23.90.120, (B)(4) and (5), Dredging.~~
- ~~e-b. Dredging is prohibited in the accretion shoreform and backshore wetland areas described in Appendix C of this title.~~
3. ~~Landfill~~ is prohibited, except for the minimum necessary to access piers or other structures that provide access to the water. Pier design should accommodate the connection between the pier and uplands by employing a pile-supported structure to the point of intersection with stable upland soils. ~~Limited landfill may be allowed for pier access that does not extend further toward the OHWM than existing topography. Any fill or excavation waterward of the OHWM requires a shoreline conditional use permit.~~
4. Excavation/Stabilization.
- a. Excavation/stabilization of bluffs is prohibited, except for the minimum necessary to access piers or other structures that provide access to the water; provided, that active feeder bluffs shall not be altered if alteration will adversely affect the existing littoral drift process. ~~New~~ ~~d~~development shall avoid, rather than modify, feeder bluffs.
- b. Excavation/stabilization is prohibited on accretion shoreforms and in wetlands in the backshore area.
5. ~~Shoreline stabilization defense works~~ shall be regulated in accordance with WCC ~~23.100.130~~ 23.40.190 and be consistent with the conservancy and aquatic shoreline ~~area~~ environment regulations of that section.
- ~~E-F. Adjacent Use.~~
1. ~~New or expanded p~~Port or industrial development adjacent to properties which are zoned for nonindustrial purposes shall provide setbacks of adequate width, to attenuate proximity impacts such as noise, light and glare; and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual screen.
2. Exterior lighting shall be designed and operated to avoid illuminating nearby properties zoned for non-port or non-industrial purposes so as to not unreasonably infringe on the use and enjoyment of such property, and to prevent hazards for public traffic. Methods of controlling illumination of nearby properties include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields and screening.

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3. The minimum setback from side property lines which intersect the OHWM for industrial and port development shall be 60 feet; provided, that:
 - i. The side yard setback shall not apply to utility or security structures such as poles, meters, fences, guard houses, power vaults or transformers; and
 - ii. The side yard setbacks for parcels adjoining the NW and SE boundaries of the Cherry Point management area shall be administered in accordance with WCC 20.68.550 (Buffer Area).
4. Required setbacks shall not be used for storage of industrial equipment or materials, or for waste disposal, but may be used for public access or outdoor recreation.

~~F.G.~~ Oil and Hazardous Materials.

1. Release of oil or hazardous materials on shorelines is prohibited.
2. A management plan shall be developed for ~~new~~ permitted or conditionally permitted development for the safe handling of cargo, fuels, bilge water, and toxic or hazardous materials to prevent them from entering aquatic waters, surface or ground water. Specific provisions shall address prompt and effective clean-up of spills that may occur. Management plans shall be coordinated with state or federal spill response plans. Where a spill management/response plan has been approved by the state, said plan may be used to satisfy the requirements of this section.
3. Necessary spill containment facilities associated with existing development may be permitted within shoreline jurisdiction where there are no feasible alternatives.
- ~~4. Recreational Development. All recreational development shall comply with the policies and regulations of WCC 23.100.100 and be consistent with the conservancy and aquatic shoreline area regulations of that section.~~
- ~~5. Archaeological, Historic and Cultural Resource Management. All development associated with archaeological, historic or cultural site activities shall comply with the policies and regulations of WCC 23.90.070.~~

23.40.130 Land Division

A. Additional Standards for Residential Divisions General.

- ~~1. Land divisions, including boundary line adjustments, shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel.~~
- ~~1.2.~~ All ~~new subland~~ divisions shall provide for vegetation conservation to mitigate cumulative impacts of intensification of use within or adjacent to the shoreline that shall include compliance with vegetation conservation requirements of WCC ~~23.30.050~~ 23.30.040, together with replanting and control of invasive species within setbacks and open space to assure establishment and continuation of a vegetation community characteristic of a native climax community.
- ~~2. Residential lots created through land division in the shoreline shall only be permitted when the following standards are met:~~

Commented [CES197]: Moved from Residential section, as there are more than just residential land divisions (e.g., commercial, industrial, etc.)

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3. Land division may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.

4. ~~New-IL~~ Land division shall assure that the lots created will not require shoreline stabilization in order for reasonable development to occur. ~~New-IL~~ Land division that would require shoreline stabilization is prohibited.

~~5. New or expanded subdivisions and all multiunit residential developments shall provide a community recreation and/or open space area for the benefit of all residents or property owners in the development; provided, that such provisions shall not apply to lot line adjustment, lot consolidation, and subdivision of land into four or fewer lots.~~

~~6.5. New or amended sub~~Land divisions of four or fewer lots adjacent to the shoreline shall provide common access to the shoreline for all lots, consistent with ~~except those for lot line adjustment and lot consolidation purposes, shall provide public access as provided for in~~ WCC 23.930.0780 (Public Access) and this section.

~~7.6. All new sub~~land divisions shall record a prohibition on ~~new~~ private docks on the face of the plat. An area for shared moorage may be approved if it meets all requirements for shared moorage in WCC 23.40.150.100.090 (Moorage), including demonstration that ~~public and private~~ marinas and ~~other boating facilities~~ launch ramps are not sufficient to meet the moorage needs of the subdivision.

~~8.7. Subdividing tidelands for sale or lease in connection with individual building lots is prohibited.~~

~~9.8. Substandard shoreline lots unsuitable for development of a primary permitted use under the WCC Official Zoning Ordinance (Title 20 (Zoning) and this program shall not be subdivided.~~

~~10.9. Land divisions of more than four lots and, including subdivision of land for more than four parcels, shall incorporate public access to publicly owned shorelines or public water bodies shorelines of the state as provided for in WCC 23.390.0780 unless the site is designated in a shoreline public access plan for a greater component of public access or public access is demonstrated to be infeasible or inappropriate. The amount and configuration of public access shall depend on the proposed use(s) and the following criteria:~~

- a. Subdivisions ~~within the shoreline~~ that have views of water areas shall provide a public pedestrian viewing area.
- b. Subdivisions adjacent to ~~public waterways~~ waters of the state and marine waters shall provide access to a point ~~that abut~~ tings the water that will provide visual access, and shall provide physical access to public waterways, public marine waters, and public tidelands that are physically accessible at low tide or low water.
- c. Subdivisions subject to requirements for dedication of land to provide open space or mitigate recreation demands of the development shall dedicate such land on or adjacent to public waterways or marine shorelines, as applicable, unless the ecological sensitivity of such land precludes public access. Portions of the area dedicated may be fenced or otherwise restricted to limit public access to ecologically sensitive areas.

Commented [CES198]: Covered elsewhere.

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~~11.10.~~ Clustering and other low-impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines.

23.4100.120-140 Mining.

~~Mining in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90-WCC.~~

~~A. Policies.~~

~~A. Mining should not be located on shorelines where unavoidable adverse impacts on other users or resources together equal or outweigh the benefits from mining.~~

~~B. Mining should not interfere with public recreation on the shoreline.~~

~~C. Mining should be located and operated so as to provide long-term protection of water quality, fish and wildlife, and fish and wildlife habitat.~~

~~D. Mining, particularly surface or strip mining, should provide for timely restoration of disturbed areas to a biologically productive, semi-natural, or other useful condition through a reclamation process consistent with regulations administered by the Department of Natural Resources and other applicable county standards.~~

~~E. Mining of marine and lake shores or accretional shoreforms, such as point bars, that have a high value for recreation or as fish or wildlife habitat should generally not be permitted.~~

~~F. Mining should only be permitted on accretion point and channel bars where appropriate studies and detailed operation plans demonstrate that:~~

~~a. Fish habitat, upland habitat and water quality will not be significantly impacted; and~~

~~b. The operation will not adversely affect geohydraulic processes, channel alignment, nor increase bank erosion or flood damages.~~

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

~~B. Regulations.~~

~~A. General.~~

~~1. The removal of gravel for flood management purposes shall be regulated in accordance with the policies-regulations for underof WCC 23.100.06023.40.100 (Flood Hazard Reduction Control Works and Instream Structures) as well as this section.~~

~~1-2. New mMining and associated activities shall be designed and conducted to result in no net loss of shoreline ecological functions and processes in accordance with WCC 23.90.03023.30.010 (Ecological Protection). Mining should not be approved where it could interfere with shoreline ecological functions or processes or cause irreparable damage to shoreline resources or features such as accretion shoreforms.~~ Application of this standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. The determination of whether there will be no net loss of ecological function shall be based on an evaluation of the reclamation plan required for the site and shall consider impacts on ecological functions during

Commented [DN199]: Removed sections which are not required by the WAC and provided only WAC specific requirements, except for the retained section on scalping, below.

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operation. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

3. Permit requirements for mining should be coordinated with the requirements of RCW Chapters 78.44 (Surface Mining) and 77.55 (Construction Projects in State Waters).
4. The proposed subsequent use of mined property shall be consistent with the provisions of the environment designation in which the property is located. Reclamation of disturbed shoreline areas shall provide appropriate ecological functions consistent with the setting.
5. Pursuant to RCW 90.48.615, motorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout is prohibited. This section does not apply to:
 - a. Aquatic mining using nonmotorized methods, such as gold panning, if the nonmotorized method does not involve use of a gravity siphon suction dredge;
 - b. Mining operations where no part of the operation or discharge of effluent from the operation is to waters of the state;
 - c. Surface mining operations regulated by the State Department of Natural Resources under Title 78 RCW;
 - d. Metals mining and milling operations as defined in chapter 78.56 RCW; or
 - e. Activities related to an industrial facility, dredging related to navigability, or activities subject to a clean water act section 404 individual permit.
- a. Mining shall not be permitted in critical areas except as a part of an approved flood control program or in conjunction with a habitat restoration or enhancement plan; provided, that such activities may be permitted where demonstrated to be water dependent. A determination of water dependency shall be based on evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on analysis or studies prepared for purposes of GMA designations, be integrated with any relevant environmental review conducted under SEPA (Chapter 43.21C RCW), or otherwise be shown in a manner consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a).
- b. Application for permits for mining operations shall be accompanied by operation plans, reclamation plans and analysis of environmental impacts in accordance with WCC 20.73.700. Such information shall provide sufficient documentation to make a determination as to whether the project will result in net loss of shoreline ecological functions and processes during the course of mining and after reclamation. Creation, restoration, or enhancement of habitat for priority species and the future productivity of the site may be considered in determining no net loss of ecological functions.
- c. The applicant/proponent must show that mining is dependent on a shoreline location, and that demand cannot reasonably be accommodated in operations outside shoreline jurisdiction. Information required to meet this criterion shall evaluate geologic factors such as the

Commented [CES200]: From RCW 90.48.615.

Commented [AP201]: Covered by CAO.

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distribution and availability of mineral resources as well as evaluation of need for such mineral resources, economic, transportation, and land use factors.

d. ~~Where a lawfully established mining operation has resulted in the creation of a lake(s) greater than 20 acres and such lake(s) is subject to the provisions of the shoreline management program and the Act, such lake(s) shall be given a resource shoreline area designation. Notwithstanding any other applicable regulations, such mining operations shall be permitted to continue and may be expanded subject to approval of a shoreline conditional use permit.~~

e. ~~Reclamation Plan.~~

i. ~~A reclamation plan that complies with the format and detailed minimum standards of Chapter 78.44 RCW shall be included with any shoreline permit application for mining.~~

ii. ~~A reclamation plan that is inconsistent with this program or the Act shall constitute sufficient grounds for denial of a shoreline permit; provided, that the applicant/proponent shall be given reasonable opportunity to revise the plan.~~

f. ~~Overburden.~~

i. ~~Overburden or other mining spoil or non-putrescible solid wastes shall be disposed of in an appropriate manner to protect shoreline ecological functions and processes, other uses, and aesthetic values.~~

ii. ~~Disposal of overburden or mining spoil on shorelines shall comply with landfill policies and regulations of WCC 23.90.100.~~

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

B. ~~Marine and Lake Shores.~~

a. ~~Mining of, including but not limited to, sand, gravel, cobbles, or boulders from any marine or lake shore is prohibited.~~

b. ~~Mining of quarry rock may be permitted as a conditional use; provided, that shore processes and resources are not adversely affected.~~

B. Additional Standards for Rivers and Streams.

1. Mining waterward of the ordinary high-water mark of a river shall not be permitted unless:

a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and

b. The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

a-c. The determinations required by this section shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (chapter 43.21C RCW) and the SEPA rules (chapter 197-11 WAC).

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- 1 d. In considering renewal, extension, or reauthorization of gravel bar and other in-channel
2 mining operations in locations where they have previously been conducted, the County shall
3 require compliance with this subsection to the extent that no such review has previously
4 been conducted. Where there has been prior review, the County shall review previous
5 determinations comparable to the requirements of this section to assure compliance with
6 this section under current site conditions.
- 7 ~~b-e.~~ The provisions of this section do not apply to dredging of authorized navigation channels
8 when conducted in accordance with WCC 23.40.080 (Dredging and Dredge Material
9 Disposal).
- 10 2. Mining within ~~any designated~~ channel migration zone (CMZ) may be approved as shall require a
11 shoreline conditional use.
- 12 ~~1-3.~~ Scalping of accretional point bars may be permitted as a shoreline conditional use for flood
13 hazard reduction control purposes and or market demands commercial purposes under the
14 following conditions:
- 15 a. Removal of specified quantities of sand and gravel or other materials at specific locations
16 will not adversely affect the natural processes of gravel transportation for the river system
17 as a whole. Specific studies accompanying the application shall demonstrate that no adverse
18 flood, erosion, or other environmental impacts occur either upstream or downstream of
19 extraction sites. Mining extraction amounts, rates, timing, and locations shall be based on a
20 scientifically determined sediment budget adjusted periodically according to data provided
21 by a regular monitoring plan.
- 22 b. Aggregate washing and ponding of waste water are prohibited in floodways.
- 23 c. Storage within the FEMA floodway is prohibited in the shoreline during the flood season
24 (November 1st through March 1st); provided, that temporary stockpiling is permitted during
25 working hours if all such materials are removed from the floodway at the end of each day's
26 operation.
- 27 d. All applicable permits and approvals, including, but not limited to, hydraulic project approval
28 (HPA) from the Department of Fish and Wildlife and a Whatcom County flood permit, shall
29 be obtained and all applicable provisions attached thereto shall be adhered to.
- 30 ~~e. Open pit mining may be permitted in a floodplain; provided, that all of the following criteria are~~
31 ~~met:~~
- 32 ~~i. All pits and other operations should be located outside of the channel migration zone.~~
33 ~~ii. All pits of each operation should be located and excavated to a depth so as to function as a~~
34 ~~self flushing chain of lakes whenever the pits are overtopped by floods in order to prevent~~
35 ~~eutrophication and fish entrapment.~~
36 ~~iii. The entire operation should be sized and designed so that neither additional bank erosion,~~
37 ~~catastrophic changes in channel location, nor adverse impact to fish resources or water~~
38 ~~quality will likely result in the long term.~~

Commented [AP203]: Updated for consistency with WAC 173-26-241(3)(h).

Commented [DN203]: Not specifically required by the WAC. Proposed for removal.

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- iv. ~~The scale and mode of operation will not have adverse impacts on fish resources, water quality, and recreation resources, nor adversely impact a stream's natural capacity to erode, shift, accrete, and/or flood.~~
- v. ~~All equipment, works and structures are designed to withstand flooding without becoming a hazard in themselves nor causing adverse effects on shore features, without the necessity for shore stabilization structures.~~
- vi. ~~All structures or equipment which are not flood proof shall be located outside of the 100-year floodplain during the flood season (November 1st through March 1st); provided, that such equipment is permitted during daily operations.~~

C. Regulations for Specific Shoreline Environment Designations

- 1. In the Aquatic shoreline environment mining is prohibited, except that accretional bar scalping in streams may be permitted as a shoreline conditional use; provided, that upon approval by the County and Ecology of a sediment management plan component for a mutually designated reach of river, including incorporating the findings of a programmatic environmental impact statement, the shoreline conditional use requirement will no longer be in effect unless mutually agreed to in said management plan.

D. Shoreline Area Regulations:

~~Urban. Mining is prohibited.~~

~~Urban Resort. Mining is prohibited.~~

~~Urban Conservancy. Mining is prohibited.~~

~~Shoreline Residential. Mining is prohibited.~~

~~Rural. Mining may be permitted as a conditional use subject to policies and regulations of this program.~~

~~Resource. Mining may be permitted as a conditional use subject to policies and regulations of this program.~~

~~Conservancy. Mining may be permitted as a conditional use subject to policies and regulations of this program.~~

~~Natural. Mining is prohibited.~~

- 1. ~~Aquatic. Mining is prohibited, except that accretional bar scalping in streams may be permitted as a conditional use subject to policies and regulations of this program; provided, that upon approval by the county and Ecology of a sediment management plan component for a mutually designated reach of river, including incorporating the findings of a programmatic environmental impact statement, the conditional use requirement will no longer be in effect unless mutually agreed to in said management plan.~~

Commented [CES204]: Moved from removed 'Shoreline Area Regulations.'

Commented [CES205]: Addressed in the use table now.

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~~23.4100.130-150~~ **Moorage Structures—Docks, Piers and Mooring Buoys.**

~~A. Policies.~~

~~A. Moorage associated with a single family residence is considered a water dependent use; provided, that it is designed and used as a facility to access watercraft, and other moorage facilities are not available or feasible. Moorage for water related and water enjoyment uses or shared moorage for multifamily use should be allowed as part of a mixed use development or where it provides public access.~~

~~B. New moorage, excluding docks accessory to single family residences, should be permitted only when the applicant/proponent has demonstrated that a specific need exists to support the intended water dependent or public access use.~~

~~C. As an alternative to continued proliferation of individual private moorage, mooring buoys are preferred over docks or floats. Shared moorage facilities are preferred over single user moorage where feasible, especially where water use conflicts exist or are predictable. New subdivisions of more than two lots and new multifamily development of more than two dwelling units should provide shared moorage.~~

~~D. Docks, piers and mooring buoys, including those accessory to single family residences, should avoid locations where they will adversely impact shoreline ecological functions or processes, including currents and littoral drift.~~

~~E. Moorage should be spaced and oriented in a manner that minimizes hazards and obstructions to public navigation rights and corollary rights thereto such as, but not limited to, fishing, swimming and pleasure boating, as well as private riparian rights of adjacent land owners.~~

~~F. Moorage should be restricted to the minimum size necessary to meet the needs of the proposed use. The length, width and height of piers and docks should be no greater than that required for safety and practicality for the primary use.~~

~~G. Pile supports are preferred over fills because piles do not displace water surface and intertidal or aquatic habitat and are removable and thus more flexible in terms of long term use patterns. Floats may be less desirable than pile structures where aquatic habitat or littoral drift are significant.~~

~~H. The use of buoys for small craft moorage is preferred over pile or float structures because of lesser long term impact on shore features and users; moorage buoys should be placed as close to shore as possible to minimize obstruction to navigation.~~

~~I. Shoreline resources and water quality should be protected from overuse by boaters living on vessels (live aboards). Boaters living on vessels are restricted to established marinas with facilities to address waste handling and other sanitary services.~~

~~J. Vessels should be restricted from extended mooring on waters of the state unless authorization is obtained from the DNR and impacts to navigation and public access are mitigated.~~

~~K. Piers and docks should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term.~~

~~L. New pier and dock development should be designed so as not to interfere with lawful public access to or use of shorelines. Developers of new piers and shared moorage should be encouraged to~~

Commented [AP206]: Revised per Scoping Document, Items #11a and 11b and includes a general overhaul to include more specifications.

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~~provide physical or visual public access to shorelines whenever safe and compatible with the primary use and shore features.~~

~~B. Regulations.~~

A. General.

1. ~~This section applies to all moorage structures. Marinas and boat launches are regulated pursuant to Moorage including docks, piers and mooring buoys in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. Shared moorage with more than four berths and Boat launching facilities are regulated under WCC 23.40.060-100.040, (Boating Facilities – Marinas and Launch Ramps).~~

2. No pier or dock shall be used for a residence.

3. Public access facilities shall be regulated pursuant to WCC 23.30.0760 (Public Access).

4. Commercial moorage shall be permitted only for water-dependent uses, and only if the applicant/proponent demonstrates that existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for the proposed water-dependent use.

5. Commercial covered moorage may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water, including demonstration that adequate upland sites are not feasible.

6. Moorage structures shall not be permitted within the following shoreline habitats because of their scarcity, biological productivity, and sensitivity:

a. Feeder bluffs and accretion shoreforms;

b. Marshes and other wetlands;

c. Kelp and eelgrass beds; and,

d. Areas of high energy or shallow sloping bottoms (<2% gradient) in the marine environment.

7. Moorage structures shall not be permitted within the following shoreline habitats because of their scarcity, biological productivity, and sensitivity unless no alternative location is feasible, the project would result in a net enhancement of shoreline ecological functions, and the proposal is otherwise consistent with this program:

a. Estuaries;

b. Tidal pools on rock shores;

c. Spawning and holding areas for forage fish (such as herring, surf smelt and sandlance);

d. Subsistence, commercial and recreational shellfish beds; and

e. Other critical saltwater or freshwater habitats.

8. Other than for day use, all vessels mooring on waters of the state must obtain a lease or permission from the State Department of Natural Resources, except as allowed by applicable state regulations.

9. No moorage shall impact the rights of navigation or public access, unless mitigated.

~~10. When there is not a moorage structure, marine rails are permissible, but shall be supported with as few piles as practicable.~~

~~B. Dimensional Standards – Freshwater.~~

Commented [CES207]: Revised per Scoping Document, Item #8c. This language is carried over from an existing regulation in the Boating Facilities section of the SMP related to marinas and boat launches.

Commented [CES208]: Added per DOE recommendation.

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1. ~~Freshwater – New overwater~~ Moorage structures in freshwater environments may be permitted, subject to the following:

	Design and Dimensional Standards
<u>Maximum Area: surface coverage, including all attached float decking, platform lifts, covered moorage, ramps, ells, and fingers</u>	• 480 sq. ft. for an individual use dock or pier • 700 sq. ft. for a shared moorage facility used by 2 residential property owners • 1,000 sq. ft. for a shared moorage facility used by 3 or more residential property owners • Public and commercial moorage structures shall be limited to the minimum area needed to accommodate the intended use. • These area limitations shall include platform lifts • Where a pier or dock cannot reasonably be constructed under the area limitation above to obtain a moorage depth of 5.5 feet measured below ordinary high water mark, an additional 4 sq. ft. of area may be added for each additional foot of pier or dock length needed to reach 5.5 feet of water depth at the waterward end of the pier or dock; provided, that all other area dimensions, such as maximum width and length, have been minimized.
<u>Maximum Width</u>	• For moorage structures accessory to a residential use: - o 4 feet for pier or dock walkway or ramp - o 6 feet for ells - o 2 feet for fingers - o 6 feet for float decking • Public and marina moorage structures shall be a maximum of 6 feet for all elements unless a need for a larger size is demonstrated
<u>Height</u>	• Minimum of 1.5 feet above ordinary high water to bottom of pier stringers, except the floating section of a dock and float decking attached to a pier
<u>Maximum Length</u> o Marine Rails o Floats o Overall Dock Length	• 20 feet waterward from the ordinary high water mark • 20 feet <u>feet per user (e.g. single user – 20 feet, 2-users – 40 feet, etc.)</u> for float decking • Minimum necessary to obtain a moorage depth of 5.5 feet measured below ordinary high watermark at the waterward end of the dock, though in no instance shall a dock be longer than adjacent docks or 100 feet, whichever is the lesser.
<u>Decking for piers, docks, walkways, platform lifts, ells, and fingers</u>	• Floats 6 feet wide or less must have at least 30% of the deck surface covered in functional grating • Floats greater than 6 feet wide must have at least 50% of the deck surface covered in functional grating • All other dock components must have 100% of the deck surface covered in functional grating • The open area of functional grating must be at least 60% • Replacement of more than 33% or 250 sq. ft., whichever is greater, of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only

Commented [Co/C209]: Amended pursuant to Resolution 2022-027

~~C. Dimensional Standards – Marine.~~

- ~~1-2. Marine – New overwater~~ Moorage structures in marine environments may be permitted, subject to the following; provided that port, industrial, and commercial piers and floats shall be the minimum area, length, and width necessary for the intended use:

	Design and Dimensional Standards
--	----------------------------------

Commented [CES210]: Standards updated to meet the requirements of the Army Corps of Engineers' Regional General Permit 6 (RGP-6): Structures in Inland Marine Waters of Washington State, updated 2/12/20.

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<u>Maximum Area: surface coverage, including all components</u>	• 480 sq. ft. for an individual use dock or pier • 700 sq. ft. for a shared moorage facility used by 2 residential property owners • 1,000 sq. ft. for a shared moorage facility used by 3 or more residential property owners • Where a pier or dock cannot reasonably be constructed under the area limitation above to obtain a moorage depth of -9.5 feet mean low low water as measured at the waterward end of the dock, an additional 4 sq. ft. of area may be added for each additional foot of pier or dock length needed to reach -9.5 feet mean low low water as measured at the waterward end of the pier or dock; provided, that all other area dimensions, such as maximum width and length, have been minimized
<u>Maximum Width</u>	• For moorage structures accessory to a residential use: - o 4 feet for single use or 6 feet for joint use for pier or dock walkway or ramp - o 6 feet for ells - o 2 feet for fingers - o 8 feet for float decking — Public and marina moorage structures shall be a maximum of 6 feet for all elements unless a need for a larger size is demonstrated For a joint use structure pier — 86 feet • Public and marina moorage structures shall be a maximum of 6 feet for all elements unless a need for a larger size is demonstrated
<u>Height</u>	• Maximize height over the bed to improve light transmission • The bottom of the pier must be at least six feet above the bed at the landward end
<u>Maximum Length</u>	• Marine Rails – 20 feet • Floats – 30 feet per user (e.g., single-user – 30 feet, 2-users – 60 feet, etc.) • Overall Dock Length – Minimum necessary to obtain a moorage depth of -9.5 feet mean low low water as measured at the waterward end of the dock.
<u>Decking</u>	• Floats must have at least 50% of the deck surface covered in functional grating. • Piers, stairs, ramps, and platform lifts must have 100% of the deck surface covered in functional grating • Grating openings should be oriented lengthwise in the east/west direction to the maximum extent practicable. • Grating must not be covered (on the surface or underneath) with any items (e.g., kayaks, planters, sheds, lawn chairs, etc.) except utility boxes. • Grating must be either multi-directional grating with a minimum of 40% open space or square grating with a minimum of 60% open space. Provide documentation to show amount of % open area. • Replacement of more than 10% or 48 sq. ft. of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only

Commented [DOE-Req211]: Required Change – This change removes the ambiguous reference to an 8-foot maximum associated with joint use structures. After consultation with Whatcom County PDS staff, these changes clarify the original intent that the 8-foot width maximum applied to joint-use residential moorage structures. Staff also suggested limiting the maximum width of such structures to 6-feet.

Commented [CES212]: Revised based on USACE standards.

C. Construction Standards for Overwater Moorage Structures.

1. Piers and docks shall be the minimum size necessary to meet the needs of the proposed water-dependent use, and shall observe the following criteria:
2. Piers and docks Moorage structures shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials used for submerged portions of a pier or dock, decking and other components that may come in contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Piers and docks in lakes providing a public water

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- supply shall be constructed of untreated materials, such as untreated wood, approved plastic composites, concrete or steel.
3. Piers and docks shall use pile supports unless engineering studies demonstrate that pile supports are insufficient to ensure public safety. Riprapped or bulkheaded fills may be approved for public projects only and only as a shoreline conditional use and only when demonstrated that no feasible alternative is available. Mitigation shall be provided to ensure no net loss of shoreline ecological functions and processes.
4. Approaches to piers and docks shall use piers or other structures to span the entire upper foreshore to the point of intersection with stable upland soils and shall be design to avoid interference with littoral drift or wave refraction. Limited fill or excavation may be allowed landward of the OHWM to match the upland with the elevation of the pier or dock.
5. Pile diameter shall be the minimum necessary and pile spacing shall be the maximum feasible to minimize shading and avoid a "wall" effect that would block or baffle wave patterns, currents, littoral drift, or movement of aquatic life forms, or result in structure damage from driftwood impact or entrapment. Piles supporting a new pier must be spaced no closer than 20 feet apart.
- 5-6. Offshore and foreshore pile structures shall allow for continuity of hydraulic energy patterns, unless specifically designed to reduce wave impact on shores.
7. Flotation for the float shall be fully enclosed and contained in a shell (e.g., polystyrene tubs not shrink wrapped or sprayed coatings) that prevents breakup or loss of the flotation material into the water and is not readily subject to damage by ultraviolet radiation and/or abrasion caused by rubbing against piling and/or waterborne debris.
8. Flotation components shall be installed under the solid portions of the float, not under the grating.
9. If the project includes the replacement of existing piling, they should be either partially cut with a new piling secured directly on top, fully extracted, or cut 2 feet below the mudline. If treated piling are fully extracted or cut, the holes or piles must be capped with clean, appropriate material.
- 6-10. A maximum of two moorage pilings may be installed to accommodate the moorage of boats exceeding the length of the floats.
11. Overhead wiring or plumbing is not permitted on moorage structures.
12. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non-reflective.
13. Moorage facilities shall be constructed and maintained so that no part of a facility creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.
14. Water supply, sewage disposal and disposal of nonhazardous materials associated with activities on docks and piers shall conform to applicable health standards.
15. No private or shared moorage may be constructed to within 200 feet of OHWM on the opposite shore of any lake or semi-enclosed body of water such as a bay, cove, or natural channel. This

Commented [AP213]: Added per Scoping Document, Item #5e. This provision is consistent with WAC requirements to require a CUP for any fill waterward of the OHWM.

Commented [CES214]: Updated to meet the requirements of the Army Corps of Engineers' Regional General Permit 6 (RGP-6): Structures in Inland Marine Waters of Washington State, updated 2/12/20.

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- 1 restriction shall not apply within marinas, dredged canal systems or approved marina-home
2 developments.
- 3 16. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable
4 containers when provided with secondary containment.
- 5 17. The width of landings, stairways, or steps must not exceed 4 feet for single-use and 6 feet for
6 joint-use.
- 7 18. Additional standards for marine moorage sturctures:
- 8 a. Floats may be held in place with lines anchored with a helical screw or "duckbill" embedded
9 anchor, piles with stoppers and/or float support/stub piles. (1) For a single-user float, a
10 maximum of 4 piles (not including stub piles) or embedded anchors may be installed. (2) For
11 a joint-use float, a maximum of 8 piles (not including stub piles) or embedded anchors may
12 be installed. (3) If embedded anchors need to be utilized, the anchor lines shall not rest on
13 the substrate at any time; each must contain a mid-line float. (4) Only if the substrate
14 prohibits use of piles or embedded anchors may a Corps-approved alternative be used. (5) If
15 a concrete anchor or other Corps-approved alternative is needed to hold the float,
16 calculations showing that it will hold without dragging or breaking during storm events are
17 required. This analysis should include the size of the float and the dry weight and
18 dimensions of the anchor.
- 19 b. If the float is positioned perpendicular to the ramp, a small access float may be installed to
20 accommodate tidal movement of the ramp. The access float cannot be larger than 6 feet
21 wide and 10 feet long.
- 22 c. No floats may be installed in the Upper Shore Zone (area landward of +5 MLLW).
- 23 d. Float Stops:
- 24 i. To suspend the float above the substrate at all tides, float stops should be installed on
25 piles anchoring floats. This method is preferred over (d)(ii) and(d)(iii) because float
26 stops are less impacting to the marine environment.
- 27 ii. If float stops attached to piles are not feasible (provide explanation) then up to four
28 10-inch diameter stub piles may be installed.
- 29 iii. Float "feet" attached to the float are an option if the substrate consists of coarse
30 material as described in the column to the right
- 31 19. Additional standards for marine mooring buoys:
- 32 a. Mooring buoys shall be placed at a distance specified by the Washington Department of Fish
33 and Wildlife, the Washington Department of Natural Resources, and the U.S. Coast Guard to
34 balance the goals of avoiding nearshore habitat and minimizing obstruction to navigation.
35 Anchors and other design features shall meet Washington Department of Fish and Wildlife
36 standards.
- 37 b. The location (latitude/longitude) of the anchor for the buoy must be identified on the
38 project drawings.
- 39 c. Anchor lines must not rest or drag on the substrate, and a midline float must be installed to
40 prevent this.

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- d. Anchors should be helical screw or another type of embedded anchor. Only if the substrate prohibits use of embedded anchors may alternative anchors (i.e., concrete block) be used. If an embedded anchor cannot be used and a concrete anchor is needed, calculations showing that the anchor will hold without dragging or breaking during storm events is required. This analysis should include the size of the vessel and the dry weight and dimensions of the anchor.
- e. No other moorage structures may be anchored within a 117-foot radius (with the proposed buoy in the center of the 117-foot radius circle, which would result in a concentration of no more than one per acre) of the proposed buoy.
- f. New mooring buoys may not be installed in any waterbody the Washington State Department of Health has designated as "threatened" or "closed" to shellfish harvesting due to the number of boats moored there.

- ~~D. Private recreational moorage for individual lots is permitted in existing subdivisions approved on or before January 28, 1993, only where shared moorage has not already been developed. Prior to development of a new dock for a single residential lot, the applicant/proponent shall demonstrate that:~~
- ~~E. Existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for use;~~
- ~~F. On marine shorelines, alternative moorage, such as mooring buoys or a dock sized to accommodate a tender to provide access in conjunction with a mooring buoy, are not adequate or feasible; and~~
- ~~G. The applicant/proponent has contacted abutting property owners and none have indicated a willingness to share an existing dock or develop a shared moorage in conjunction with the applicant/proponent.~~
- ~~H. If allowed, only one private dock shall be permitted on a shoreline residential lot.~~
- ~~I. Shared moorage shall be required in accordance with the following to prevent the proliferation of moorage facilities:~~
- ~~J. Shared moorage shall be provided for all new residential developments of more than two dwelling units. New subdivisions shall contain a restriction on the face of the plat prohibiting individual docks. A site for shared moorage should be owned in undivided interest by property owners within the subdivision. Shared moorage facilities shall be available to property owners in the subdivision for community access and may be required to provide public access depending on the scale of the facility. If shared moorage is provided, the applicant/proponent shall file at the time of plat recordation a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:~~
- ~~K. Apportionment of construction and maintenance expenses;~~
- ~~L. Easements and liability agreements; and~~
- ~~M. Use restrictions.~~
- ~~N. On marine shorelines a dock or pier may be approved only if it is not feasible to provide mooring buoys with an adequate landing area or a dock sized to accommodate tenders.~~

Commented [CES215]: Added to meet the requirements of the Army Corps of Engineers' Regional General Permit 6 (RGP-6): Structures in Inland Marine Waters of Washington State, updated 2/12/20.

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- ~~O. Where a multifamily residential development, camping club or subdivision development provides shared moorage, space for the number of waterfront lots or dwelling units may be provided with an additional provision for sites without water frontage up to a ratio of 1.25 moorage spaces per total lots or units.~~
- ~~P. Prior to issuing a permit for shared moorage, a proponent shall file with the Whatcom County auditor a legally enforceable joint use agreement that, at minimum, addresses the following:~~
- ~~Q. Apportionment of construction and maintenance expenses;~~
- ~~R. Easements and liability agreements; and~~
- ~~S. Use restrictions.~~
- ~~T. Commercial docks shall be permitted only for water dependent uses, and only if the applicant/proponent demonstrates that existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for the proposed water dependent use.~~
- ~~U. Private moorage for float planes may be permitted as a conditional use where construction will not adversely affect shoreline functions or processes, including wildlife use. Ecological restoration may be required to compensate for the greater intensity of activity associated with the use.~~
- ~~V. If allowed under the provisions of this program, only one private dock with one accessory float, one boat lift, and one covered moorage accessory to a permitted moorage, shall be permitted on a shoreline lot owned for residential or private recreational use.~~
- ~~W. Docks with or without a float shall be the minimum size required to provide for moorage. Single-family docks and floats shall not exceed 40 feet in length measured perpendicularly from the OHWM nor exceed three feet in height above the extreme high water level. Shared moorage may extend to 80 feet in length if demonstrated to be necessary to provide adequate moorage. In the case of pile docks at marine or river locations, the height shall be limited to that which may be reasonably necessary to accommodate landing and moorage of watercraft. Commercial docks shall be the minimum length necessary to serve the type of vessel served.~~
- ~~X. Private docks up to 60 feet in length or shared moorage up to 100 feet in length measured perpendicularly from the OHWM, including floats, may be permitted by the administrator in shallow areas where a dock sized to accommodate a tender to provide access to a mooring buoy is not feasible and where existing docks on adjacent properties presently extend out as far as that which is proposed, and where such added length is necessary in order to allow a reasonable use of the dock, as determined based upon adjacent uses; and where the extension in dock length will not adversely affect ecological processes and functions, provided the required dock length is the minimum necessary to achieve such purposes. Docks that cannot reasonably meet this standard may request a review under the variance provisions of this program.~~
- ~~Y. Moorage shall be designed to avoid the need for maintenance dredging. The moorage of a boat larger than provided for in the original moorage design shall not be grounds for approval of d~~
- ~~Z. In order to minimize impacts on nearshore areas and avoid reduction in ambient light level:~~
- ~~AA. The width of piers, docks and floats shall be the minimum necessary and shall not exceed four feet in width, except where specific information on use patterns justifies a greater width. Marine floats shall not exceed eight feet in width nor 40 feet in length and freshwater floats shall not exceed six~~

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feet in width and 20 feet in length unless authorized by a variance. Exceptionally large vessels or vessels that require a relatively deep draft may be required to use a buoy, other alternative mooring scheme, or to moor in a marina. Materials that will allow light to pass through the deck may be required where width exceeds four feet.

~~BB. Dock surfaces designed to allow maximum light penetration shall be used on walkways or gangplanks in nearshore areas.~~

~~CC. Piers, docks and floats shall be located along a north/south orientation to the maximum extent feasible.~~

~~DD. Private docks shall not encroach into the required sideyard setbacks for residential development (both onshore and offshore); provided, that a shared moorage may be located adjacent to or upon a side property line of the affected properties upon filing of an easement agreement or other legal instrument by the affected property owners.~~

~~EE. Dock and Pier Design.~~

~~FF. Moorage buoys shall be placed at a distance specified by the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources, and the U.S. Coast Guard to balance the goals of avoiding nearshore habitat and minimizing obstruction to navigation. Anchors and other design features shall meet Washington Department of Fish and Wildlife standards.~~

~~GG. A covered moorage accessory to a single family pier or dock, not accessory to a marina, shall have no walls other than an open structural framework to support a roof and shall not cover more than 200 square feet nor exceed 15 feet in height above OHWM. Roof materials shall be translucent, or at least 50 percent clear skylights.~~

~~HH. Commercial covered moorage may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water, including demonstration that adequate upland sites are not feasible.~~

~~II. No private or shared moorage may be constructed to within 200 feet of OHWM on the opposite shore of any lake or semi enclosed body of water such as a bay, cove, or natural channel. This restriction shall not apply within marinas, dredged canal systems or approved marina home developments.~~

~~JJ. If a dock is provided with railing, such railing shall not exceed 36 inches in height and shall be an open framework that does not unreasonably interfere with shoreline views of adjoining properties or lawful use of water surface~~

~~KK. Water supply, sewage disposal and disposal of nonhazardous materials associated with activities on docks and piers shall conform to applicable health standards.~~

~~LL. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish shall be generally non reflective.~~

~~MM. Moorage facilities shall be constructed and maintained so that no part of a facility creates hazardous conditions nor damages other shore property or natural features during predictable flood conditions. Floats shall be securely anchored.~~

~~NN. No pier or dock shall be used for a residence.~~

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- 1 ~~OO. Storage of fuel, oils, and other toxic materials is prohibited on docks and piers except portable~~
2 ~~containers when provided with secondary containment.~~
3 ~~PP. Public access facilities shall be provided in accordance with policies and regulations in~~
4 ~~WCC 23.90.080.~~
5 D. Additional Standards for Individual use docks and piersMoorage.
6 1. An individual use dock may consist of one pier, one float or platform lift, one boat lift, and one
7 covered moorage.
8 2. When allowed under the provisions of this program, only one private dock shall be permitted as
9 an accessory use to a primary use.
10 3. Private recreational moorage for individual lots is permitted in subdivisions approved on or
11 before January 28, 1993, only where shared moorage has not already been developed.
12 4. Prior to development of a new dock for a single residential lot, the applicant/proponent shall
13 demonstrate that:
14 a. Existing facilities in the vicinity, including marinas and shared moorage, are not adequate or
15 feasible for use;
16 b. Alternative moorage, such as mooring buoys or a dock or marine rail system sized to
17 accommodate a tender to provide access in conjunction with a mooring buoy, are not
18 adequate or feasible; and
19 c. The applicant/proponent has contacted abutting property owners and none have indicated
20 a willingness to share an existing dock or develop a shared moorage in conjunction with the
21 applicant/proponent.
22 5. Private moorage for float planes may be permitted as a shoreline conditional use where
23 construction will not adversely affect shoreline functions or processes, including wildlife use.
24 Ecological restoration may be required to compensate for the greater intensity of activity
25 associated with the use.
26 6. Private docks shall not encroach into the required sideyard setbacks for residential development
27 (both onshore and offshore).
28 ~~4-7. Covered moorage accessory to a single-family pier or dock shall have no walls other than an~~
29 ~~open structural framework to support a roof and shall not cover more than 200 square feet nor~~
30 ~~exceed 15 feet in height above OHWM. Roof materials shall be translucent, or at least 50~~
31 ~~percent clear skylights.~~
32 E. Additional Standards for Shared Moorage.
33 1. When allowed under the provisions of this program, a shared moorage dock may be permitted
34 for multiple users. Such docks may consist of one pier and multiple floats or platform lifts, boat
35 lifts, and covered moorages, not to exceed the number of authorized users nor the total
36 maximum area allowed per WCC 23.40.140(B).
37 2. Shared moorage shall be required in accordance with the following to prevent the proliferation
38 of moorage facilities:
39 a. Shared moorage shall be provided for all residential developments of more than two
40 dwelling units.

Commented [CES216]: Updated to meet current state and federal regs & guidance

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- b. Subdivisions shall contain a restriction on the face of the plat prohibiting individual docks.
- c. Shared moorage facilities shall be available to property owners in the subdivision for community access and may be required to provide public access depending on the scale of the facility. A site for shared moorage should be owned in undivided interest by property owners within the subdivision.
- d. If shared moorage is provided, the applicant/proponent shall file at the time of plat recordation a legally enforceable joint use agreement or other legal instrument that, at minimum, addresses the following:
- i. Apportionment of construction and maintenance expenses;
 - ii. Easements and liability agreements; and
 - iii. Use restrictions.
- e. On marine shorelines a dock or pier may be approved only if it is not feasible to provide mooring buoys with an adequate landing area or a dock or marine rail system sized to accommodate tenders.
- f. Where a new multifamily residential, camping club, or subdivision development proposes to provide shared moorage, the number of slips shall be limited to the amount of moorage needed to serve dwelling units/rental spaces with water frontage; provided, that a limited number of upland dwelling units/rental spaces within shoreline jurisdiction may also be accommodated at a ratio of 0.25 slips per such dwelling units/rental spaces. space for the number of waterfront lots or dwelling units may be provided with an additional provision for sites without water frontage up to a ratio of 1.25 moorage spaces per total lots or units. Applications for shared moorage shall demonstrate that mooring buoys are not feasible prior to approval of dock moorage. Shared moorage currently leased serving or proposed to be leased to serve upland dwelling units/rental spaces property owners shall be reviewed as a marina. This provision does not apply to existing developments.
- ~~Shared moorage shall be limited to the amount of moorage needed to serve lots with water frontage; provided, that a limited number of upland lots may also be accommodated. Applications for shared moorage shall demonstrate that mooring buoys are not feasible prior to approval of dock moorage. Shared moorage currently leased or proposed to be leased to upland property owners shall be reviewed as a marina.~~
3. Shared moorage may be located adjacent to or upon a side property line of the affected properties upon filing of an easement agreement or other legal instrument by the affected property owners.
- C. Shoreline Area Regulations:
- A. Urban. Private and shared moorage are permitted subject to policies and regulations of this program. Public, commercial and industrial moorage, including expansion of existing piers, and covered moorage or floatplane moorage accessory to a permitted moorage may be permitted as a conditional use.
 - B. Urban Resort. Private, shared and public moorage, and covered moorage or floatplane moorage accessory to a permitted moorage, may be permitted as a conditional use subject to the policies

Commented [Co/C217]: Amended pursuant to Resolution 2022-027

Commented [Co/C218]: Amended pursuant to Resolution 2022-027

Commented [CES219]: Addressed by use table now.

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and regulations of this program. Commercial moorage is prohibited, except piers serving small passenger vessels may be permitted as a conditional use. Industrial moorage is prohibited.

~~C. Urban Conservancy. Private and shared moorage on non marine shorelines are permitted subject to policies and regulations of this program. Private and shared moorage on marine shorelines, other than constructed marinas or canals, may be permitted as a conditional use. Public and commercial moorage, including the expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial and covered moorage are prohibited.~~

~~D. Shoreline Residential. Private and shared moorage are permitted subject to policies and regulations of this program. Public and commercial moorage, including expansion of existing piers, and covered moorage or floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial moorage is prohibited.~~

~~E. Rural. Private and shared moorage are permitted subject to policies and regulations of this program. Public, industrial and commercial moorage, including expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Covered moorage is prohibited.~~

~~F. Resource. Private and shared moorage are permitted subject to policies and regulations of this program. Public, industrial and commercial moorage, including expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Covered moorage is prohibited.~~

~~G. Conservancy. Private and shared moorage on nonmarine shorelines are permitted subject to policies and regulations of this program. Private and shared moorage on marine shorelines, other than constructed marinas or canals, may be permitted as a conditional use. Public and commercial moorage, including the expansion of existing piers, and floatplane moorage accessory to a permitted moorage may be permitted as a conditional use. Industrial and covered moorages are prohibited.~~

~~H. Natural. Moorage is prohibited, except public access, interpretive or nature observation facilities that are compatible with the area's physical and visual character may be conditionally permitted subject to policies and regulations of this program. Covered and floatplane moorage are prohibited.~~

~~I. Aquatic. Moorage is permitted, subject to the use and development regulations of the abutting upland shoreline area designation. Unless authorized by WA DNR or its designees, extended moorage longer than 60 consecutive days in one location shall be considered an obstruction which interferes with the normal public use of the surface of the waters of the state, and is prohibited.~~

23.4100.140-160 Recreation.

Shoreline recreation shall be subject to the policies and regulations of this section and

Chapter 23.90 WCC.

~~A. Policies.~~

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- 1 ~~A. Shoreline recreational development should be given priority for shoreline location to the extent that~~
2 ~~the use facilitates the public's ability to reach, touch, and enjoy the water's edge, to travel on the~~
3 ~~waters of the state, and to view the water and the shoreline. Where appropriate, such facilities~~
4 ~~should be dispersed along the shoreline in a manner that supports more frequent recreational~~
5 ~~access and aesthetic enjoyment of the shoreline for a substantial number of people.~~
6 ~~B. Recreational developments should facilitate appropriate use of shoreline resources while conserving~~
7 ~~them. These resources include, but are not limited to: accretion shoreforms, wetlands, soils, ground~~
8 ~~water, surface water, native plant and animal life, and shore processes.~~
9 ~~C. Recreational development requiring extensive structures, utilities and roads and/or substantial~~
10 ~~modifications of topography or vegetation removal should not be located or expanded in areas~~
11 ~~where damage to persons, property, and/or shoreline functions and processes is likely to occur.~~
12 ~~D. Recreational developments and plans should provide the regional population a varied and balanced~~
13 ~~choice of recreation experiences in appropriate locations. Public agencies and private developers~~
14 ~~should coordinate their plans and activities to provide a wide variety of recreational opportunities~~
15 ~~without needlessly duplicating facilities.~~
16 ~~E. Trail links between shoreline parks and public access points should be encouraged for walking,~~
17 ~~horseback or bicycle riding and other non-motorized vehicle access where appropriate. The~~
18 ~~Whatcom County Comprehensive Park and Recreation Open Space Plan should be considered in~~
19 ~~design and approval of public trail systems.~~
20 ~~F. Access to natural character recreational areas, including but not limited to beaches and fishing~~
21 ~~streams, should be a combination of linear shoreline trails or easements and small parking or access~~
22 ~~tracts to minimize user concentration on small portions of the shoreline.~~
23 ~~G. Recreation facilities should incorporate public education regarding shoreline ecological functions~~
24 ~~and processes, the role of human actions on the environment and the importance of public~~
25 ~~involvement in shorelines management. Opportunities incorporating educational and interpretive~~
26 ~~information should be pursued in design and operation of recreation facilities and nature trails.~~
27 ~~H. Reasonable physical or visual public access to shorelines should be provided and integrated with~~
28 ~~recreational developments in accordance with WCC 23.90.080.~~
29 ~~I. Recreation development should be located only where utility and road capability is adequate, or~~
30 ~~may be provided without significant damage to shore features commensurate with the number and~~
31 ~~concentration of anticipated users.~~
32 ~~J. Cooperative efforts among public and private persons toward the acquisition and/or development~~
33 ~~of suitable recreation sites or facilities should be explored to assure long-term availability of~~
34 ~~sufficient public sites to meet local recreation needs.~~
35 ~~B. Regulations. Where significant adverse impacts are adequately mitigated, recreational development~~
36 ~~is a priority use for shoreline location, subject to the following:~~
37 A. General.
38 1. Water-related and water-enjoyment uses ~~do shall~~ not displace water-dependent uses ~~and are~~
39 ~~consistent with existing water-related and water-enjoyment uses.~~

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2. Activities provided by recreational facilities must bear a substantial relationship to the shoreline, or provide physical or visual access to the shoreline. Facilities for water-dependent recreation such as fishing, clam digging, swimming, boating, and wading, and water-related recreation such as picnicking, hiking, and walking should be located near the shoreline, while non-water-related recreation facilities shall be located inland.
 3. Recreation areas or facilities ~~on the shoreline~~ shall provide physical or visual public access consistent with the criteria of WCC 23.30.06090-080 (Public Access).
 4. Recreational facilities with large grass areas, such as golf courses and playing fields, and facilities with extensive impervious surfaces shall incorporate means to prevent erosion, control the amount of runoff, and prevent harmful concentrations of chemicals and sediment from entering waterbodies in accordance with the ~~policies and~~ regulations of WCC 23.390.0340 (Water Quality and Quantity).
 5. Recreational use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Such use is prohibited on tidelands, backshore beaches, streams, or wetlands; except as necessary for public health and safety or maintenance.
 6. Trails shall meet the requirements of WCC Chapter 16.16 (Critical Areas).
- B. Regulations for Specific Shoreline Environment Designations.
1. In the Urban Conservancy shoreline environment, low intensity water-oriented recreational use and development is permitted subject to the following criteria:
 - a. Structures will not result in more than 10 percent building coverage or 4,000 square feet, whichever is greater, and total impervious surface will not exceed 20 percent, or 10,000 square feet, whichever is greater.
 - b. Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.
 - c. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.
 2. In the Resource shoreline environment, low intensity water-oriented recreational use and development is permitted; provided, that no designated agricultural or forest resource lands of long-term significance are displaced.
 3. In the Conservancy shoreline environment, low intensity water-oriented recreational use and development is permitted subject to the following criteria:
 - a. Structures on sites of one acre or less will not result in more than 10 percent building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed 20 percent or 5,000 square feet, whichever is greater.
 - b. Structures on sites greater than one acre will not result in more than five percent building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed 10 percent or 10,000 square feet, whichever is greater.
 - c. Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.

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d. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.

4. In the Natural shoreline environment, low intensity water-oriented recreational use and development consisting of primitive trails or primitive campsites is permitted subject to the following criteria:

a. Essential minor structures such as trails, stairs, small picnic areas, primitive roads, viewpoints, restrooms, interpretive facilities, or development that will not adversely affect shoreline ecological functions and processes are permitted.

b. Any necessary landscaping shall use native or similar self-maintaining vegetation.

c. Recreational development requiring extensive structures or substantial alterations to topography or native vegetation is prohibited.

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

A. Shoreline Area Regulations.

1. Urban. Water-oriented recreational use and development is permitted subject to policies and regulations of this program.

2. Urban Resort. Water-oriented recreational use and development is permitted subject to policies and regulations of this program.

3. Urban Conservancy. Low intensity water-oriented recreational use and development is permitted subject to policies and regulations of this program and the following criteria:

a. Structures will not result in more than 10 percent building coverage or 4,000 square feet, whichever is greater, and total impervious surface will not exceed 20 percent, or 10,000 square feet, whichever is greater.

b. Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.

c. Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.

4. Shoreline Residential. Water-oriented recreational use and development is permitted subject to policies and regulations of this program.

5. Rural. Water-oriented recreational use and development is permitted subject to policies and regulations of this program.

6. Resource. Low intensity water-oriented recreational use and development is permitted subject to policies and regulations of this program; provided, that no designated agricultural or forest resource lands of long-term significance are displaced.

7. Conservancy. Low intensity water-oriented recreational use and development is permitted subject to policies and regulations of this program and the following criteria:

Commented [AP220]: Carried over from removed 'Shoreline Area Regulations.'

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- a. ~~Structures on sites of one acre or less will not result in more than 10 percent building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed 20 percent or 5,000 square feet, whichever is greater.~~
 - b. ~~Structures on sites greater than one acre will not result in more than five percent building coverage or 2,000 square feet, whichever is greater, and total impervious surface will not exceed 10 percent or 10,000 square feet, whichever is greater.~~
 - c. ~~Alteration of topography shall be limited to the minimum necessary to accommodate allowed development, and generally less than 30 inches.~~
 - d. ~~Use of areas or facilities will not result in use patterns that lead to degradation of shoreline ecological functions.~~
8. ~~Natural. Low intensity water oriented recreational use and development consisting of primitive trails or primitive campsites is permitted subject to policies and regulations of this program and the following criteria:~~
- a. ~~Essential minor structures such as trails, stairs, small picnic areas, primitive roads, viewpoints, restrooms, interpretive facilities, or development that will not adversely affect shoreline ecological functions and processes are permitted, subject to policies and regulations of this program.~~
 - b. ~~Any necessary landscaping shall use native or similar self-maintaining vegetation.~~
 - c. ~~Recreational development requiring extensive structures or substantial alterations to topography or native vegetation is prohibited.~~
9. ~~Aquatic. Water oriented recreational use and development is permitted, subject to the use and development regulations of the abutting upland shoreline area designation; provided, that underwater parks may be permitted as a conditional use.~~

23.4100.150-170 Residential.

~~Residential development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. This section applies to r~~Residential development, uses, and activities. ~~as defined in WCC Chapter 23.110 includes multifamily development and the~~The creation of new residential lots through land division ~~is regulated pursuant to WCC 23.40.130 (Land Division).~~

B. ~~Policies.~~

- A. ~~Single family residences are designated in Chapter 90.58 RCW as a priority use in those limited instances when authorization is given for alterations of the natural condition of shorelines of the state.~~
- B. ~~New residential development is encouraged to cluster dwelling units together to reduce physical and visual impacts on shorelines and to reduce utility and road costs. Planned unit developments that include common open space and recreation facilities, or a variety of dwelling sizes and types, are encouraged at suitable locations as a preferable alternative to extensive single lot subdivisions on shorelines. Planned unit developments (Chapter 20.85 WCC) may also include a limited number of neighborhood commercial business uses where consistent with the applicable zoning regulations.~~

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- ~~C. Allowable density of new residential development should comply with applicable comprehensive plan goals and policies, zoning restrictions, and shoreline area designation standards. The density per acre of development should be appropriate to local natural and cultural features.~~
- ~~D. Structures or development for uses accessory to residential use should preserve shoreline open space, be visually and physically compatible with adjacent cultural and shoreline features, be reasonable in size and purpose, and result in no net loss of shoreline ecological functions and processes.~~
- ~~E. Buildings greater than 35 feet above average grade level that will obstruct the views of a substantial number of residences on areas adjoining such shorelines are limited by the Act (RCW 90.58.320) to those cases where this program does not prohibit such development and then only when overriding considerations of the public interest will be served. This program provides opportunities for buildings greater than 35 feet in height in limited areas where consistent with development objectives and the goals and policies of this program.~~
- ~~F. New residential development should be planned and built in accordance with the policies and regulations in WCC 23.90.030 and to minimize the need for shoreline stabilization and flood hazard reduction measures.~~
- ~~G. Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation may include avoidance or minimization of clearing or grading, restoration of areas of native vegetation, and/or control of invasive or nonnative vegetation.~~
- ~~H. Whenever possible, nonregulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged for residential development. Such methods may include resource management planning, low impact development techniques, voluntary protection and enhancement projects, education, or incentive programs.~~
- ~~I. New multiunit residential development, including subdivision of land for more than four parcels, should provide substantial shore space for development residents and the public, unless public access is infeasible due to incompatible uses, safety, impacts to shoreline ecology or legal limitations.~~
- ~~J. Development should provide open space corridors between structures, and along site boundaries, so as to provide space for outdoor recreation, preserve views, and minimize use conflicts.~~
- ~~K. Recreation-oriented residential development in the shoreline should be located only where substantial recreation opportunities are provided on site, and where nearby property owners and other appropriate uses will not be adversely affected.~~
- ~~C. Regulations.~~
- ~~A. General.~~
- ~~1. New or Over-water residential structures, including floating homes, are prohibited.~~
- ~~1-2. New or Residential development may not be approved in cases when it can be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within a channel migration zone or floodway during the life of the development or use.~~

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3. ~~New~~ Residential development shall assure through a geotechnical analysis that the development will not require shoreline stabilization for the life of structure (100 years). Prior to approval, geotechnical analysis of the site and shoreline characteristics shall demonstrate that shoreline stabilization is unlikely to be necessary; setbacks from steep slopes, bluffs, landslide hazard areas, seismic hazard areas, riparian and marine shoreline erosion areas shall be sufficient to protect structures during the life of the structure (100 years); and impacts to adjacent, downslope or down-current properties are not likely to occur. The greater setback resulting from this regulation or WCC ~~23.90.130~~ 23.40.020 (Shoreline Bulk Provisions) shall apply.

~~2. Clustering and low impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines in accordance with policies and regulations of WCC 23.90.090.~~

4. Residential structures, accessory uses, and related facilities shall be designed and located so as to minimize view obstructions to and from shorelines and waterbodies.

5. Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.

B. Standards for Single-Family Residential Use on Constrained Lots.

1. Legally existing lots with a depth (the distance from the ordinary high water mark to the inside edge of the frontage setback) that would not allow for compliance with the reduced standard buffer may be allowed without a shoreline variance when the following criteria are met:

2. The lot is vacant or existing structures are removed; provided an existing primary single family residential structure may be enlarged, consistent to WCC 23.50.020, to the maximum building area allowed in (3) below.

~~4.3. The maximum impact building area lying landward of the shoreline buffer and interior to required side yard setbacks is shall not exceed 2,500 square feet or less. The maximum impact building area means the proposed residence, normal appurtenances (except drainfields), and any proposed residential accessory structures the entire area that will be disturbed to construct the home, sidewalks and similar structures (except the single path allowed for shoreline access), parking areas, normal appurtenances (except drainfields). Additionally, and up to another 500 square feet of low-impact development (LID) landscaping, including any lawn, turf, ornamental vegetation, or gardens may be allowed, provided that it is set back as far as feasible from the shoreline.~~

4. In no case shall the proposed residence be located waterward of the common-line setback as determined in applicable sections of ~~Consideration shall be given to view impacts in accordance with~~ WCC 23.40.020(D)(2) (Common-Line Setback).

~~2.5.~~ The lot is not subject to landslide hazard areas, ~~alluvial fan hazard areas~~, or riverine and coastal erosion hazard areas or associated buffers ~~as defined in (see~~ WCC 16.16.310);

~~3.6.~~ The nonconforming lot was created prior to the effective date of this program (August 8, 2008);

7. Appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the building area and landscaping allowance residence in the least environmentally

Commented [CES222]: Moved to land division

Commented [CES223]: Moved from Site Planning section. Required to meet WAC 173-26-241(3)(l).

Commented [CES224]: Moved from old nonconforming section.

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~~damaging location relative to the shoreline and any critical areas and their buffers; and~~
~~provided, that;~~

~~8. All administrative reductions to side yard and/or frontage setbacks are pursued. Such reductions~~
~~may be approved administratively without a zoning variance, when doing so will not create a~~
~~hazardous condition or a condition that is inconsistent with this program and WCC Title 20.~~

~~4-9. There is no opportunity to consolidate lots under common ownership that will alleviate the~~
~~nonconformity;~~

~~10. The shoreline jurisdiction shoreline area outside of the approved development is retained if fully~~
~~functional, and/or enhanced with native trees, shrubs and groundcovers through development~~
~~of a mitigation plan, including monitoring and maintenance contingencies per WCC~~
~~16.16.260(G) optimized to provide the maximum shoreline ecological functions and ecosystem~~
~~wide functions;~~

~~11. Development may not take place waterward of the ordinary high water mark; and~~

~~12. Accessory utilities Facilities such as a conventional drainfield system may be allowed within~~
~~critical areas or their buffers, subject to specific criteria in Chapter 16.16 WCC.~~

C. Additional Standards for Multifamily Residential Development.

~~1. Due to the potential for adverse impact upon adjacent uses and the community from such high~~
~~rise and multiunit buildings that exceed 35 feet in height, the County must find proposals for~~
~~such buildings to be consistent with this program and the Act, particularly as related to~~
~~RCW 90.58.320, and the following factors:~~

~~2-1. Open space areas and setbacks shall be required along shorelines and between buildings~~
~~wherever feasible. These areas should be large enough so that local views are not extensively~~
~~blocked, and building residents have privacy and ample space for outdoor recreation and~~
~~circulation. The amount of open space shall increase proportionately as density and/or height~~
~~increase. In general, a view corridor must be maintained across 30 percent of the average parcel~~
~~width with additional width provided for the percentage increase above 35 feet to a maximum~~
~~of 50 percent of the lot width. The increased area within a view corridor due to increased height~~
~~must be devoted to landscaping or other open space.~~

~~3. Urban services, including sanitary sewers, public water supply, fire protection, stormwater~~
~~drainage, and police protection shall be provided at adequate levels to protect the public health,~~
~~safety, and welfare.~~

~~4-2. Circulation, parking areas, and outdoor storage or loading areas shall be adequate in size and~~
~~designed so that the public safety and local aesthetic values are not diminished. Such areas shall~~
~~be screened where appropriate from open space areas by landscaping, fences or other similar~~
~~structures, or grade separation.~~

~~3. New multiunit mMultifamily development with more than four units and, including subdivision~~
~~of land for more than four parcels, shall incorporate public access to publicly owned shorelines~~
~~or public waterbodies waters of the state as provided for in WCC 23.390.0780 (Public Access)~~
~~unless the site is designated in a shoreline public access plan for a greater component of public~~

Commented [DOE-Req225]: Required Change – It is unclear what the term “optimized” means but this change restores the exiting requirement that the remaining buffer areas are enhanced with trees, shrubs and groundcovers and maintained in perpetuity.

Commented [CES226]: Already addressed by 23.40.020(C)(2)

Commented [CES227]: Covered by Title 20.

Commented [DOE-Req228]: Required Change – This change restores the existing language that requires consideration for all multifamily development. There is nothing in the public access standards of the SMP Guidelines that exempt multifamily developments under a certain unit size [WAC 173-26-221(4)]

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access or public access is demonstrated to be infeasible or inappropriate. The amount and configuration of public access shall depend on the proposed use(s) and the following criteria:

- a. Multifamily development that have views of water areas shall provide a public pedestrian viewing area.
- b. Multifamily development adjacent to waters of the state shall provide access to a point abutting the water that will provide visual access, and shall provide physical access to public waterways, public marine waters, and public tidelands that are physically accessible at low tide or low water.
- c. Multifamily development subject to requirements for dedication of land to provide open space or mitigate recreation demands of the development shall dedicate such land on or adjacent to public waterways or marine shorelines, as applicable, unless the ecological sensitivity of such land precludes public access. Portions of the area dedicated may be fenced or otherwise restricted to limit public access to ecologically sensitive areas.

5-4. Recreational needs of building residents shall be provided through on-site recreation facilities and access to shorelines. The variety and number of on-site recreation facilities should increase proportionately as density increases. ~~Where appropriate, public access should be provided and integrated with the development.~~

~~A. Location and Design.~~

- ~~1. As mandated by the Act (RCW 90.58.320), no shoreline permit may be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines that will obstruct the view of a substantial number of residences on areas adjoining such shorelines, except where this program does not prohibit such development and only when overriding considerations of the public interest will be served.~~
- ~~2. Minimum required setbacks from shorelines and side property lines, maximum height limits and open space requirements are contained in WCC 23.90.130, Shoreline bulk provisions — Buffers, setbacks, height, open space and impervious surface coverage.~~

B.D. Additional Standards for Accessory Uses and Development.

- ~~1. Accessory development common to residences includes, but is not limited to, recreational moorage (mooring buoys, docks and floats), garages and shops, parking areas, water craft storage, shoreline stabilization, fences, cabanas, tennis courts, swimming pools, saunas, antennas, decks, walkways and landscaping.~~
- 2.1. Shoreline permits shall be required for accessory development that does not meet the intent and definition of an appurtenance as defined in WCC 23.110.010(16).
2. ~~Such Non-water dependent accessory uses development shall not be located~~ are prohibited in required shoreline setbacks, except, as provided in WCC Chapter 16.16 (Critical Areas).
3. Non-water dependent development uses and shall be prohibited over the water, unless clearly water dependent such as moorage (mooring buoys, docks and floats) for recreational or personal use.

Commented [CES229]: Mimicking the public access requirements for land divisions.

Commented [CES230]: Deleted throughout, as every use has to meet the general setbacks.

Commented [DN231]: Deleted, as this is a definition and is covered there.

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4. ~~For projects involving two or more dwelling units, only shared moorage consisting of mooring buoys, or shared moorage and/or floats, is permitted. Individual private docks are prohibited. Shared moorage may be approved if it meets all requirements in WCC 23.100.090.~~
5. ~~4. Private recreational docks and floats for individual lots are permitted in existing subdivisions which were approved on or before January 28, 1993, only where shared moorage has not already been developed and subject to the policies and regulations in WCC 23.100.090. For docks and piers, see WCC 23.40.150 (Moorage Structures).~~
- E. Regulations for Specific Shoreline Environment Designations.
1. In the Natural shoreline environment, residential development is prohibited, except that one single-family residence per legal lot may be permitted as a shoreline conditional use where there is no feasible location outside of the shoreline.
- D. Shoreline Area Regulations.
- A. ~~Urban. Residential development is permitted subject to policies and regulations of this program.~~
- B. ~~Urban Resort. Residential development is permitted subject to policies and regulations of this program.~~
- C. ~~Urban Conservancy. Single family and duplex development is permitted subject to policies and regulations of this program. Subdivision of property shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel. All other residential development may be permitted as a conditional use.~~
- D. ~~Shoreline Residential. Residential development is permitted subject to policies and regulations of this program.~~
- E. ~~Rural. Residential development is permitted subject to policies and regulations of this program.~~
- F. ~~Resource. Residential development limited to farm related residences or one residence and one accessory dwelling unit is permitted per existing parcel where there is no feasible location outside of the shoreline.~~
- G. ~~Conservancy. Single family and duplex development is permitted subject to policies and regulations of this program. Subdivision of property shall not be allowed in a configuration that will require significant vegetation removal or shoreline modification or result in a net loss of shoreline ecological functions and processes at the time of development of the subdivision and/or use of each new parcel. All other residential development may be permitted as a conditional use.~~
- H. ~~Natural. Residential development is prohibited, except that one single family residence per existing lot of record may be permitted as a conditional use where there is no feasible location outside of the shoreline.~~
- I. ~~Aquatic. Residential development is prohibited.~~

Commented [AP232]: Moved from 'Shoreline Area Regulations.'

Commented [CES233]: Addressed in use table now.

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23.4100.160-180 Restoration and Enhancement.

~~e. Restoration in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

A. Policies.

- ~~1. This program recognizes the importance of restoration of shoreline ecological functions and processes and encourages cooperative restoration efforts and programs between local, state, and federal public agencies, tribes, nonprofit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.~~
- ~~2. Restoration actions should restore shoreline ecological functions and processes as well as shoreline features and should be targeted towards meeting the needs of sensitive and/or locally important plant, fish and wildlife species as well as the biological recovery goals for early Chinook and bull trout populations, and other salmonid species and populations.~~
- ~~3. Restoration should be integrated with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan and the WRIA 1 Watershed Management Plan.~~
- ~~4. Priority should be given to restoration actions that:
 - ~~2. Create dynamic and sustainable ecosystems.~~
 - ~~3. Restore connectivity between stream/river channels, floodplains and hyporheic zones.~~
 - ~~4. Restore natural channel forming geomorphologic processes.~~
 - ~~5. Mitigate peak flows and associated impacts caused by high stormwater runoff volume.~~
 - ~~6. Reduce sediment input to streams and rivers and associated impacts.~~
 - ~~7. Improve water quality.~~
 - ~~8. Restore native vegetation and natural hydrologic functions of degraded and former wetlands.~~
 - ~~9. Replant native vegetation in riparian areas to restore functions.~~
 - ~~10. Restore nearshore ecosystem processes, such as sediment transport and delivery and tidal currents that create and sustain habitat.~~
 - ~~11. Restore pocket estuaries that support salmon life histories, including feeding and growth, refuge, osmoregulation, and migration.~~
 - ~~12. Address contamination along industrial shoreline regions.~~~~

A. Regulations-General.

1. Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed, and implemented in accordance with applicable policies and regulations of this program.
2. Restoration shall be carried out in accordance with an approved shoreline restoration plan, ~~County Resolution 2007-011, and in accordance with the policies and regulations of this program.~~
3. The County may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects within urban growth areas consistent with criteria and procedures in WAC 173-27-215.

Commented [DN234]: Moved from General Regulations section (WCC 23.30)

Commented [AP235]: Added per Periodic Review Checklist, Item 2009.a, and Scoping Document, Item #2f.

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~~1. Shoreline Area Regulations.~~

Commented [CES236]: Addressed in use table now.

- ~~a. Urban. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~b. Urban Resort. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~c. Urban Conservancy. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~d. Shoreline Residential. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~e. Rural. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~f. Resource. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~g. Conservancy. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~h. Natural. Restoration activities are permitted subject to policies and regulations of this program.~~
- ~~i. Aquatic. Restoration activities are permitted subject to policies and regulations of this program.~~

~~23.4100.170-190~~ Shoreline Stabilization.

~~A. General.~~

- ~~1. All development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible.~~
- ~~2. Shoreline stabilization measures shall comply with the principals and standards of WAC 173-26-231(3)(a) (Shoreline Stabilization).~~
- ~~3. Shoreline stabilization structures shall not result in a net loss of shoreline ecological functions. If shoreline stabilization is necessary pursuant to a geotechnical analysis, the method, either hard or soft, may be required to provide mitigation.~~
- ~~4. When authorized consistent with these provisions, shoreline stabilization measures shall be designed in accordance with WDFW's Integrated Streambank Protection Guidelines or WDFW's Marine Shoreline Design Guidelines, whichever is relevant to the particular environment.~~

Commented [CES237]: Added per DOE recommendation.

Commented [CES238]: Added per DOE recommendation.

~~4.5.~~ Alternatives for shoreline stabilization shall be based on the following order of preference:

- ~~a. No action, increase building setbacks, relocate structures;~~
- ~~a-b. Nonstructural shoreline stabilization, including building setbacks, relocation of structures to be protected, and groundwater management;~~
- ~~b-c. Other sSoft shoreline stabilization treatment;~~
- ~~d. Hybrid shoreline stabilization;~~
- ~~e. Hard shoreline stabilization.~~
- ~~6. Soft shoreline stabilization treatment shall be used unless demonstrated through a geotechnical analysis not to be sufficient to protect primary structures, dwellings, or businesses.~~
- ~~7. Hard shoreline stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:~~
 - ~~a. To protect legally existing primary structures:~~

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- i. New or enlarged structural shoreline stabilization measures for the existing primary structure, including residences and their primary appurtenant structures or uses, shall not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the lawfully established, primary structure will be damaged within three years from shoreline erosion caused by tidal actions, currents, or waves. Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using soft treatment.
 - ii. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need.
 - b. In support of water-dependent development when all of the following apply:
 - i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage;
 - ii. Nonstructural shoreline stabilization, planting vegetation, or installing on-site drainage improvements are not feasible or not sufficient;
 - iii. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report;
 - c. In support of non-water-dependent development, including single-family residences, when all of the following apply:
 - i. The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage;
 - ii. Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient;
 - iii. The need to protect the primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as tidal action, currents and waves;
 - d. To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to Chapter 70.105D RCW when nonstructural measures, planting vegetation, or installing on-site drainage improvements are not feasible or sufficient.
 8. When hard shoreline stabilization measures are demonstrated to be necessary, they must:
 - a. Limit the size of stabilization measures to the minimum necessary; and
 - b. Assure no net loss of shoreline ecological functions; and
 9. Publicly financed or subsidized shoreline erosion control measures shall provide appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions.
 10. Bioengineering approaches or other soft treatment shoreline stabilization that provide restoration of shoreline ecological functions may be permitted waterward of the OHWM.

Commented [CES239]: Amended to comply with WAC 173-26-231(3)(a)(iii)(E).

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11. Shoreline stabilization on streams should be located and designed to fit the physical character and hydraulic energy potential of a specific shoreline reach, which may differ substantially from adjacent reaches. ~~Hard shoreline stabilization methods are prohibited in jurisdictional shoreline streams on estuarine shores, in wetlands, and in salmon spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.~~
12. ~~Revetments are prohibited, except for use in water-dependent and public infrastructure projects, which may be permitted as conditional use.~~
13. ~~Gabions are prohibited along marine shorelines, but may be permitted as a conditional use along freshwater shorelines.~~
14. ~~Shore stabilization should not be developed for the purpose of filling shorelines. Shoreline stabilization measures shall not be for the purpose of creating dry land, leveling or extending property, creating or preserving residential lawns, yards, or landscaping, and shall not be allowed except when otherwise allowed in this program.~~
15. ~~Minimize disturbance pertaining to beach access by avoiding trails that may be subject to loss or damage by erosion require hard stabilization.~~
- ~~Bluff stabilization walls shall be prohibited unless proven necessary through a geotechnical report.~~
16. Placement of shoreline stabilization methods shall follow the natural contour of the existing shoreline, be parallel to and at or above the OHWM.
17. ~~When determined to be necessary pursuant to this section Bulkheads and other similar hard structures are shoreline stabilization prohibited on marine feeder bluffs or on marine or lake accretion shoreforms, shall require a except as a conditional use permit where exposure to storm waves and driftwood battering seriously threaten other similar existing structures and no feasible alternatives exist. Such bulkheads shall be set back a minimum of 20 feet landward from the OHWM.~~
 - a. ~~Shoreline stabilization on marine feeder bluffs may require additional mitigation measures, including those necessary to offset the loss of sediment supply.~~
 - b. ~~Shoreline stabilization on accretion shoreforms shall be set back a minimum of 20 feet landward from the OHWM.~~
18. Shoreline stabilization must be designed by a professional engineer licensed in the state of Washington with demonstrated experience in hydraulic activities of shorelines. Alternatively, soft ~~treatment~~ shoreline stabilization may be designed by a habitat biologist or a professional with demonstrated expertise in designing soft ~~treatment~~ shoreline stabilization.
19. Depending on the degree of hard or soft elements to the project, the ~~County~~, WDFW, and/or U.S. Army Corps of Engineers may require varying degrees of mitigation or other permit conditions.
20. Shoreline stabilization, as applied in this section, is generally distinguished from shoreline restoration activities. However, specific shoreline stabilization elements of restoration activities shall be guided by this section.

Commented [CES240]: Deleted since all stabilization requires a geotech report.

Commented [CES241]: Moved from below and modified based on discussion w/ DOE.

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21. Use of shoreline armoring to protect a lot where no primary structure presently exists shall be prohibited.

22. Shoreline stabilization structures shall not be constructed with waste materials such as demolition debris, derelict vessels, tires, concrete or any other materials which might have adverse toxic or visual impacts on shoreline areas.

B. Additional Standards for Replacement or Repair of Existing Shoreline Stabilization.

1. Damaged structural stabilization may be repaired up to 50% of the linear length within a 5-year period. Repair area that exceeds 50% shall be considered a replacement. Stabilization repair applications shall consider cumulative approvals of each successive application within a five-year period.

2. Any replacement of, additions to, or increases in the dimensions of existing shoreline stabilization measures shall be considered as a new structure.

3. An existing stabilization structure may be replaced with a similar structure if there is a demonstrated need, through a geotechnical report, to protect principal uses or structures from erosion caused by currents, tidal action or waves.

4. If the OHWM has been re-established, the replacement structure must be located at or near the new OHWM.

5. Alternative or soft treatment stabilization shall be considered prior to in-kind replacement through an alternatives analysis.

6. The replacement structure shall:

- a. Be designed, located, sized and constructed to assure no net loss of ecological functions.
- b. Perform the same stabilization function of the existing structure and not require additions to or increases in size.
- c. Not encroach waterward of the OHWM or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

7. When possible or as an element of mitigation sequencing, failing, harmful, unnecessary, or ineffective structures should be removed, and shoreline ecological functions and processes should be restored using nonstructural or soft and/or long-term stabilization measures.

C. Supplemental Application Materials Requirements.

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

- a. A scaled site plan showing:
 - i. The location of existing and proposed shore stabilization, structures, fill, and vegetation, with dimensions indicating distances to the OHWM; and
 - ii. Existing site topography, preferably with two-foot contours.
- b. A description of the processes affecting the site, and surrounding areas that influence or could be influenced by the site, including areas in which stream processes, lake or marine geomorphic processes affect the site, including, but not limited to:

Commented [CES242]: DOE recommended we have a threshold to distinguish between repair & replacement. How much has to be left to be considered replair? Language from SMP Handbook chapter 15, pg. 35-36.

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- i. Soil erosion, deposition, or accretion;
 - ii. Evidence of past or potential channel migration;
 - iii. Evidence of past or potential erosion due to tidal action and/or waves;
 - iv. Littoral drift; and
 - v. An estimate of shoreline erosion rates.
- c. A description and analysis of the urgency and risk associated with the specific site characteristics, an alternative analysis addressing the order of preference as specified in subsection (A)(4), and demonstrated need as specified in subsection (A)(7).
- d. A discussion and analysis demonstrating conformance with the standards enumerated in WCC Chapter 16.16 (Critical Areas).

Commented [CES243]: Added at DOE's recommendation.

D. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Conservancy and Conservancy shoreline environments, breakwaters and jetties may be permitted as a shoreline conditional use if accessory to a water-dependent use and littoral sediment transport is not significantly disrupted.
2. In the Natural shoreline area environment, shoreline stabilization is prohibited; except that using bioengineering approaches may be permitted when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere.
3. In the Aquatic shoreline environment:
 - a. Bioengineering approaches are permitted on tidelands and shorelands when necessary to restore an eroding accretion shoreform or to retard erosion elsewhere.
 - b. Drift sills, breakwaters, and jetties may be permitted as a shoreline conditional use if such development is permitted in the abutting upland shoreline environment designation.
 - c. Bulkheads or revetments are prohibited except for an approved water-dependent development.

Commented [AP244]: Moved from 'Shoreline Area Regulations.'

~~Shore stabilization in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

- ~~1. Alternatives to structures for shore protection should be used whenever possible. Such alternatives may include no action (allow the shoreline to retreat naturally), increased building setbacks, building relocation, drainage controls, and bioengineering, including vegetative stabilization, and beach nourishment.~~
- ~~2. New or expanded structural shore stabilization for new primary structures should be avoided. Instead, structures should be located and designed to avoid the need for future shoreline stabilization where feasible. Land subdivisions should be designed to assure that future development of the created lots will not require structural shore stabilization for reasonable development to occur.~~
- ~~3. New or expanded structural shore stabilization should only be permitted where demonstrated to be necessary to protect an existing primary structure that is in danger of loss or substantial damage,~~

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- 1 and where mitigation of impacts would not cause a net loss of shoreline ecological functions and
2 processes.
- 3 ~~4. New or expanded structural shore stabilization for enhancement, restoration, or hazardous~~
4 ~~substance remediation projects should only be allowed when nonstructural measures, vegetation~~
5 ~~planting, or on-site drainage improvements would be insufficient to achieve enhancement,~~
6 ~~restoration or remediation objectives.~~
- 7 ~~5. Shore stabilization on streams should be located and designed to fit the physical character and~~
8 ~~hydraulic energy potential of a specific shoreline reach, which may differ substantially from adjacent~~
9 ~~reaches.~~
- 10 ~~6. Shore stabilization should not be permitted to unnecessarily interfere with public access to public~~
11 ~~shorelines, nor with other appropriate shoreline uses including, but not limited to, navigation,~~
12 ~~seafood harvest, or private recreation.~~
- 13 ~~7. Provisions for multiple use, restoration, and/or public shore access should be incorporated into the~~
14 ~~location, design and maintenance of shore stabilization for public or quasi-public developments~~
15 ~~whenever safely compatible with the primary purpose. Shore stabilization on publicly owned~~
16 ~~shorelines should not be allowed to decrease long-term public use of the shoreline.~~
- 17 ~~8. Shore stabilization should be developed in a coordinated manner among affected property owners~~
18 ~~and public agencies for a whole drift sector (net shore-drift cell) or reach where feasible, particularly~~
19 ~~those that cross jurisdictional boundaries, to address ecological and geohydraulic processes,~~
20 ~~sediment conveyance and beach management issues. Where beach erosion threatens existing~~
21 ~~development, a comprehensive program for shoreline management should be established.~~
- 22 ~~9. In addition to conformance with the regulations in this section, nonregulatory methods to protect,~~
23 ~~enhance, and restore shoreline ecological functions and other shoreline resources should be~~
24 ~~encouraged for shore stabilization. Nonregulatory methods may include public facility and resource~~
25 ~~planning, technical assistance, education, voluntary enhancement and restoration projects, or other~~
26 ~~incentive programs.~~
- 27 ~~10. Shore stabilization should be located, designed, and maintained to protect and maintain shoreline~~
28 ~~ecological functions, ongoing shore processes, and the integrity of shore features. Ongoing stream,~~
29 ~~lake or marine processes and the probable effects of proposed shore stabilization on other~~
30 ~~properties and shore features should be considered. Shore stabilization should not be developed for~~
31 ~~the purpose of filling shorelines.~~
- 32 ~~11. Failing, harmful, unnecessary, or ineffective structures should be removed, and shoreline ecological~~
33 ~~functions and processes should be restored using nonstructural methods or less harmful long-term~~
34 ~~stabilization measures.~~
- 35 ~~12. Structural shoreline stabilization measures should only be used when more natural, flexible,~~
36 ~~nonstructural methods such as vegetative stabilization, beach nourishment and bioengineering have~~
37 ~~been determined infeasible. Alternatives for shoreline stabilization should be based on the following~~
38 ~~hierarchy of preference:~~
39 ~~a. No action (allow the shoreline to retreat naturally), increase building setbacks, and relocate~~
40 ~~structures.~~

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- ~~b. Flexible defense works constructed of natural materials including soft shore protection, bioengineering, including beach nourishment, protective berms, or vegetative stabilization.~~
- ~~c. Rigid works constructed of artificial materials such as riprap or concrete.~~
- ~~Materials used for construction of shoreline stabilization should be selected for long-term durability, ease of maintenance, compatibility with local shore features, including aesthetic values and flexibility for future uses.~~
- ~~13. Larger works such as jetties, breakwaters, weirs or groin systems should be permitted only for water-dependent uses when the benefits to the region outweigh resource losses from such works, and only where mitigated to provide no net loss of shoreline ecological functions and processes.~~
- ~~14. Alternative structures, including floating, portable or submerged breakwater structures, or several smaller discontinuous structures, should be considered where physical conditions make such alternatives with less impact feasible.~~
- ~~B. Regulations.~~
 - ~~1. Allowed Use.~~
 - ~~a. New or expanded structural shore stabilization for existing primary structures, including roads, railroads, public facilities, etc., is prohibited unless there is conclusive evidence documented by a geotechnical analysis that there is a significant possibility that the structure will be damaged within three years as a result of shoreline erosion caused by stream processes, tidal action or waves, and only when significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes. Where a geotechnical analysis confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.~~
 - ~~b. New shore stabilization for new development is prohibited unless it can be demonstrated that the proposed use cannot be developed without shore protection, and a geotechnical analysis documents that alternative solutions are not feasible or do not provide sufficient protection. The need for shore stabilization shall be considered in the determination of whether to approve new water-dependent uses. Proposed designs for new or expanded shore stabilization shall be designed in accordance with applicable Department of Ecology and Department of Fish and Wildlife guidelines and certified by a qualified professional.~~
 - ~~c. Shoreline stabilization is prohibited for new non-water-oriented development; provided, that such stabilization may be approved as a conditional use where a geotechnical analysis demonstrates that shore stabilization is necessary to facilitate reasonable use of a property and documents that alternative solutions, including location outside of the shoreline, are not feasible or do not provide sufficient protection, and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided.~~
 - ~~d. Where shore stabilization is allowed, it shall consist of "soft," flexible, and/or natural materials or other bioengineered approaches unless a geotechnical analysis demonstrates that such measures are infeasible.~~

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- 1 e. ~~Replacement of an existing shore stabilization structure with a similar structure is permitted~~
2 ~~if there is a demonstrated need to protect primary uses, structures or public facilities~~
3 ~~including roads, bridges, railways, and utility systems from erosion caused by stream~~
4 ~~undercutting or tidal action; provided, that the existing shore stabilization structure is~~
5 ~~removed from the shoreline as part of the replacement activity. A geotechnical analysis may~~
6 ~~be required to document that alternative solutions such as those listed in subsections~~
7 ~~(A)(12)(a) and (b) of this section are not feasible or do not provide sufficient protection.~~
8 ~~Existing shoreline stabilization structures that are being replaced shall be removed from the~~
9 ~~shoreline unless removal of such structures will cause significant damage to shoreline~~
10 ~~ecological functions or processes. Replacement walls, bulkheads or revetments shall not~~
11 ~~encroach waterward of the ordinary high water mark or the existing shore defense structure~~
12 ~~unless the primary use being protected is a residence that was occupied prior to January 1,~~
13 ~~1992, and there are overriding safety or environmental concerns. In such cases, the~~
14 ~~replacement structure shall abut the existing shoreline stabilization structure.~~
15 f. ~~Groins are prohibited except as a component of a professionally designed community or~~
16 ~~public beach management program that encompasses an entire drift sector or reach for~~
17 ~~which alternatives are infeasible, or where installed to protect or restore shoreline~~
18 ~~ecological functions or processes.~~
19 g. ~~Jetties and breakwaters are prohibited except as an integral component of a professionally~~
20 ~~designed harbor, marina, or port. Where permitted, floating, portable or submerged~~
21 ~~breakwater structures, or smaller discontinuous structures, are preferred where physical~~
22 ~~conditions make such alternatives with less impact feasible. Defense works that~~
23 ~~substantially reduce or block littoral drift and cause erosion of downdrift shores, shall not be~~
24 ~~allowed unless an adequate long-term professionally engineered beach nourishment~~
25 ~~program is established and maintained.~~
26 h. ~~New or expanded shore stabilization may be permitted to protect projects with the primary~~
27 ~~purpose of enhancing or restoring ecological functions, or projects for hazardous substance~~
28 ~~remediation pursuant to Chapter 70.105D RCW when nonstructural approaches, such as~~
29 ~~vegetation planting, and/or on-site drainage improvements are not feasible or do not~~
30 ~~provide sufficient protection.~~
31 i. ~~Proposed designs for new or expanded shore stabilization shall be designed and certified by~~
32 ~~a qualified professional.~~
33 j. ~~No motor vehicles, appliances, other similar structures nor parts thereof, nor structure~~
34 ~~demolition debris, nor any other solid waste shall be used for shore stabilization.~~
35 k. ~~The size of shore stabilization measures shall be limited to the minimum necessary to~~
36 ~~provide protection for the primary structure or use it is intended to protect.~~
37 2. ~~Marine Shorelines and Lakes. In those limited cases where a proposed bulkhead meets the~~
38 ~~criteria in this section for a shoreline permit or the exemption criteria under WCC 23.60.022,~~
39 ~~and to assure that such bulkheads will be consistent with the provisions of this program, the~~
40 ~~administrator shall review the proposed design as it relates to local physical conditions and issue~~

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written findings that the location and design meet all criteria of this program, subject to the following:

~~a. Bulkheads and other similar hard structures are prohibited on marine or lake accretion shoreforms, except as a conditional use where exposure to storm waves and driftwood battering seriously threaten other similar existing structures and no feasible alternatives exist. Such bulkheads shall be set back a minimum of 20 feet landward from the OHWM.~~

~~b. Bulkheads and other similar hard structures are prohibited on marine feeder bluff and estuarine shores, and on wetland and rock shores; provided, that such structures may be permitted as a conditional use where valuable primary structure(s) are at risk and no feasible alternatives exist and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided.~~

~~c. Bulkheads and other similar hard structures shall be located within one foot of the bank toe, and shall generally parallel the shoreline.~~

~~d. Bulkheads and other similar hard structures shall be designed and constructed with gravel backfill and weep holes so that natural downward movement of surface or ground water may continue without ponding or saturation.~~

~~e. Bulkheads exposed to significant wave action shall be designed to dissipate wave energy and scouring.~~

~~f. Walls, revetments or other similar hard structures within 10 feet of the OHWM shall be considered bulkheads; provided, that on accretion shoreforms walls or revetments or other similar hard structures within 20 feet of the OHWM shall be considered bulkheads.~~

~~3. Shore Stabilization on Streams. In those limited cases where a proposed bulkhead, revetment or other similar structure meets the criteria in this section for a shoreline permit or an exemption under WCC 23.60.022, and to assure that such revetment or similar structure will be consistent with this program, the administrator shall review the proposed design for consistency with state guidelines for stream bank protection as it relates to local physical conditions and issue written findings that the location and design meet all criteria of this program, subject to the following:~~

~~a. Revetments or similar hard structures are prohibited on estuarine shores, in wetlands, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.~~

~~b. Revetments or similar hard structures shall be placed landward of associated wetlands unless it can be demonstrated that placement waterward of such features would not adversely affect ecological functions.~~

~~c. A geotechnical analysis of stream geomorphology both upstream and downstream shall be performed to assess the physical character and hydraulic energy potential of the specific stream reach and adjacent reaches upstream or down, and assure that the physical integrity of the stream corridor is maintained, that stream processes are not adversely affected, and that the revetment will not cause significant damage to other properties or valuable shoreline resources. In addition:~~

Commented [CES245]: Moved above.

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- ~~i. Revetments or similar structures shall not be developed on the low, innermost channel banks in a stream except to protect public works, railways and existing commercial farmsteads.~~
 - ~~ii. Where revetments or similar structures are proposed, analysis shall assure that localized shore stabilization will be effective, as compared to more extensive cooperative measures to address reach scale processes. Revetments shall be set back at convex (inside) bends to allow streams to maintain point bars and associated aquatic habitat through normal accretion. Where revetments or similar structures have already cut off point bars from the stream, consideration should be given to their relocation.~~
 - ~~iii. Revetments shall be designed in accordance with WDFW streambank protection guidelines.~~
 - ~~d. Cut and fill slopes and backfilled areas shall be stabilized with brush matting and buffer strips and revegetated with native grasses, shrubs and/or trees so that there is no net loss of ecological functions.~~
 - ~~e. All forms of shore stabilization shall be constructed and maintained in a manner that does not degrade the quality of affected waters. The county may require reasonable conditions to achieve this objective such as setbacks, buffers, or storage basins.~~
 - ~~f. Shore stabilization shall allow for normal ground water movement and surface runoff.~~
 - ~~g. Selection of materials for projects shall be in conformance with applicable engineering standards.~~
- ~~4. Viewpoints and Public Access.~~
 - ~~a. Where appropriate, larger public or private shore stabilization projects shall be required to maintain, replace or enhance existing public access opportunities by incorporating physical or visual access areas and/or facilities into the design of the project.~~
 - ~~b. Publicly financed or subsidized shoreline stabilization shall not restrict appropriate public access to the shoreline and shall provide new public access except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to shoreline ecological functions.~~
- ~~5. Application Materials. Geotechnical reports required pursuant to this section shall address the need for shoreline stabilization and shall include the following:~~
 - ~~a. A scaled site plan showing:~~
 - ~~i. The location of existing and proposed shore stabilization, structures, fill, and vegetation, with dimensions indicating distances to the OHWM; and~~
 - ~~ii. Existing site topography, preferably with two-foot contours.~~
 - ~~b. A description of the processes affecting the site, and surrounding areas that influence or could be influenced by the site, including areas in which stream processes, lake or marine geomorphic processes affect the site, including, but not limited to:~~
 - ~~i. Soil erosion, deposition, or accretion;~~
 - ~~ii. Evidence of past or potential channel migration;~~
 - ~~iii. Evidence of past or potential erosion due to tidal action and/or waves;~~

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- iv. ~~Littoral drift; and~~
- v. ~~An estimate of shoreline erosion rates.~~
- c. ~~A description and analysis of the urgency and risk associated with the specific site characteristics.~~
- d. ~~A discussion and analysis demonstrating conformance with the standards enumerated in Chapter 16.16 WCC.~~
- C. ~~Shoreline Area Regulations.~~
 1. ~~Urban.~~
 - a. ~~Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - b. ~~Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - c. ~~Gabions are prohibited.~~
 2. ~~Urban Resort.~~
 - a. ~~Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - b. ~~Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - c. ~~Gabions are prohibited.~~
 3. ~~Urban Conservancy.~~
 - a. ~~Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - b. ~~Breakwaters and jetties may be permitted as a conditional use if accessory to a water-dependent use and littoral sediment transport is not significantly disrupted.~~
 - c. ~~Groins and gabions are prohibited.~~
 4. ~~Shoreline Residential.~~
 - a. ~~Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - b. ~~Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - c. ~~Gabions are prohibited.~~
 5. ~~Rural.~~
 - a. ~~Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - b. ~~Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - c. ~~Gabions are prohibited.~~
 6. ~~Resource.~~
 - a. ~~Bulkheads, revetments, and bioengineering approaches are permitted subject to policies and regulations of this program.~~
 - b. ~~Groins, breakwaters and jetties may be permitted as a conditional use.~~
 - c. ~~Gabions are prohibited.~~
 7. ~~Conservancy.~~

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

23.4100.180-200 Signs.

~~Signs in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC.~~

~~A. Policies.~~

~~A. Whatcom County recognizes the constitutional right for property owners to communicate using signs on their property. These policies are intended to ensure that signage within shoreline areas is~~

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consistent with the purpose and intent of the Act and this program by addressing impacts to ecological functions, public safety and visual aesthetics.

~~B. Signs should be located, designed and maintained to be visually compatible with local shoreline scenery as seen from both land and water, especially on shorelines of statewide significance.~~

~~C. Sign location and design should not significantly impair shoreline views.~~

~~D. As a preferable alternative to continued proliferation of single purpose signs, communities, districts, and/or multiuse or multitenant commercial developments are encouraged to erect single, common use gateway signs to identify and give directions to local premises and public facilities.~~

~~E. Signs of a commercial or industrial nature should be limited to those areas or premises to which the sign messages refer.~~

~~F. Billboards and other off-premises signs are not water dependent, reduce public enjoyment of or access to shorelines, and often lower values of nearby properties. Such signs should not be located on shorelines except for approved community gateway or directional signs.~~

~~G. Signs near scenic vistas and view points should be restricted in number, location, and height so that enjoyment of these limited and scarce areas is not impaired.~~

~~H. Freestanding signs should be located to avoid blocking scenic views and be located on the landward side of public transportation routes which generally parallel the shoreline.~~

~~I. To minimize negative visual impacts and obstructions to shoreline access and use, low-profile, on-premises wall signs are strongly preferred over freestanding signs or off-premises wall signs.~~

~~J. Signs should be designed mainly to identify the premises and nature of enterprise without unduly distracting uninterested passersby. Moving or flashing signs should be prohibited on shorelines.~~

~~B. Regulations.~~

~~A. General.~~

1. These provisions do not apply to private informational signs posted on private property by the owner for reasonable purposes such as address, No Trespass, and temporary signs such as For Sale, Rent and campaign signs; provided, that no such sign exceeds four square feet in area.

2. In addition to the regulations in this section, signs are subject to WCC 20.80.400, et seq. (Signs)

1-3. Unless otherwise prohibited by zoning regulations or this program, shoreline developments are permitted to maintain a total of three on-premises signs. Only one may be a freestanding, roof, or projecting sign; provided, that if this sign is double faced, then only one other wall sign is permitted. This provision does not apply to private informational signs posted on private property by the owner for reasonable purposes such as address, home occupation signs, No Trespass, and temporary signs such as For Sale, Rent and campaign signs; provided, no sign exceeds four square feet in area. All signs proposed for a development requiring a substantial development permit shall be designated on application and approval documents.

2. Multiuse or multitenant commercial developments shall erect no more than one sign at each street gateway.

3. Communities, neighborhoods and districts shall erect no more than one sign at each street gateway identifying the name of the community or neighborhood and give directions to local premises and public facilities.

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4. ~~Exception. Signs required by law and signs posted for legitimate safety purposes shall not be subject to limitations with respect to the number, location, and/or size; provided, that they are the minimum necessary to achieve the intended purpose. Such signs include but are not limited to official or legal notices issued and posted by any public agency or court, or traffic directional or warning signs.~~

5. ~~All building signs shall be integrated with building design. Roof signs shall be designed to occupy a design feature of the roof such as a dormer or gable and may not be placed above the peak of a pitched roof or the eave of a flat roof. Projecting signs shall be incorporated in a marquee, canopy, or other architectural feature.~~

6. ~~Applications for substantial development permits shall include a conceptual sign package addressing the size and location of all signs and shall include design standards to assure that all signs in a development are consistent in terms of material, color, height, size, and illumination.~~

7. ~~Sign permits not associated with a substantial development permit shall demonstrate compliance with all provisions of this code and shall be similar to and compatible with other signs in a development under a single ownership or approved as an integrated development.~~

8. ~~4. Sign illumination shall be indirect, incorporating exterior lighting shining on the sign, or shadow illumination behind nontransparent materials. Internally illuminated signs are prohibited.~~

9. ~~5. Distracting Devices. Any signs or other devices which flash, blink, flutter, rotate, oscillate, or otherwise purposely fluctuate in lighting or position, in order to attract attention through their distractive character, are prohibited on shorelines; provided, that searchlights, pennants, banners and other devices of seasonal, holiday, or special event character may be utilizeused for up to 90 days in one year.~~

10. ~~6. Freestanding signs other than those private informational signs described in subsection (BA)(1) of this section are prohibited between a public right-of-way and the water where the water-body is visible from the public right-of-way.~~

11. ~~7. To protect views from the water or publicly accessible beaches or lands adjacent to the water, freestanding signs other than those private informational signs described in subsection (BA)(1) of this section are prohibited between buildings and OHWM, and waterward of a line drawn from the nearest point of the building parallel to the shoreline; provided, that where a public road or path separates said building from the OHWM, up to one freestanding sign not to exceed 12 square feet is permitted between the road or path and said building.~~

12. ~~8. Signs may not be located in critical areas or buffers as established by WCC Chapter 16.16 except as otherwise provided for therein in Chapter 16.16 WCC; provided, that pursuant to subsections (B)(1) and (4) of this section, signs may be permitted within critical area buffers where the placement of such signs does not require the removal of vegetation.~~

13. ~~9. Unless specifically exempted from setback requirements in WCC 23.40.020, the minimum required setbacks for permanent freestanding signs are is 50 feet. From the ordinary high water mark, where not subject to critical areas or buffers: 50 feet.~~

~~a. From side property lines: 10 feet.~~

~~b. Maximum height: 15 feet.~~

Commented [AP246]: Revised for consistency with WCC 23.40.020 (Bulk Provisions) per Scoping Document, Item #16b.

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

C. Sign Area Limit.

a. The maximum area of individual sign faces shall be consistent with applicable zoning standards; provided, that the combined area of sign faces per premises shall not exceed 60 square feet with a maximum face area of freestanding signs not to exceed 12 square feet in all shoreline designations where signs are permitted, except on aquatic, urban conservancy, and conservancy shorelines and shorelines of statewide significance where the total sign area shall not exceed 24 square feet per premises and freestanding signs shall not exceed 4 square feet.

b. The size of individual building or tenant signs shall be governed in accordance with the following table:

Table 3. Sign Area Limits

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

1. (1) Includes only vertical building walls, excludes all roof area above the eaves and any dormers or other vertical areas above roof eaves. For building tenants, includes the area of the projection of the interior partitions onto the exterior wall.

2. (2) On aquatic and conservancy shorelines and shorelines of statewide significance, no sign visible from a public right of way, the water, or publicly accessible beaches or lands adjacent to the water, shall exceed 24 square feet, and freestanding signs shall not exceed four square feet.

Commented [CES247]: Covered by 20.80.400

3.10. Freestanding signs shall be entirely self-supporting and structurally sound without permanent use of guy wires or cables.

4.11. Signs shall comply with the standards in this section at any time a change in use or modification of structures requiring a substantial development permit is approved. Abandoned or derelict signs should either be properly restored or completely removed within a reasonable period of time by the sign owner or property owner as necessary.

B. Regulations for Specific Shoreline Environment Designations.

1. In the Natural shoreline environment, sign development is prohibited, except for trail marking, hazard warnings, or interpretive scientific or educational purposes and personal signs provided for in this section. Such permitted signs shall be limited in size and number to those required to affect their purpose.

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2. In the Aquatic shoreline area environment, only wall signs and low-profile freestanding signs less than 30 inches in height for water-dependent uses are permitted, except as provided for in this section, and no premise may have more than two signs.

C. Shoreline Area Regulations.

A. ~~Urban. Sign development is permitted subject to policies and regulations of this program.~~

B. ~~Urban Resort. Sign development is permitted subject to policies and regulations of this program.~~

C. ~~Shoreline Residential. Sign development is permitted subject to policies and regulations of this program.~~

D. ~~Urban Conservancy. Sign development is permitted subject to policies and regulations of this program.~~

E. ~~Rural. Sign development is permitted subject to policies and regulations of this program.~~

F. ~~Resource. Sign development is permitted subject to policies and regulations of this program.~~

G. ~~Conservancy. Sign development is permitted subject to policies and regulations of this program.~~

H. ~~Natural. Sign development is prohibited, except for trail marking, hazard warnings, or interpretive scientific or educational purposes and personal signs provided for in subsection (B)(1) of this section. Such permitted signs shall be limited in size and number to those required to affect their purpose.~~

I. ~~Aquatic. Only wall signs and low-profile freestanding signs under 30 inches in height for water-dependent uses are permitted, except as provided for in subsections (B)(1) and (4) of this section. No one premises may maintain more than two signs in an aquatic shoreline area.~~

23.4100.190-210 Transportation.

These regulations apply to both public and private transportation projects.

A. ~~General. Roads, railways, and other transportation developments in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. These policies and regulations apply to both public transportation projects and private transportation projects.~~

~~B. Policies.~~

C. ~~New public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline, unless:~~

D. ~~Perpendicular water crossings are required for access to authorized uses consistent with this program; or~~

E. ~~Facilities are primarily oriented to pedestrian and non-motorized use and provide an opportunity for a substantial number of people to enjoy shoreline areas, and are consistent with policies and regulations for ecological protection in WCC 23.90.030.~~

F. ~~Transportation facilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural sites.~~

G. ~~Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.~~

H. ~~New or expanded public transportation facility route selection and development should be coordinated with related local and state government land use and circulation planning.~~

Commented [AP248]: Carried over from removed 'Shoreline Area Regulations.'

Commented [CES249]: Addressed in use table now.

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~~I. Transportation system route planning, acquisition, and design in the shoreline should provide space wherever possible for compatible multiple uses such as utility lines, pedestrian shore access or view points, or recreational trails.~~

~~J. Transportation system plans and transportation projects within shorelines should provide safe trail space for non-motorized traffic such as pedestrians, bicyclists, or equestrians. Space for such uses should be required along roads on shorelines, where appropriate, and should be considered when rights-of-way are being vacated or abandoned.~~

~~K. Public access should be provided to shorelines where safe and compatible with the primary and adjacent use, or should be replaced where transportation development substantially impairs lawful public access. Viewpoints, parking, trails and similar improvements should be considered for transportation system projects in shoreline areas, especially where a need has been identified.~~

~~L. Public transportation routes, particularly arterial highways and railways, should be located, designed, and maintained to permit safe enjoyment of adjacent shore areas and properties by other appropriate uses such as recreation or residences. Vegetative screening or other buffering should be considered.~~

~~M. Regulations.~~

~~A. General.~~

1. RCW 36.87.130 prohibits the County from vacating any county road that abuts a body of saltwater or freshwater except for port, recreational, educational, or industrial purposes. Therefore, development, abandonment, or alteration of undeveloped county road ends within SMP jurisdiction is prohibited unless approved in accordance with this program.
2. Transportation development shall be carried out in a manner that maintains or improves state water quality standards for affected waters.
3. Maintenance activity including vegetation control and erosion control shall be carried out consistent with this program. Necessary minor resurfacing of existing roadways and replacement of culverts that improve shoreline ecological functions may be exempt from substantial development permit requirements as provided by WCC ~~23-60-020~~ Title 22 (Land Use and Development).

4. Transportation facilities must meet the following criteria:

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

~~c. Documentation that the proposed facilities comply with critical area regulations in WCC Chapter 16.16.~~

~~d.c. Documentation of how t~~The location, design, and use achieves no net loss of shoreline ecological functions and incorporate appropriate mitigation in accordance with WCC ~~23-30-020~~ 23.30.010 (Ecological Protection).

Commented [PDS250]: Redundent. Already a general regulation.

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d. ~~Documentation that~~The proposed facilities avoid public recreation areas and significant natural, ~~historic, archaeological~~ or cultural resources, or ~~that~~ no alternative is feasible outside of the shoreline and ~~that~~ all feasible measures to minimize adverse impacts have been incorporated into the proposal.

B. Site Design and Operation.

~~4-1.~~ Transportation facilities on shorelines shall be designed to generally follow natural topography, to minimize cuts and/or fills, to avoid cutting off meander bends or point bars, and to avoid adverse impacts to shoreline ecological functions and processes. Wherever such roads or railway embankments cross depressions remaining from remnant channels and oxbow bends, crossings of ample cross-section shall be provided to span the remnant feature.

~~5-2.~~ Raised arterial roads or railways shall be built outside the floodway except for necessary crossings. If built in the floodway fringe, such routes should be aligned generally parallel to outside stream bends so they will also act as setback dikes. Any parking areas required along such roads shall be sited at the base of the embankment and at the downstream corner of large accretion beaches, thus requiring no or minimal flood ~~hazard reduction control~~ works or shoreline stabilization. Local access roads in floodplains shall be built at valley floor grade level so that floodwaters are not abnormally obstructed nor diverted. Transportation facilities shall be designed so that no significant loss of floodway capacity or measurable increase in predictable flood levels will result. If transportation facilities are intended to secondarily provide flood ~~hazard reduction control~~, they shall comply with policies of the Comprehensive Plan and regulations for flood ~~hazard reduction control~~ works under WCC ~~23.40.080~~ 23.40.100 (Flood Hazard Reduction and Instream Structures).

~~6-3.~~ If a road is demonstrated to be necessary along an accretion shoreform, the waterward road shoulder shall be set back far enough from the primary berm so that the berm may absorb the high energy of storm tide breakers, as well as prevent road bed erosion and allow optimum recreational use of these scarce shore features.

~~7-4.~~ Spans on rivers shall avoid placing structures within the channel migration zone or other dynamic, shifting channel elements such as bends.

~~8-5.~~ Earth cut slopes and other exposed soils shall be placed, compacted, and planted or otherwise stabilized and protected from surface runoff with native vegetation. Transportation facilities sited close to water, wetlands, or other sensitive features shall incorporate the maximum feasible buffer of native vegetation in accordance with critical area regulations in WCC Chapter 16.16.

~~9-6.~~ Bridges or bottomless culverts or other similar structures shall be used in accordance with WDFW guidance to protect shoreline ecological functions and processes. Bridge approaches in floodways shall be constructed on open piling, support piers, or other similar measures to preserve hydraulic processes.

~~10-7.~~ Bridge supports and abutments shall be designed and spaced so they do not act as walls baffling or blocking flood waters, or interrupting stream channel processes or littoral drift.

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~~11.8.~~ Transportation facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood treated with creosote, pentachlorophenol or other similarly toxic materials are prohibited. Preferred materials are concrete and steel.

~~12.9.~~ Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignment shall follow the natural contours of the site and minimize width to the maximum extent feasible. Elevated walkways should be ~~utilize~~ use to cross wetlands.

~~10.~~ Nonemergency construction and repair work shall be scheduled for that time of year when seasonal conditions (weather, streamflow) permit optimum feasible protection of shoreline ecological functions and processes.

~~N-C.~~ Additional Standards for Parking Facilities.

~~1.~~ Parking facilities are not a water-dependent use and shall only be permitted in the shoreline to support an authorized use where it can be demonstrated that there are no feasible alternative locations away from the shoreline. Parking facilities shall be buffered from the water's edge and less intense adjacent land uses by vegetation screening, undeveloped space, or structures developed for the authorized primary use.

~~1.2.~~ Parking areas shall be developed ~~utilizing~~ using low impact development techniques whenever possible including, but not limited to, the use of permeable surfacing materials.

~~2.3.~~ Impervious surfacing for parking lot/space areas shall be minimized through the use of alternative surfaces where feasible, consistent with the most current Low Impact Development Technical Guidance Manual for Puget Sound, or as amended.

~~3.~~ Minimum required setbacks from shorelines are contained in WCC ~~23.90.130~~, Shoreline bulk provisions— Buffers, setbacks, height, open space and impervious surface coverage.

~~D.~~ Supplemental Application Requirements.

~~1.~~ In addition to the application requirements specified in WCC Title 22 (Land Use and Development), All applications for new or expanded transportation facilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this program, including but not limited to subsection (A)(4) of this section.

~~2.~~ Documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to connect specific end points. An analysis of alternatives may be required. New or expanded public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline.

~~3.~~ Documentation that the facilities are primarily oriented to pedestrian use and provide an opportunity for a substantial number of people to enjoy shoreline areas.

~~4.~~ Documentation that the proposed facilities comply with critical area regulations in Chapter ~~16.16~~ WCC.

Commented [DN251]: Moved from Site Planning section (WCC 23.30.080).

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5. Documentation of how the location, design, and use achieves no net loss of shoreline ecological functions and incorporate appropriate mitigation in accordance with WCC 23.90.030.

6. Documentation that facilities avoid public recreation areas and significant natural, historic, archaeological or cultural resources, or that no alternative is feasible outside of the shoreline and that all feasible measures to minimize adverse impacts have been incorporated into the proposal.

E. Regulations for Specific Shoreline Environment Designations.

1. In the Urban Conservancy and Conservancy shoreline area environments, transportation facilities are permitted only for access to approved development.

2. In the Natural shoreline area environment, transportation facilities are prohibited, except to access approved recreational development.

3. In the Aquatic shoreline area environment, access to water-dependent or water-related uses, such as ferry terminals, is permitted. Bridge crossings for non-water-dependent or non-water-related uses may be permitted as a shoreline conditional use.

A. Shoreline Area Regulations.

1. Urban. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.

2. Urban Resort. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.

3. Urban Conservancy. Transportation facilities are permitted only for access to approved development, subject to policies and regulations of this program.

4. Shoreline Residential. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.

5. Rural. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.

6. Resource. Transportation facilities are permitted subject to policies and regulations of this program. Transportation facilities not serving a specific approved use, including roads, railways, and parking areas, may be permitted as a conditional use, provided there is no feasible location outside of the shoreline.

7. Conservancy. Transportation facilities are permitted only for access to approved development, subject to policies and regulations of this program.

Commented [AP252]: Carried over from removed 'Shoreline Area Regulations.'

Commented [CES253]: Addressed in use table now.

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~~8. Natural. Transportation facilities are prohibited, except to access approved recreational development.~~

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

23.4100.200-220 Utilities.

~~Utility development in shoreline areas shall be subject to the policies and regulations of this section and Chapter 23.90 WCC. These policies and regulations apply to both local and regional, both public and private utilities. This section applies to regional and local utilities, both public and private, but not to accessory utilities (see definitions in WCC Chapter 23.60); however, there are regulations regarding septic systems located in WCC 23.30.020 (Water Quality and Quantity).~~

~~A. Policies.~~

~~A. New public or private utilities should be located inland from the land/water interface, preferably out of the shoreline jurisdiction, unless:~~

~~a. Perpendicular water crossings are unavoidable; or~~

~~b. Utilities are required for authorized shoreline uses consistent with this program.~~

~~B. Utilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural resources.~~

~~C. Utilities should be located, designed, constructed, and operated to result in no net loss of shoreline ecological functions and processes with appropriate mitigation as provided in WCC 23.90.030.~~

~~D. All utility development should be consistent with and coordinated with all local government and state planning, including comprehensive plans and single purpose plans to meet the needs of future populations in areas planned to accommodate growth. Site planning and rights-of way for utility development should provide for compatible multiple uses such as shore access, trails, and recreation or other appropriate use whenever possible; utility right-of way acquisition should also be coordinated with transportation and recreation planning.~~

~~E. Utilities should be located in existing rights-of way and corridors whenever possible.~~

~~F. Utilities serving new development should be located underground, wherever possible.~~

~~G. Development of pipelines and cables on aquatic lands and tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which would disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.~~

~~B. Regulations.~~

~~A. General Design and Operation.~~

- ~~1. Components of water systems Utilities which that~~ are not water-dependent shall be located away from shoreline jurisdiction unless alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant adverse impacts to other

Commented [AP254]: Added pursuant to scoping document Item 17i.

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- shoreline resources and values such as parks and recreation facilities, public access, and ~~archaeological, historic, and cultural resources, and or~~ aesthetic resources.
2. ~~Fire Protection Facilities.~~ Storage and handling facilities for water-borne firefighting or rescue equipment may be permitted on shoreline jurisdiction at locations which are suitable considering the purpose of the proposal and the policies of the Comprehensive Plan.
3. ~~Utilities shall be located within roadway and driveway corridors and rights-of-way wherever feasible.~~
- 3.4. ~~New and expanded u~~Utilities must meet the following criteria:
- a. ~~Documentation that t~~The ~~proposed~~ facilities ~~esy~~ cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to cross shorelands to connect specific end points. An analysis of alternatives may be required. ~~New or expanded public or private u~~Utilities should be located inland from the land/water interface, preferably out of shoreline jurisdiction.
- b. ~~Documentation that the proposed facilities comply with critical area regulations in WCC Chapter 16.16.~~
- ~~e.b. Documentation of how t~~The location, design, and use ~~of the proposed facility~~ achieves no net loss of shoreline ecological functions and incorporates appropriate mitigation in accordance with WCC ~~23.30.020~~23.30.010 (Ecological Protection).
- ~~d.c. Documentation that~~The ~~proposed~~ facilities will avoid public recreation areas and significant natural, ~~historic, archaeological~~ or cultural ~~resources~~ sites, and that all feasible measures to minimize adverse impacts to such resources have been incorporated into the proposal.
- d. ~~Applications must demonstrate~~The ~~proposal includes~~ adequate provisions for preventing spills or leaks, as well as procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.
- e. ~~If the proposal is for oil, gas, and natural gas utilities and pipelines or electrical energy and communications utilities~~Application materials, ~~it shall~~ includes an analysis of alternative routes avoiding aquatic lands, including an analysis of alternative technology.
- B. ~~Additional Standards for Specific Utilities~~Water Systems.
1. ~~Desalinization facilities shall be located consistent with critical area regulations and buffers, except for water-dependent components such as water intakes.~~
2. ~~Solid Waste Facilities.~~
- a. ~~Private and public intake facilities, and wells on shorelines, should be located where there will be no net loss in ecological functions or adverse impacts upon shoreline resources, values, natural features, or other users.~~
- b. ~~Desalinization facilities shall be located consistent with critical area regulations and buffers, except for water-dependent components such as water intakes.~~
- c. ~~Sewage Systems.~~
- d. ~~Sewage trunk lines, interceptors, pump stations, treatment plants and other components that are not water-dependent shall be located away from shoreline jurisdiction unless~~

Commented [CES255]: Moved from Site Planning section; required by WAC 173-26-241(3)(I).

Commented [PDS256]: Redundant. Already a general regulation.

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alternative locations, including alternative technology, are demonstrated to be infeasible and it is demonstrated that the facilities do not result in a net loss of shoreline ecological functions and processes or significant impacts to other shoreline resources and values such as parks and recreation facilities, public access and archaeological, historic, and cultural resources, and aesthetic resources.

e. Outfall pipelines and diffusers are water dependent, but should be located only where there will be no net loss in shoreline ecological functions and processes or adverse impacts upon shoreline resources and values.

f. Septic tanks and drainfields are prohibited where public sewer is reasonably available.

g-a. Solid Waste Facilities. Facilities for processing, storage and disposal of solid waste are not normally water-dependent. Components that are not water-dependent shall not be permitted ~~on~~ in shoreline jurisdiction.

h-b. Disposal of solid waste on shorelines or in water-bodies has potential for severe adverse effects upon ecological processes and functions, property values, public health, natural resources, and local aesthetic values and shall not be permitted.

i-c. Temporary storage of solid waste in suitable receptacles is permitted as an accessory use to a primary permitted use, or for litter control.

2.3. Oil, Gas and Natural Gas Transmission.

a. ~~Regional~~ Oil, gas, and natural gas ~~utility~~ pipelines, ~~except local service lines~~, shall not be located in shoreline jurisdiction unless alternatives are demonstrated to be infeasible ~~and shall include analysis of alternative routes avoiding aquatic lands and including alternative technology.~~

b. ~~Local~~ Natural gas ~~local service lines~~ utilities shall not be located in ~~shoreline area~~ shoreline environments unless serving approved shoreline uses. Crossings of shorelines shall not be approved unless alternatives are demonstrated to be infeasible. ~~Application materials shall include an analysis of alternative routes avoiding aquatic lands, including an analysis of alternative technology.~~

C. ~~Developers and operators of pipelines and related appurtenances for gas and oil shall be required to demonstrate adequate provisions for preventing spills or leaks, as well as established procedures for mitigating damages from spills or other malfunctions and shall demonstrate that periodic maintenance will not disrupt shoreline ecological functions.~~

4.4. Electrical Energy and Communication Systems.

2. ~~Energy and communication systems including substations, towers, transmission and distribution lines have critical location requirements, but are not normally water dependent. Systems components that are not water dependent shall not be located on shoreline jurisdiction unless alternatives are infeasible. Application materials for such facilities shall include an analysis of alternative routes avoiding aquatic lands, including an analysis of alternative technology.~~

a. Underground placement of lines shall be required on shorelines for new or replacement lines that are parallel to the shoreline, and do not cross water or other critical areas ~~defined in WCC Chapter 16.16~~; provided, that maintenance of existing aerial lines above 35kv may

Commented [DN257]: Moved to the General Regs – Water Quality section as this would apply universally and relates more to accessory utilities

Commented [AP258]: Captured above.

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be permitted above ground where alternatives are demonstrated to be impractical and/or infeasible. New or replacement lines that cross water or other critical areas ~~defined in Chapter 16.16 WCC~~ may be required to be placed underground depending on impacts on ecological functions and processes and visual impacts; provided, that maintenance of existing aerial lines above 35 kv may be permitted above ground where alternatives are demonstrated to be impractical and/or infeasible. Poles or supports treated with creosote or other wood preservatives that may be mobile in water shall not be used along shorelines or associated wetlands. Where road rights-of-way or easements are within 150 feet and also are parallel to the shoreline for more than 500 feet, no new overhead wiring shall be installed between the road and OHWM.

b. Utilities for ~~new~~ development within the shoreline shall be installed underground.

~~a. Other Utility Production and Processing Facilities. Other utility processing facilities, such as power plants, that are non-water-oriented shall not be allowed in shoreline jurisdiction unless no other feasible alternative is available.~~

~~b. Minimum required setbacks from shorelines and side property lines and maximum height limits are contained in WCC 23.90.130, Shoreline bulk provisions—Buffers, setbacks, height, open space and impervious surface coverage.~~

~~c. Site Coverage. Maximum site coverage for utility development including parking and storage areas shall not exceed standards in the underlying zoning in WCC Title 20 and shall not exceed 50 percent on urban, urban resort and shoreline residential shorelines, 35 percent on rural and resource shorelines and 20 percent on urban conservancy and conservancy shorelines.~~

5. Hydropower Development. In addition to the general requirements, above, hydropower facilities shall be located, designed, and operated to:

a. Minimize impacts to fish and wildlife resources including spawning, nesting, rearing habitat, migratory routes, and critical areas. Mitigation measures to achieve no net loss of shoreline ecological functions and processes shall be implemented in accordance with WCC 23.30.010 (Ecological Protection).

b. Minimize impacts to geohydraulic processes; waterfalls; erosion and accretion shoreforms; agricultural land; scenic vistas; recreation sites; and sites having significant historical, cultural, scientific, or educational value.

c. Accommodate public access to, and multiple use of, the shoreline.

d. Comply with the instream structure regulations of 23.40.100 (Flood Hazard Reduction and Instream Structures).

C. Supplemental Application Requirements.

1. In addition to the minimum application requirements specified in WCC Title 22 (Land Use and Development), All applications for ~~new or expanded~~ utilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this program, ~~including but not limited to subsection (1)(b) of this section.~~

D. Regulations for Specific Shoreline Environment Designations.

Commented [AP259]: Revised for conciseness and clarity.

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1. In the Urban Conservancy and Conservancy shoreline environments, local utility development is permitted; provided, that sewage outfalls and treatment plants, over-water communication or power-lines, fuel pipelines, and other types of hazardous material pipelines may be permitted as a shoreline conditional use, provided there is no feasible location outside the shoreline.
2. In the Natural shoreline environment, utility development is prohibited. Maintenance of existing utilities is permitted and shall take extraordinary measures in protecting the natural features therein.
3. In the Aquatic shoreline environment:
 - a. Submarine electrical or communications cables, over-water public utility lines consisting of local distribution facilities if adequately flood-proofed, water intakes, and desalinization facility intakes are permitted.
 - b. Submarine water and sewer lines, fuel pipelines, sewer, and desalinization outfalls may be permitted as shoreline conditional uses.
 - c. Crossings of water-bodies by over-water transmission or distribution lines and on-site electrical communication wiring may be permitted within 100 feet of the OHWM and wetlands and over bodies of water as a shoreline conditional use. All other utility development is prohibited.

C. ~~Shoreline Area Regulations.~~

- A. ~~Urban. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.~~
- B. ~~Urban Resort. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.~~
- C. ~~Urban Conservancy. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program; provided, that sewage outfalls and treatment plants, over-water communication or power lines, fuel pipelines, and other types of hazardous material pipelines may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Freestanding communication towers are prohibited. Desalinization facilities may be permitted as a conditional use.~~
- D. ~~Shoreline Residential. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use,~~

Commented [AP260]: Moved from 'Shoreline Area Regulations,' below.

Commented [CES261]: Addressed by use table now.

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~~provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.~~

~~E. Rural. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.~~

~~F. Resource. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Desalinization facilities may be permitted as a conditional use.~~

~~G. Conservancy. Utility development consisting of local distribution facilities is permitted subject to policies and regulations of this program; provided, that sewage outfalls and treatment plants, over water communication or power lines, fuel pipelines, and other types of hazardous material pipelines may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Regional facilities, including transmission facilities serving customers outside of Whatcom County, may be permitted as a conditional use, provided there is no feasible location outside the shoreline. Freestanding communication towers are prohibited. Desalinization facilities may be permitted as a conditional use.~~

~~H. Natural:~~

~~a. Utility development is prohibited.~~

~~b. Maintenance of existing utilities is permitted and shall take extraordinary measures in protecting the natural features therein.~~

~~I. Aquatic:~~

~~a. Submarine electrical or communications cables, over water public utility lines consisting of local distribution facilities if adequately flood proofed, water intakes, and desalinization facility intakes are permitted subject to policies and regulations of this program.~~

~~b. Submarine water and sewer lines, fuel pipelines, sewer, and desalination outfalls may be permitted as conditional uses.~~

~~c. Crossings of water bodies by over water transmission or distribution lines and on-site electrical communication wiring may be permitted within 100 feet of the OHWM and wetlands and over bodies of water as a conditional use. All other utility development is prohibited.~~

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**Chapter 23.50 Applicability and Nonconforming Uses, Structures, and
Lots**

Commented [AP262]: Moved Applicability portion to Chapter 23.10, Purpose, Intent, and Applicability

23.50.010 Application to persons and development.

Commented [AP263]: Moved to Chapter 23.10

~~C. This program shall apply to any person as defined in Chapter 23.110 WCC.~~

~~D. This program shall apply to any use or development as defined in Chapter 23.110 WCC. All development and use of shorelines of the state shall be carried out in a manner that is consistent with this program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required for such development pursuant to Chapter 23.60 WCC.~~

~~E. No substantial development as defined in Chapter 23.110 WCC shall be undertaken within shorelines by any person on shorelines without first obtaining a substantial development permit from Whatcom County; provided, that such a permit shall not be required for the exempt activities listed in WCC 23.60.022.~~

23.50.020 Relationship to other local regulations.

Commented [AP264]: Moved to Chapter 23.05.

~~F. In the case of development subject to the shoreline permit requirement of this program, the county building official shall not issue a building permit for such development until a shoreline permit has been granted; provided, that any permit issued by the building official for such development shall be subject to the same terms and conditions that apply to the shoreline permit.~~

~~G. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided, that for single family residences, a building permit reviewed and signed off by the administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review. The building official shall attach and enforce conditions to the building permit as required by applicable regulations of this program pursuant to RCW 90.58.140(1).~~

~~H. In the case of zoning conditional use permits and/or variances required by WCC Title 20 for development that is also within shorelines, the county decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program in consideration of recommendations from the administrator. The decision maker shall attach conditions to such permits and variances as required to make such development consistent with this program.~~

~~I. In the case of land divisions, such as short subdivisions, long plats and planned unit developments that require county approval, the decision maker shall document compliance with bulk and dimensional standards as well as policies and regulations of this program and attach appropriate conditions and/or mitigating measures to such approvals to ensure the design, development activities and future use associated with such land division(s) are consistent with this program.~~

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~~J. Other local ordinances that may be applicable to shoreline development or use include, but are not limited to:~~
~~1. Building, plumbing, mechanical, and fire codes.~~
~~2. Boating and swimming, WCC Title 11.~~
~~3. On-site sewage system regulations, Chapter 24.05 WCC.~~
~~4. Solid waste rules and regulations, Chapter 24.06 WCC.~~
~~5. Zoning, WCC Title 20.~~
~~6. Land division regulations, WCC Title 21.~~
~~7. Development standards.~~

~~23.50.030 Relationship to other state and federal laws.~~

~~F. Obtaining a shoreline permit or statement of exemption for a development or use does not excuse the applicant/proponent from complying with any other local, tribal, state, regional or federal statutes or regulations applicable to such development or use.~~

~~G. At the time of application or initial inquiry, the administrator shall inform the applicant/proponent of other such statutes and regulations relating to shoreline issues that may be applicable to the project to the extent that the administrator is aware of such statutes. However, the final responsibility for determining applicable statutes and regulations and complying with the same rests with the applicant/proponent or responsible person carrying out the use or development in question.~~

~~H. Washington State statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~

- ~~1. Flood Control Zone Act, Chapter 86.16 RCW.~~
- ~~2. Forest Practices Act, Chapter 76.09 RCW.~~
- ~~3. Fish and Wildlife, RCW Title 77.~~
- ~~4. Water Pollution Control Act, Chapter 90.48 RCW.~~
- ~~5. Land Subdivision Act, Chapter 58.17 RCW.~~
- ~~6. Surface Mining Act, Chapter 78.44 RCW.~~
- ~~7. Washington Clean Air Act, Chapter 70.94 RCW.~~
- ~~8. State Environmental Policy Act (SEPA), Chapter 43.21C RCW.~~
- ~~9. Camping Resorts Act, Chapter 19.105 RCW.~~
- ~~10. Water Resources Act of 1971, Chapter 90.54 RCW.~~
- ~~11. Growth Management Act, Chapter 36.70A RCW.~~
- ~~12. State Hydraulic Code, Chapter 77.55 RCW.~~

~~I. Regional authority regulations authorized by state law that may be applicable to shoreline development or use include, but are not limited to:~~

- ~~1. Northwest Clean Air Agency regulations.~~
- ~~2. Puget Sound Water Quality Management Plan.~~

~~J. Federal statutes together with implementing regulations adopted pursuant thereto that may be applicable to shoreline development or use include, but are not limited to:~~

Commented [AP265]: Moved to Chapter 23.05

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- ~~1. Rivers and Harbors Act of 1899.~~
- ~~2. Fish and Wildlife Coordination Act of 1958.~~
- ~~3. National Environmental Policy Act of 1969 (NEPA).~~
- ~~4. Coastal Zone Management Act of 1972, as amended.~~
- ~~5. Federal Water Pollution Control Act, as amended.~~
- ~~6. Flood Insurance Act of 1968, as amended.~~
- ~~7. Clean Air Act, as amended.~~
- ~~8. Endangered Species Act (ESA).~~

23.50.040 Application within federal reserves.

- ~~B. The shoreline permit procedures, policies and regulations established in this program shall apply to development or use of shorelines of the state within national forests, national parks and national recreation areas by persons other than federal agencies.~~
- ~~C. As recognized by RCW 90.58.350, the provisions of this program shall not apply to lands held in trust by the United States for Indian nations, tribes or individuals.~~

Commented [AP266]: Moved to Chapter 23.05

23.50.050 Program effects on property values.

- ~~C. As provided for in RCW 90.58.290, the restrictions imposed upon use of real property through implementation of policies and regulations of the Act and this program shall be duly considered by the county assessor and the county board of equalization in establishing the fair market value of such properties.~~
- ~~D. Designation of private property as a natural or conservancy shoreline area pursuant to Chapter 23.30 WCC shall qualify the property as meeting the definition of "open space land" under the Open Space Taxation Act of 1970, as amended (RCW 84.34.020(1)) and shall qualify such land for application for open space taxation in accordance with RCW 84.34.037 and Chapter 3.28 WCC.~~

Commented [AP267]: Moved to Chapter 23.05

23.50.060 Hazardous substance remedial actions.

- ~~A. The procedural requirements of Chapter 90.58 RCW shall not apply to a project for which a consent decree, order, or agreed order has been issued pursuant to Chapter 70.105D RCW or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D RCW. The Department of Ecology shall, in consultation with the administrator, assure that such projects comply with the substantive requirements of Chapter 90.58 RCW, Chapter 173-26 WAC and this program. (Ord. 2009 13 § 1 (Exh. 1)).~~

Commented [AP268]: Deleted per Periodic Review Checklist, Item 2017.c, and Scoping Document, Item #1c. Exceptions are now established in §22.07.010(G).

23.50.070 Nonconforming development.

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

- ~~A. The lawfully established use of any building, structure, land or premises existing on the effective date of initial adoption of the program (August 27, 1976), or any subsequent amendment thereto or authorized under a permit or approval issued, or otherwise vested, prior to the effective date of initial adoption of the program or any subsequent amendment thereafter shall be considered~~

Commented [MD269]: Rewritten (below) per the latest DOE guidance that separates out nonconforming uses, development, and lots. See minor revisions to draft replacement text below.

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nonconforming and may be continued, subject to the provisions of this section; provided, that agricultural activities shall conform to WCC 16.16.290; provided further, that bulkheads shall conform to WCC 23.100.130.

B. Nonconforming structures may be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of this program is not increased; provided, that a nonconforming development that is moved any distance must be brought into conformance with this program and the Act; provided further, that as a conditional use a nonconforming dock may be modified, reoriented or altered within the same general location to be more consistent with the provisions of this SMP.

C. Nonconforming structures, other than single family residences and their appurtenances that are expanded or enlarged must obtain a variance or be brought into conformance with this program and the Act; provided, that nonconforming structures with conforming uses may be expanded or enlarged within the existing building footprint as a conditional use pursuant to WCC 23.100.050(B)(1)(e).

D. Nonconforming structures (including accessory structures) that are damaged or destroyed by fire, explosion, flood, or other casualty may be restored or replaced in kind; provided, that:

1. Structures containing conforming uses, such as a single family residence or accessory structure, that are located within a hazardous area shall be redeveloped consistent with the requirements of Chapter 16.16 WCC, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas); provided, that the permit process is commenced within 18 months of the date of such damage; and the reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsections H and I of this section.

2. Structures containing nonconforming uses can be replaced in kind if there is no feasible alternative that allows for compliance with the provisions of this program, and the permit process is commenced within 18 months of the date of such damage, and the reconstruction does not expand, enlarge, or otherwise increase the nonconformity, except as provided for in subsection E or H of this section.

E. If a nonagricultural nonconforming use is intentionally abandoned for a period of 12 months or more, then any future use of the nonconforming building, land or premises shall be consistent with the provisions of this program.

F. Replacement of any nonconforming structures or buildings or portions thereof within the aquatic shoreline area shall comply with program requirements for materials that come in contact with the water pursuant to WCC 23.90.040(B)(5); provided, that replacement of existing wood pilings with chemically treated wood is allowed for maintenance purposes where use of a different material such as steel or concrete would result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds 20 percent of the existing pilings over a 10 year period, such pilings shall conform to the standard provisions of this section.

G. Enlargement or expansion of single family residences by the addition of space to the main structure or by the addition of normal appurtenances as defined in Chapter 23.110 WCC that extend waterward of the existing primary residential foundation walls further into a critical area (excluding

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the buffers of the critical areas), further into the minimum required side yard setback, or that increase the structure height above the limits established by this program shall require a variance; provided, that expansion of nonconforming single family residences other than that specified in this subsection I may be expanded without a variance where the provisions of subsection J or K of this section apply.

H. The enlargement or expansion of single family residences by the addition of space to the exterior of the main structure or normal appurtenances is permitted without a conditional use permit or variance once during the life of the structure (100 years). The structure shall be located landward of the ordinary high water mark, and any expansion of the footprint is landward of the existing building footprint (not the side yard), and any vertical expansion is within the existing building footprint; provided, that the following conditions are met:

1. Enlargements, expansions, or additions that increase the existing primary structure or normal appurtenances by up to 250 square feet of gross floor area as defined by Chapter 23.110 WCC shall be allowed provided the expansion or addition will occur on a previously impacted impervious surface and the expansion is not waterward of the common line setback as illustrated in Appendix F.
2. Enlargements, expansions, or additions that increase the total footprint of the existing primary structure or normal appurtenances by 250 to 500 square feet of gross floor area as defined by Chapter 23.110 WCC shall be allowed; provided, that the addition will occur on a previously impacted impervious surface and the expansion is not waterward of the common line setback as illustrated in Appendix F; further provided, that the shoreline is enhanced by the equivalent area of a building footprint that is expanded. If enhanced through planting, the administrator shall require a vegetation management plan consistent with WCC 23.90.060(B)(2).

I. The administrator shall require a conditional use permit if the enlargement or expansion of single family residences by the addition of space to the exterior of the main structure or normal appurtenances is in excess of those allowances provided in subsection J of this section.

J. A structure that 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. In addition to the conditional use criteria of WCC 23.60.040, before approving a conditional use for a change in nonconforming use, the hearing examiner shall also find that:

1. No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;
2. The proposed use will be at least as consistent with the policies and provisions of the Act and this program and as compatible with the uses in the area as the preexisting use;
3. The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
4. The structure(s) associated with the nonconforming use shall not be expanded in a manner that increases the extent of the nonconformity including encroachment into areas, such as setbacks, and any critical areas and/or associated buffers established by Chapter 16.16 WCC, where new structures, development or use would not be allowed;

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- ~~5. The vegetation conservation standards of WCC 23.90.060(B)(3) are met;~~
- ~~6. The change in use, remodel or expansion will not create adverse impacts to shoreline ecological functions and/or processes; and~~
- ~~7. Uses which are specifically prohibited or which would thwart the intent of the Act or this program shall not be authorized.~~
- ~~K. Nonconforming lots are those that have a building area of less than 2,500 square feet available for a single family residence and normal appurtenances that is unrestricted by setbacks or buffers from shorelines.~~
- ~~L. Where permitted according to shoreline areas designations (WCC Table 23.100.010), new single-family development on any legal lot in shoreline jurisdiction that is nonconforming with respect to the required shoreline buffer standards may be allowed without a shoreline variance when all of the following criteria are met:~~
 - ~~1. The depth of the lot (the distance from the ordinary high water mark to the inside edge of the frontage setback) is equal to or less than the standard buffer as indicated in Chapter 16.16 WCC; and~~
 - ~~2. The building area lying landward of the shoreline buffer and interior to required side yard setbacks is 2,500 square feet or less; provided, that consideration shall be given to view impacts and all single family residences approved under this section shall not extend waterward of the common line setback as measured in accordance with Appendix F. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping; and~~
 - ~~3. The lot is not subject to landslide hazard areas, alluvial fan hazard areas, or riverine and coastal erosion hazard areas or associated buffers as provided in WCC 16.16.310; and~~
 - ~~4. The nonconforming lot was created prior to August 8, 2008; and~~
 - ~~5. Appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the residence in the least environmentally damaging location relative to the shoreline and any critical areas; and provided, that all administrative reductions to side yard and/or frontage setbacks are pursued, when doing so will not create a hazardous condition or a condition that is inconsistent with this program and WCC Title 20; and~~
 - ~~6. There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity; and~~
 - ~~7. The area between the structure and the shoreline and/or critical area shall comply with the vegetation conservation standards of WCC 23.90.060(B)(3); and~~
 - ~~8. Development may not take place waterward of the ordinary high water mark; and~~
 - ~~9. Facilities such as a conventional drainfield system may be allowed within critical areas or their buffers, except wetlands and buffers, outside of the building area specified above, subject to specific criteria in Chapter 16.16 WCC.~~
- ~~M. Redevelopment of nonconforming rights of way and associated transportation structures, such as railroad trestles, may be permitted for purposes of facilitating the development of public trails and/or public shoreline access; provided, that such redevelopment shall be otherwise consistent~~

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with the provisions of this program, including but not limited to the provisions for public access and no net loss of shoreline ecological functions and processes, except as provided for in subsections E and H of this section.

23.50.010 Nonconforming Uses.

A. The lawfully established use of any building, structure, land, or premises existing or authorized under a permit or approval issued prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but which does not conform to present use regulations due to subsequent changes to the master program, shall be considered legally nonconforming and may be continued, subject to the provisions of this section; provided, that agricultural activities shall conform to WCC Chapter 16.16, Article 8 (Conservation Program on Agricultural Lands).

B. The expansion, alteration, and/or intensification of a nonconforming use is prohibited.

C. An existing use designated as a shoreline conditional use under present use regulations that lawfully existed prior to the effective date of the initial adoption of this program (August 27, 1976) or any applicable amendment thereafter and that has not obtained a shoreline conditional use permit shall be considered a legal use and may be continued subject to the provisions of this section without obtaining a shoreline conditional use permit.

D. Other than agricultural uses complying with WCC 16.16.800, if a use is discontinued for a period of 12 consecutive months or more, then any subsequent use, if allowed, shall be consistent with the provisions of this program and the Act.

E. The change of a nonconforming use to another type of nonconforming use is prohibited. may only

occur upon the approval of a shoreline conditional use permit. In addition to the shoreline conditional use criteria of WCC Title 22 (Land Use and Development), before approving a shoreline conditional use for a change in nonconforming use, the Hearing Examiner shall also find that:

— No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;

— The proposed use will be consistent with the policies and provisions of the Act and this program and as compatible with the uses in the area as the preexisting use;

— The vegetation conservation management standards of WCC 23.30.050 are met;

— The change in use or remodel will not create adverse impacts to shoreline ecological functions and/or processes; and

— Uses that are specifically prohibited or that would thwart the intent of the Act or this program shall not be authorized.

— Public Access is provided as required by this program.

— Vegetation screening and/or view protection is provided as required by this program.

Commented [P/C270]: P/C Motion to prohibit. Carried 8-1.

Commented [P/C271]: P/C Motion to delete. Carried 7-2.

23.50.011 Nonconforming Structures.

A. A lawfully established structure existing or authorized under a permit or approval issued prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but is no longer fully consistent with present regulations due to subsequent changes to

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1 the master program, shall be considered legally nonconforming and may be continued, subject to
2 the provisions of this section; provided that:

3 1. Shoreline stabilization structures shall conform to WCC 23.40.190 (Shoreline Stabilization).

4 2. When maintenance and repair of a nonconforming structure has lapsed such that the structure
5 or activity area is not in a usable condition, the structure or activity shall be considered to be
6 abandoned or derelict and may no longer be continued.

7 3. For structures where the ordinary high water mark establishes landward of the structure, this
8 structure shall be considered to be abandoned or derelict and may no longer be continued.

9 4. Non-overwater nonconforming structures may be maintained, repaired, renovated, or
10 remodeled to the extent that nonconformance with the standards and regulations of this
11 program is not increased, provided that a nonconforming structure that is moved any distance
12 must be brought into conformance with this program and the Act, except as provided in
13 subsection (C) and (D) of this section;

14 5. Overwater nonconforming structures may be maintained or repaired to the extent that
15 nonconformance with the standards and regulations of this program is not increased; provided
16 that when replacement is the common method of repair, the replaced components shall meet
17 the construction and materials standards of WCC 23.40.150 (Moorage Structures).

18 B. Nonconforming structures (including accessory structures) that are damaged or destroyed by fire,
19 explosion, flood, or other casualty may be restored or replaced in kind; provided, that:

20 1. Intentional demolition or removal is not a casualty.

21 2. Damaged or destroyed nonconforming structures containing conforming uses that are located
22 within a geologically hazardous area or frequently flooded area shall be reconstructed
23 consistent with the requirements of WCC Chapter 16.16, Article 3 (Geologically Hazardous
24 Areas) and Article 4 (Frequently Flooded Areas); provided, that the permit process is
25 commenced within 18 months of the date of such damage; and the reconstruction does not
26 expand, enlarge, or otherwise increase the nonconformity, except as provided for in this
27 section.

28 3. Damaged or destroyed nonconforming structures containing nonconforming uses can be
29 replaced in kind if:

30 a. There is no feasible alternative that allows for compliance with the provisions of this
31 program;

32 b. The structure is reconstructed consistent with the requirements of WCC Chapter 16.16,
33 Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas);

34 c. The permit process is commenced within 12 months of the date of such damage; and,

35 d. The reconstruction does not expand, enlarge, or otherwise increase the nonconformity.

36 C. Nonconforming structures that do not meet the criteria of subsection (A)(2) but are intentionally
37 demolished or removed with a valid demolition permit may be replaced with the same bulk
38 dimensions provided that:

39 1. The permit process is commenced within 12 months of the date of such demolition or removal;
40 and

Commented [CES272]: Revised to remind folks that a demo permit is required; and clarify that this does not apply to unusable structures addressed in A.2.

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2. ~~Such~~ structures that are located within a geologically hazardous area ~~or frequently flooded area~~ shall be reconstructed consistent with the requirements of WCC Chapter 16.16, Article 3 (Geologically Hazardous Areas) and Article 4 (Frequently Flooded Areas).

D. ~~Replacement of any nonconforming structures or buildings or portions thereof within the aquatic shoreline environment shall comply with program requirements for construction design and materials; provided, that replacement of existing wood pilings with chemically treated wood is allowed for maintenance purposes where use of a different material such as steel or concrete would result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds 20% of the existing pilings over a 10-year period, such pilings shall conform to the standard provisions of this section.~~

E. ~~Other than for single-family residences and their appurtenances, nonconforming structures that are shall not be altered, expanded or enlarged, or expanded without must be brought into conformance with this program and the Act or obtain a variance unless such alteration, enlargement or expansion would bring the structure into conformance with this program and the Act; provided, that nonconforming structures with conforming uses may be enlarged or expanded within the existing building footprint as a shoreline conditional use pursuant to WCC Title 22 (Land Use and Development) 23.100.050(B)(1)(c) when the following criteria are met:-~~

1. The enlargement or expansion is within the existing building footprint;
2. The enlargement or expansion is in conformance with the bulk dimensional standards; and
3. Public access ~~is provided~~ and/or the shoreline environment is enhanced.

F. ~~Single-family residences nonconforming to the shoreline (critical area) buffer.~~

1. ~~Enlargement or expansion of a primary single-family structure may be approved when either of the following are met:~~

- a. ~~When the vertical expansion or enlargement is within the existing building footprint and is in conformance with the bulk dimensional standards; or~~
- b. ~~When the enlargement or expansion meets all of the following.~~
 - i. ~~The enlargement or expansion will not extend waterward of the building footprint of the existing primary structure or the enlargement or expansion is consistent with the constrained lot provisions in WCC 23.40.170 (Standards for Single-Family Residential Use on Constrained Lots).~~
 - ii. ~~The enlargement or expansion is not within a critical area or critical area buffer in a manner inconsistent with this program.~~
 - iii. ~~The enlargement or expansion is in conformance with the bulk dimensional standards.~~

2. ~~The enlargement or expansion of single-family residences or normal appurtenances greater than the constrained lot provisions of WCC 23.40.170(C) may be approved once during the life of the structure (100 years); provided, that the following conditions are met:-~~

- a. ~~The existing structure must be located landward of the ordinary high water mark.~~
- b. ~~Building footprint enlargement or expansion:~~
 - i. ~~Shall not increase the total building footprint by more than 500 square feet.~~
 - ii. ~~Shall be landward or lateral of the existing footprint.~~

Commented [MD273]: Under WAC 173-27-080 variance only needed if increasing nonconformity.

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- 1 iii. Shall occur on a previously impacted impervious surface.
- 2 iv. Shall not occur waterward of the common line setback as described in WCC 23.40.020
- 3 (Shoreline Bulk Provisions) follows:
- 4 A. Where there are legally established single-family residential primary structures
- 5 within 50 feet on both sides of the proposed residence, the setback shall be
- 6 determined as the greater of either:
- 7 1. A common line drawn between the nearest corners of the foundation closest to
- 8 the sideyard property line of the proposed residence to each adjacent
- 9 residence, or
- 10 2. A common line calculated by the average of both adjacent residences' existing
- 11 setbacks.
- 12 B. Where there is a legally established single-family residential primary structure
- 13 within 50 feet on only one side of the proposed residence, the common line setback
- 14 shall be determined as the greater of either:
- 15 1. A common line drawn between nearest corner of the foundation closest to
- 16 the sideyard property line of the proposed residence to the adjacent
- 17 residence and the nearest point of the standard buffer on the adjacent vacant
- 18 lot, or
- 19 2. A common line calculated by the average of the adjacent residence's setback
- 20 and the standard buffer for the adjacent vacant lot.
- 21 v. Shall be accompanied by enhancement of an area equivalent to the enlargement or
- 22 expansion if the total building footprint increases by more than 250 square feet. If
- 23 enhanced through planting, the Director shall require a vegetation management plan
- 24 consistent with WCC 23.30.0540 (Vegetation Management).
- 25 c. The property has not previously received a shoreline exemption under the provisions for a
- 26 nonconforming or constrained lot.
- 27 G. Redevelopment of nonconforming rights-of-way and associated transportation structures, such as
- 28 railroad trestles, may be permitted for purposes of facilitating the development of public trails
- 29 and/or public shoreline access; provided, that such redevelopment shall be otherwise consistent
- 30 with the provisions of this program, including but not limited to the provisions for public access and
- 31 no net loss of shoreline ecological functions and processes, except as provided for in this section.
- 32 23.50.042030 Nonconforming Lots.
- 33 A lawfully established lot existing or authorized under a permit or approval issued prior to the effective
- 34 date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but
- 35 which does not conform to present lot standards, shall be considered a legally nonconforming lot and
- 36 may be developed subject to the provisions of this program.
- 37 Where permitted by the shoreline areas designation (WCC Table 23.100.010), new single family
- 38 development on any legal lot in shoreline jurisdiction that is nonconforming with respect to the
- 39 required shoreline setback standards may be allowed without a shoreline variance when the
- 40 following criteria are met:

Commented [ECY Req'd274]: This change is needed to define the common-line setback for the purposes of implementing WCC 23.50.020.F.2.b.iv as a result of REQ-2 above.

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- 1 ~~— The depth of the lot (the distance from the ordinary high water mark to the inside edge of the~~
- 2 ~~frontage setback) is equal to or less than the standard buffer as indicated in Chapter 16.16 WCC;~~
- 3 ~~— The building area lying landward of the shoreline buffer and interior to required side yard~~
- 4 ~~setbacks is 2,500 square feet or less. The building area means the entire area that will be~~
- 5 ~~disturbed to construct the home, normal appurtenances (except drainfields), and landscaping,~~
- 6 ~~including any lawn, turf, ornamental vegetation, or gardens located in the outer management~~
- 7 ~~zone of the buffer pursuant to WCC 23.30.060(B)(2);~~
- 8 ~~— Consideration shall be given to view impacts. Any single family residences approved under this~~
- 9 ~~section shall not extend waterward of fifteen (15) feet landward of the OHWM, or the common-~~
- 10 ~~line setback as measured in accordance with WCC 23.30.060(A)(2)(b), whichever is further~~
- 11 ~~landward.~~
- 12 ~~— The lot is not subject to landslide hazard areas or riverine and coastal erosion hazard areas or~~
- 13 ~~associated buffers as defined in WCC 16.16.310;~~
- 14 ~~— The nonconforming lot was created prior to the effective date of this program (August 8, 2008);~~
- 15 ~~— Appropriate measures are taken to mitigate all adverse impacts, including but not limited to~~
- 16 ~~locating the residence in the least environmentally damaging location relative to the shoreline~~
- 17 ~~and any critical areas, that all administrative reductions to side yard and/or frontage setbacks~~
- 18 ~~are pursued; and when doing so will not create a hazardous condition or a condition that is~~
- 19 ~~inconsistent with this program and WCC Title 20. The standard front yard setback may be~~
- 20 ~~reduced to 20 feet pursuant to WCC 20.80.230(2). The standard side yard setbacks may be~~
- 21 ~~reduced to 5 feet of the total required side yard setbacks on one side and the balance on the~~
- 22 ~~other side pursuant to WCC 23.90.130.B.4; provided, that if the side yard setback reductions~~
- 23 ~~pursuant WCC 23.90.130.B.4 are insufficient, both side yard setbacks may be reduced to 5 feet.~~
- 24 ~~— There is no opportunity to consolidate lots under common ownership that will alleviate the~~
- 25 ~~nonconformity;~~
- 26 ~~— The area between the structure and the shoreline and/or critical area shall comply with the~~
- 27 ~~vegetation conservation standards of WCC 23. 30.050(B);~~
- 28 ~~— Development may not take place waterward of the ordinary high water mark; and~~
- 29 ~~— Facilities such as a conventional drainfield system may be allowed within critical areas or their~~
- 30 ~~buffers, except wetlands and buffers, outside of the building area specified above, subject to~~
- 31 ~~specific criteria in Chapter 16.16 WCC.~~

Commented [RCE275]: Moved to 23.40.170(C).

23.50.080 Property rights.

Commented [AP276]: Moved to Chapter 23.10

- 32 A. Decisions on shoreline permits and/or approvals shall recognize all relevant constitutional and other
- 33 legal limitations on the regulation of private property. Findings shall assure that conditions imposed
- 34 relate to the governmental authority and responsibility to protect the public health, safety, and
- 35 welfare, are consistent with the purposes of the Act, and are roughly proportional to the expected
- 36 impact.
- 37
- 38 B. This program does not alter existing law on access to or trespass on private property and does not
- 39 give the general public any right to enter private property without the owner's permission.

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- 1 ~~C. Consistent with Whatcom County's high standard of staff conduct, county staff observe all~~
- 2 ~~applicable federal and state laws regarding entry onto privately owned property.~~

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Chapter 23.60 Shoreline Permits and Exemptions

23.60.005 General requirements.

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

Commented [MD277]: Unless otherwise noted, the contents of this chapter have been moved to T-22.

23.60.010 Substantial development permits criteria.

- A. A substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt pursuant to WCC 23.60.022.
- B. In order to be approved, the decision maker must find that the proposal is consistent with the following criteria:
 1. All regulations of this program appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under WCC 23.60.030.
 2. All policies of this program appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.
 3. For projects located on shorelines of statewide significance, the policies of Chapter 23.40 WCC shall also be adhered to.
- C. In the granting of all shoreline substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

Commented [RCE278]: Moved to applicability section.

23.60.020 Exemptions from Shoreline Substantial Development Permits process.

A. 23.60.021 Application and interpretation.

1. An exemption from the substantial development permit process is not an exemption from compliance with the Act, or this program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and regulatory provisions of this program and the Act. A statement of exemption shall be obtained for exempt activities consistent with the provisions of WCC 23.60.020.
2. 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.
3. The burden of proof that a development, or use is exempt is on the applicant/proponent of the exempt development action.

Commented [RE279]: Moved to ecological protection and critical areas

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4. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.
5. A development or use that is listed as a conditional use pursuant to this program or is an unlisted use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.
6. When a development or use is proposed that does not comply with the bulk, dimensional and/or performance standards of the program, such development or use shall only be authorized by approval of a shoreline variance even if the development or use does not require a substantial development permit.
7. All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the administrator, including compliance with bulk and dimensional standards and policies and regulations of this program. The administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the program.

B. 23.60.022 Exemptions listed.

1. The following activities shall be considered exempt from the requirement to obtain a shoreline substantial development permit. A statement of exemption, as provided for in WCC 23.60.023 of this program shall be required for those activities listed in WCC 23.60.023(B) and (C).
 - a. Any development of which the total cost or fair market value, whichever is higher, does not exceed \$5,718, or as amended by the state office of financial management, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
 - b. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. Normal maintenance includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition. Normal repair means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or the environment.
 - c. Construction of the normal protective bulkhead common to single family residences. A normal protective bulkhead includes those structural and nonstructural developments

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installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used for backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife.

- d. ~~Emergency construction necessary to protect property from damage by the elements. An emergency is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time too short to allow full compliance with this program. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit that would have been required, absent an emergency, pursuant to Chapter 90.58 RCW, Chapter 173-27 WAC or this program, shall be obtained. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.~~
- e. ~~Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including, but not limited to, head gates, pumping facilities, and irrigation channels; provided, that this exemption shall not apply to agricultural activities proposed on land not in agricultural use on December 17, 2003; and further provided, that a feedlot of any size, all processing plants, other activities of a commercial nature, or alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.~~
- f. ~~Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids such as channel markers and anchor buoys.~~

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- ~~g. Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of 35 feet above average grade level and that meets all requirements of the state agency or local government having jurisdiction thereof. Single-family residence means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance as defined in WCC 23.110.010.~~
- ~~h. Construction of a dock, including a shared moorage, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single-family or multifamily residence. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. The private dock exemption applies if either:
 - ~~i. In saltwater, the fair market value of the dock does not exceed \$2,500;~~
 - ~~ii. In fresh waters the fair market value of the dock does not exceed \$10,000, but if subsequent construction having a fair market value exceeding \$2,500 occurs within five years of the completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this program. For the purpose of this section, saltwater shall include the tidally influenced marine and estuarine water areas of the state including the Strait of Georgia, local marine waters and all associated bays, inlets and estuaries.~~~~
- ~~i. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters including return flow and artificially stored ground water for the irrigation of lands; provided, that this exemption shall not apply to construction of new irrigation facilities proposed after December 17, 2003.~~
- ~~j. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.~~
- ~~k. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on June 4, 1975, that were created, developed or utilized, primarily as a part of an agricultural drainage or diking system.~~
- ~~l. Any project with a certification from the governor pursuant to Chapter 80.50 RCW.~~
- ~~m. Site exploration and investigation activities that are prerequisite to preparation of a development application for authorization under this program, if:
 - ~~i. The activity does not interfere with the normal public use of surface waters;~~
 - ~~ii. The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality and aesthetic values;~~
 - ~~iii. The activity does not involve the installation of any structure and, upon completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity;~~~~

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- iv. ~~A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the administrator to ensure that the site is restored to preexisting conditions; and~~
- v. ~~The activity is not subject to the permit requirements of RCW 90.58.550.~~
- n. ~~The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that is recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW.~~
- o. ~~Watershed restoration projects as defined in Chapter 23.110 WCC and by RCW 89.08.460. The administrator shall review the projects for consistency with the program in an expeditious manner and shall issue its decision along with any conditions within 45 days of receiving a complete application form from the applicant/proponent. No fee may be charged for accepting and processing applications for watershed restoration projects as defined in Chapter 23.110 WCC.~~
- p. ~~A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:~~
 - i. ~~The project has been approved in writing by the Department of Fish and Wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;~~
 - ii. ~~The project received hydraulic project approval by the Department of Fish and Wildlife pursuant to Chapter 77.55 RCW; and~~
 - iii. ~~The administrator has determined that the project is consistent with this program. The administrator shall make such determination in a timely manner and provide it by letter to the project proponent.~~

~~C. 23.60.023 Statements of Exemption.~~

1. ~~The administrator is hereby authorized to grant or deny requests for statements of exemption from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in WCC 23.60.022. Such statements shall be applied for on forms provided by the administrator. The statement shall be in writing and shall indicate the specific exemption of this program that is being applied to the development, and shall provide a summary of the administrator's analysis of the consistency of the project with this program and the Act. As appropriate, such statements of exemption shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the program and Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. The administrator's actions on the issuance of a statement of exemption or a denial are subject to appeal pursuant to WCC 23.60.150.~~
2. ~~Exempt activities related to any of the following shall not be conducted until a statement of exemption has been obtained from the administrator: dredging, flood control works and instream structures, development within an archaeological or historic site, clearing and ground~~

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~~disturbing activities such as landfill or excavation, dock, shore stabilization, freestanding signs, or any development within an aquatic or natural shoreline designation; provided, that no separate written statement of exemption is required for the construction of a single family residence when a county building permit application has been reviewed and approved by the administrator; provided further, that no statement of exemption is required for emergency development pursuant to WAC 173-27-040(2)(d).~~

- ~~3. No statement of exemption shall be required for other uses or developments exempt pursuant to WCC 23.60.022 unless the administrator has cause to believe a substantial question exists as to qualifications of the specific use or development for the exemption or the administrator determines there is a likelihood of adverse impacts to shoreline ecological functions.~~
- ~~4. Whether or not a written statement of exemption is issued, all permits issued within the area of shorelines shall include a record of review actions prepared by the administrator, including compliance with bulk and dimensional standards and policies and regulations of this program. The administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Act and this program.~~
- ~~5. A notice of decision for shoreline statements of exemption shall be provided to the applicant/proponent and any party of record. Such notices shall also be filed with the Department of Ecology, pursuant to the requirements of WAC 173-27-050 when the project is subject to one or more of the following federal permitting requirements:
 - ~~a. A U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899. (The provisions of Section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters. Specific applicability information should be obtained from the Corps of Engineers.); or~~
 - ~~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 any project that may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the Corps of Engineers.)~~~~
- ~~6. Whenever the exempt activity also requires a U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 or a Section 404 permit under the Federal Water Pollution Control Act of 1972, a copy of the written statement of exemption shall be sent to the applicant/proponent and Ecology pursuant to WAC 173-27-050.~~

23.60.030 Variance permit criteria.

- ~~A. The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this program and any associated standards appended to this program such as critical areas buffer requirements where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this program would impose unnecessary hardships on the applicant/proponent or thwart the policy set forth in RCW 90.58.020. Use restrictions may not be varied.~~

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- ~~B. Variances will be granted in any circumstance where denial would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.~~
- ~~C. Proposals that would otherwise qualify as a reasonable use pursuant to WCC 16.16.270(A) shall require a shoreline variance and shall meet the variance criteria in this section.~~
- ~~D. Variances may be authorized, provided the applicant/proponent can demonstrate all of the following:~~
- ~~1. That the strict application of the bulk or dimensional criteria set forth in this program precludes or significantly interferes with reasonable permitted use of the property;~~
 - ~~2. That the hardship described in subsection A of this section is specifically related to the property, and is the result of conditions such as irregular lot shape, size, or natural features and the application of this program, and not, for example, from deed restrictions or the applicant's/proponent's own actions;~~
 - ~~3. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects on adjacent properties or the shoreline environment;~~
 - ~~4. That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;~~
 - ~~5. That the public interest will suffer no substantial detrimental effect;~~
 - ~~6. That the public rights of navigation and use of the shorelines will not be materially interfered with by the granting of the variance; and~~
 - ~~7. Mitigation is provided to offset unavoidable adverse impacts caused by the proposed development or use.~~
- ~~E. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined herein, or within any wetland as defined herein, may be authorized, provided the applicant can demonstrate all of the following:~~
- ~~1. That the strict application of the bulk, dimensional or performance standards set forth in this program precludes all reasonable use of the property; and~~
 - ~~2. That the proposal is consistent with the criteria established under subsections (D)(1) through (7) of this section; and~~
 - ~~3. That the public rights of navigation and use of the shorelines will not be adversely affected.~~
- ~~Other factors that may be considered in the review of variance requests include the conservation of valuable natural resources and the protection of views from nearby roads, surrounding properties and public areas; provided, the criteria of subsection D of this section are first met. In addition, variance requests based on the applicant's/proponent's desire to enhance the view from the subject development may be granted;~~
- ~~where there are no likely detrimental effects to existing or future users, other features, or shoreline ecological functions and/or processes, and~~
- ~~where reasonable alternatives of equal or greater consistency with this program are not available;~~
- ~~4. In platted residential areas, variances shall not be granted that allow a greater height or lesser shore setback than what is typical for the immediate block or area.~~

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

23.60.040 Conditional use permits criteria.

- A. ~~The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of this program in a manner consistent with the policy of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the county or the Department of Ecology to control any undesirable effects of the proposed use.~~
- B. ~~Uses specifically classified or set forth in this program as conditional uses and unlisted uses may be authorized, provided the applicant/proponent can demonstrate all of the following:~~
- ~~1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this program.~~
 - ~~2. That the proposed use will not interfere with normal public use of public shorelines.~~
 - ~~3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.~~
 - ~~4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.~~
 - ~~5. That the public interest suffers no substantial detrimental effect.~~
- C. ~~Other uses not specifically classified or set forth in this program, including the expansion or resumption of a nonconforming use pursuant to WCC 23.50.070, may be authorized as conditional uses, provided the applicant/proponent can demonstrate that the proposal will satisfy the criteria set forth in subsection B of this section, and that the use clearly requires a specific site location on the shoreline not provided for under the program, and extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of this program. Uses that are prohibited cannot be authorized by a conditional use permit.~~
- D. ~~In the granting of all conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.~~
- E. ~~Permits and/or variances applied for or approved under county zoning or subdivision code requirements shall not be construed as shoreline variances under this program.~~

23.60.050 Minimum application requirements.

~~Where other approvals or permits are required for a use or development that does not require an open record hearing, such approvals or permits shall not be granted until a shoreline approval or permit is~~

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~~granted. All shoreline approvals and permits shall include written findings prepared by the administrator documenting compliance with bulk and dimensional standards and other policies and regulations of this program.~~

~~A complete application for a substantial development, conditional use, or variance permit shall contain all materials required in the Department's administrative manual; provided, that the administrator may vary or waive these requirements as provided in the manual and may vary or waive these requirements on a case-by-case basis. The administrator may require additional specific information depending on the nature of the proposal and the presence of sensitive ecological features or issues related to compliance with other county requirements.~~

23.60.060 Pre-application conference.

~~A. Prior to filing a permit application for a shoreline substantial development permit, variance or conditional use permit decision,~~

~~B. The applicant shall contact the County to schedule a pre-application conference, which shall be held prior to filing the application; provided, that such meetings shall not be required for development activities associated with shoreline restoration projects, agriculture, commercial forestry, or the construction of a single-family residence.~~

23.60.070 Fees.

~~B. Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, pre-application conferences and other required reviews and/or approvals shall be paid to the county at the time of application in accordance with the Whatcom County Unified Fee Schedule in effect at that time and Chapter 22.05 WCC.~~

~~C. When any given project requires more than one of the following permits or applications, the total amount of fees shall be reduced pursuant to WCC 22.25.030:~~

- ~~1. Preliminary plat application.~~
- ~~2. Rezone application.~~
- ~~3. Major development permit.~~
- ~~4. Planned unit development.~~
- ~~5. Binding site plan.~~

~~D. When any project requires a shoreline conditional use permit or shoreline variance in addition to a shoreline substantial development permit, the fees for the conditional use or variance shall be reduced by half.~~

~~E. In the event that actions of an applicant result in the repetition of the review, inspections and other steps in the approval process, those items or steps repeated shall be charged to and paid by the applicant prior to any further processing of the application by the county. The cost shall be in accordance with the adopted fee schedule.~~

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~~F. If an application is withdrawn within 30 days of submittal, and no work has commenced at the site of the proposal for which the application was made, a refund of not more than 50 percent of the shoreline fees paid may be granted by the administrator. This amount may be reduced where staff time, public notice and other costs exceed 50 percent of the fees paid.~~

23.60.080 Notice of application.

~~B. Upon receipt of a completed shoreline substantial development permit, shoreline variance, or shoreline conditional use permit application the County shall issue a notice of application for a proposed land use action in the manner set forth in WCC 22.05.070.~~

~~C. The rights of treaty tribes to resources within their usual and accustomed areas shall be accommodated through the notification and comment provisions of the permit review process. Tribal treaty rights may be addressed through specific permit conditions. Direct coordination between tribes and the applicant/proponent is encouraged.~~

Commented [RCE280]: Moved to 23.05.040

23.60.090 Permit application review.

~~B. All shoreline permit applications, exemptions, or other approvals shall be subject to the provisions of this program that are in effect at the time of application.~~

~~C. To facilitate review of an application the decision maker shall consider any or all of the following:~~

- ~~1. The application and attached information;~~
- ~~2. The SEPA checklist, threshold determination, environmental impact statement, or other environmental studies and/or documentation;~~
- ~~3. Written comments from interested persons;~~
- ~~4. Information and recommendations from any public agency and from the administrator in cases where the administrator is not the decision maker;~~
- ~~5. Information or comment presented at a public hearing, if held, on the application; and~~
- ~~6. The policy and provisions of the Act and this program including the criteria enumerated in WCC 23.60.010, 23.60.030 and 23.60.040, as applicable.~~

~~D. The decision maker shall process project permit applications for shoreline substantial development permits, shoreline variance, and shoreline conditional use permits in compliance with the provisions of Chapter 22.05 WCC.~~

~~E. The decision maker shall process project permit applications for shoreline statements of exemption in accordance with the provisions of Chapter 22.05 WCC and WCC 23.60.023(A).~~

~~F. Any application for a shoreline permit or approval that remains inactive for a period of 180 days shall expire and a new application and repayment of fees shall be required to reactivate the proposal; provided, that the administrator may grant a single 90-day extension for good cause. Delays such as those caused by public notice requirements, State Environmental Policy Act review, litigation directly related to the proposal, or changes in government regulations shall not be considered as part of the inactive period.~~

~~— If a shoreline permit is denied, no reapplication for the same or essentially similar development may be made until one year from the date of denial.~~

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23.60.100 Consolidated Permit Review.

- A. ~~Whenever an application for a project permit under the program requires a project permit or approval under another County permit authority, such as zoning or subdivision, the shoreline project permit application, time requirements, and notice provisions for processing the shoreline permit shall apply, in addition to those of other regulatory programs.~~
~~The provisions of Chapter 22.05 WCC shall apply to the consolidated application, review, and approval of applications that require an open record hearing.~~
- B. ~~Any shoreline use or development that is subject to other approvals or permits that requires an open record hearing under another permit authority, such as zoning or subdivision, shall be subject to consolidated review and the decision maker designated for the open record hearing shall be the decision maker for the consolidated review.~~

23.60.110 State Environmental Policy Act (SEPA) compliance.

- A. ~~Whenever an application for shoreline substantial development permit, shoreline variance, shoreline conditional use permit, or statement of exemption is subject to the rules and regulations of SEPA (Chapter 43.21C RCW), the review requirements of SEPA, including time limitations, shall apply, where applicable.~~
- B. ~~Applications for shoreline permit(s) or approval(s) that are not categorically exempt under SEPA shall be subject to environmental review by the responsible official of Whatcom County pursuant to the State Environmental Policy Act (Chapter 197-11 WAC).~~
- C. ~~As part of SEPA review, the Responsible Official may require additional information regarding the proposed development in accordance with Chapter 197-11 WAC.~~
- D. ~~Failure of the applicant/proponent to submit sufficient information for a threshold determination to be made shall be grounds for the Responsible Official to determine the application incomplete.~~

Commented [RCE281]: Covered by WCC 16.08

23.60.120 Burden of proof.

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

Commented [CES282]: Moved to Permit application review

23.60.130 Public Hearings.

- A. ~~The administrator shall determine whether an application requires a public hearing pursuant to the criteria below no later than 15 days after the minimum public comment period provided by WCC 23.60.080. An open record public hearing shall be required for all of the following:~~
- ~~1. The proposal has a cost or market value in excess of \$100,000 except for single-family residences, agriculture, commercial forestry, and ecological restoration projects; or~~
 - ~~2. The proposal would result in development of an area larger than five acres; or~~
 - ~~3. The proposal is a new or expanded marina, pier, aquaculture structure, any building over 35 feet high, mine, dam, stream diversion, landfill; or~~
 - ~~4. The administrator has reason to believe the proposal would be controversial based on public response to the notice of receipt of application and other information; or~~

Commented [CES283]: Moved/covered by Title 22 now

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- 5. ~~The proposal is determined to have a significant adverse impact on the environment and an environmental impact statement is required in accordance with the State Environmental Policy Act; or~~
- 6. ~~The proposal requires a variance and/or conditional use approval pursuant to this program; or~~
- 7. ~~The use or development requires an open record public hearing for other Whatcom County approvals or permits.~~
- B. ~~An open record public hearing on shoreline permit applications shall be held in accordance with the provisions of Chapter 22.05 WCC, unless a continuance is granted pursuant to the rules and procedures of the Hearing Examiner or other hearing body and subject to time requirements for compliance with the State Environmental Policy Act.~~
- C. ~~Repealed by Ord. 2018-032.~~
- D. ~~Repealed by Ord. 2018-032.~~
- E. ~~Public hearing requirements for permit appeals shall be processed according to WCC 23.60.150.~~

23.60.140 Permit conditions.

~~In granting, revising, or extending a shoreline permit, the decision maker may attach such conditions, modifications, or restrictions thereto regarding the location, character, and other elements of the proposed development deemed necessary to assure that the development will be consistent with the policy and provisions of the Act and this program as well as the supplemental authority provided in Chapter 43.21C RCW as applicable. In cases involving unusual circumstances or uncertain effects, a condition may be imposed to require monitoring with future review or reevaluation to assure conformance with the Act and this program. If the monitoring plan is not implemented, the permittee may be found to be noncompliant and the permit may be rescinded in accordance with WCC 23.60.180.~~

Commented [CES284]: Moved to Permit application review.

23.60.XXX Filing with Department of Ecology

- ~~After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the County will hand deliver or mail or hand deliver the permit using return receipt requested mail to the Department of Ecology regional office.~~
- ~~Projects/posals that require both Shoreline Conditional Use Permits and or Variances shall be hand delivered or mailed simultaneously with any shoreline permit for the project.~~
- ~~The permit and documentation of final local decision will be mailed together the following information:~~
 - ~~A copy of the complete application;~~
 - ~~Findings and conclusions that establish the basis for the decision, including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations, and the consistency of the project with appropriate review criteria for the type of permit(s);~~
 - ~~The final decision of the local government;~~
 - ~~A completed permit data sheet (WAC Reference); and~~

Commented [CES285]: Moved to Ch. 22.07

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- ~~Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.~~
- ~~When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.~~
- ~~Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.~~

23.60.150 Notice of Decision, Reconsideration and Appeal.

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- ~~A notice of decision for action on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit shall be provided to the applicant/proponent and any party of record in accordance with the review procedures of Chapter 22.05 WCC, and at least 10 days prior to filing such decisions with the Department of Ecology pursuant to WAC 173-27-130. Decisions filed with the Department of Ecology shall contain the following information:~~
- ~~After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, the County will mail or hand deliver the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General.~~
- ~~Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permitsshoreline permit for the project.~~
- ~~The permit and documentation of final local decision will be mailed together the following information:~~
 - ~~2. A copy of the complete application;~~
 - ~~3. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation(s), applicable program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);~~
 - ~~4. The final decision of the local government;~~
 - ~~5. A completed permit data sheet (see Appendix A of this title); and~~
 - ~~6. Where applicable, local government shall also file the applicable documents required by SEPA, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under Chapter 43.21C RCW.~~
 - ~~7. When the project has been modified in the course of the local review process, plans or text shall be provided that clearly indicate the final approved plan.~~
- ~~A. Notice of decision for shoreline statements of exemption shall comply with WCC 22.05.110(1) and 23.60.023(E).~~
- ~~Any person with standing may appeal any order, final permit decision, or final administrative determination made by the director or designee in the administration of this program.~~

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~~Administrative Appeal Procedures.~~

~~Administrative appeals are processed in accordance with WCC 22.05.160.~~

~~After the issuance of the appeal determination, a party with standing may Appeals to the Shorelines Hearings Board of a decision on a shoreline substantial development permit, shoreline variance, or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of the "date of filing," as defined in this program and RCW 90.58.140(6). The appeal to the Shorelines Hearing Board shall be filed in accordance with the provisions of Chapter 461-08C WAC.~~

~~Appeals of a decision of the Department of Ecology shall be filed in accordance with the provisions of Chapter 461-08C WAC.~~

~~B. This program shall only establish standing for parties of record for shoreline substantial development permits, shoreline variances, or shoreline conditional use permits. Standing as a party of record is not established by this program for exempt actions pursuant to WCC 23.60.022; provided, that in such cases standing may be established through an associated permit process that provides for public notice and provisions for parties of record.~~

~~A. The applicant/proponent or any party of record may request reconsideration of any final action by the decision maker within 10 days of notice of the decision. Such requests shall be filed on forms supplied by the county. Grounds for reconsideration must be based upon the content of the written decision. The decision maker is not required to provide a written response or modify his/her original decision. He/she may initiate such action as he/she deems appropriate. The procedure of reconsideration shall not preempt or extend the appeal period for a permit or affect the date of filing with the Department of Ecology, unless the applicant/proponent requests the abeyance of said permit appeal period in writing within 10 days of a final action.~~

~~B. Appeals to the Shorelines Hearings Board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of filing the final decision by Whatcom County with the Department of Ecology.~~

~~C. Whatcom County shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the Shorelines Hearings Board. Such waivers shall be filed with the county in writing concurrent with a notice of appeal within 10 days of a final action. When an applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.~~

~~D. Any order, requirement or administrative permit decision, or determination by the administrator based on a provision of this program, except a shoreline substantial development permit, may be the subject of an appeal to the office of the hearing examiner by any aggrieved person. Such appeals shall be processed in accordance with the appeal procedures of subsection H of this section and shall be an open record hearing before the hearing examiner.~~

~~E. Appeal Procedures.~~

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

23.60.160 Initiation of development.

- ~~Development pursuant to a shoreline substantial development permit, shoreline variance, or conditional use permit shall not begin and shall not be authorized until 21 days after the "date of filing" or until all review proceedings before the Shorelines Hearings Board have terminated.~~

Date of Filing.

- ~~2. "Date of filing" of a substantial development permit is the date of actual receipt of the decision by the Department of Ecology.~~
- ~~3. The "date of filing" for a shoreline variance or shoreline conditional use permit shall mean the date the permit decision rendered by the Department of Ecology is transmitted by the department to the county and the applicant/proponent.~~

23.60.170 Revisions.

- ~~A. A revision is required whenever the applicant/proponent proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit and/or statement of exemption. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, this program, or the Act. Changes that are not substantive in effect do not require a revision.~~
- ~~B. An application for a revision to a shoreline permit shall be submitted to the administrator~~director~~. The application shall include detailed plans and text describing the proposed changes. The County decision maker that approved the original permit may approve the request upon a finding that the~~

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proposed changes are within the scope and intent of the original approval, and are consistent with this program and the Act.

C. "Within the scope and intent of the original approval" means all of the following:

1. No additional over-water construction is involved except that a pier, dock, or floating structure may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less over that approved under the original approval;
2. Ground area coverage and/or height may be increased a maximum of 10 percent over that approved under the original approval; provided, that the revised approval does not authorize development to exceed the height, impervious surface, setbacks, or any other requirements of this program except as authorized under a variance granted for the original development;
~~— The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;~~
3. Additional or revised mitigation and/or landscaping is consistent with any conditions attached to the original approval and with this program;
4. The use authorized pursuant to the original approval is not changed; and
5. The revision will not cause adverse environmental impacts beyond those originally authorized in the approval.

~~— Revisions to shoreline permits and statements of exemption may be authorized after the original authorization has expired. Revisions made after the expiration of the original approval shall be limited to changes that are consistent with this program and that would not require a permit under this program. If the proposed change is a substantial development as defined by this program, then a new permit is required.~~

D. The provisions of this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits or scope of the original approval.

E. A new permit shall be required if the proposed revision and any previously approved revisions in combination would constitute development beyond the scope and intent of the original approval as set forth in subsection C of this section.

~~F. Upon approval of a revision, the decision maker shall file a copy of the revised site plan and a detailed description of the authorized changes to the original permit with the Department of Ecology together with a final ruling and findings supporting the decision based on the requirements of this section. In addition, the decision maker shall notify parties of record of the action.~~

~~— If the proposed revision is to a development for which a shoreline conditional use or variance was issued, the decision maker shall submit the revision to the Department of Ecology for approval with conditions or denial, and shall indicate that the revision is being submitted under the requirements of this subsection.~~

~~— Under the requirements of WAC 173-27-110(6), the Department shall render and transmit to the decision maker and the applicant/proponent its final decision within 15 days of the date of the Department's receipt of the submittal from the decision maker. The decision maker shall notify parties on record of the Department's final decision.~~

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~~G. Appeals of a decision of the Department shall be filed in accordance with the provisions of Chapter 461-08C WAC.~~

23.60.180 Rescission and modification.

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

23.60.190 Expiration.

- ~~A. The following time requirements shall apply to all substantial development permits and to any development authorized pursuant to a variance, conditional use permit, or statement of exemption:~~
- ~~1. Construction shall be commenced __ or, where no construction is involved, the use or activity shall be commenced __ within two years of the effective date of a shoreline permit or exemption or the permit shall expire; provided, that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause if a request for extension has been filed with the hearing examiner or administrator as appropriate before the expiration date of the shoreline permit or exemption, and notice of the proposed extension is given to parties of record and the Department of Ecology.~~
 - ~~2. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit or exemption; provided, that the Hearing Examiner or Administrator, as appropriate, may authorize a single extension for a period of not more than one year based on a showing of good cause, if a request for extension has been filed with the hearing examiner or administrator, as appropriate, before the expiration date of the shoreline permit or exemption and notice of the proposed extension is given to parties of record and the Department of Ecology.~~
- ~~— The effective date of a shoreline permit or exemption shall be the date of filing as provided in RCW 90.58.140(6).~~

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- ~~—Tolling. The effective date does not include The time periods in (1) and (2) of this section 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 any other government permits and approvals for the which the issued shoreline permit authorizes, development that authorize the development to proceed, including the pendency of all reasonably related administrative appeals or legal appeal actions on any such permits or approval. last action required on the shoreline permit or exemption and all other government permits and approvals that authorize the development to proceed, including administrative and legal actions on any such permit or approval.~~
- ~~—The applicant/ proponent shall be responsible for informing the County of the of such pendency, of other permit applications filed with agencies other than the County and of any related administrative and legal actions on any permit or approval.~~
- ~~3. If no notice of the pendency of other permits or approvals is given to the County prior to the date of the last action by the County to grant County permits and approvals necessary to authorize the development to proceed, including administrative and legal actions of the county, and actions under other County development regulations, the date of the last action by the County shall be the effective date.~~
- ~~B. Notwithstanding the time limits established in subsections (A)(1) and (2) of this section, upon a finding of good cause based on the requirements and circumstances of the proposed project and consistent with the policies and provisions of this program and the Act, the Hearing Examiner or Administrator, as appropriate, may set different time limits for a particular substantial development permit or exemption as part of the action to approve the permit or exemption. The Hearing Examiner may also set different time limits on specific conditional use permits or variances with the approval of the Department of Ecology. The different time limits may be longer or shorter than those established in subsections (A)(1) and (2) of this section but shall be appropriate to the shoreline development or use under review. "Good cause based on the requirements and circumstances of the proposed project" shall mean that the time limits established for the project are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.~~
- ~~C. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to the commencement of a nonstructural activity; provided, that different time limits for compliance may be specified in the conditions of approval as appropriate.~~
- ~~—The Hearing Examiner or Administrator, as appropriate, shall notify the Department of Ecology in writing of any change to the effective date of a permit, authorized by subsections A through C of 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 the sections of this program previously listed shall require a new permit application.~~
- ~~D.~~

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Chapter 23.70 Administration

Commented [MD287]: Entire chapter moved to T-22

~~23.70.010 Administrator.~~

~~D. The Administrator, as defined in WCC 23.110.010, is hereby vested with the authority to:~~

- ~~1. Overall administrative responsibility for this program.~~
- ~~2. Determine if a public hearing should be held on a shoreline permit application by the Hearing Examiner pursuant to WCC 23.60.130.~~
- ~~3. Grant or deny statements of exemption.~~
- ~~4. Authorize, approve or deny shoreline substantial development permits, except for those for which the Hearing Examiner or County Council is the designated decision maker.~~
- ~~5. Issue a stop work order pursuant to the procedure set forth in WAC 173-27-270 upon a person undertaking an activity on shorelines in violation of Chapter 90.58 RCW or this program; and seek remedies for alleged violations of this program's regulations, or of the provisions of the Act, or of conditions attached to a shoreline permit issued by Whatcom County.~~
- ~~6. Decide whether or not a proposal is subject to the consolidated review process of Chapter 22.05 WCC and determine what other permits are required to be included in the consolidated review.~~
- ~~7. Make field inspections as needed, and prepare or require reports on shoreline permit applications.~~
- ~~8. Make written recommendations to the County Council or Hearing Examiner as appropriate and, insofar as possible, assure that all relevant information, testimony, and questions regarding a specific matter are made available during their respective reviews of such matter.~~
- ~~9. Propose amendments to the Planning Commission deemed necessary to more effectively or equitably achieve the purposes and goals of this program.~~
- ~~10. The Administrator shall perform the following administrative responsibilities:~~
- ~~11. Advise interested persons and prospective applicants/proponents as to the administrative procedures and related components of this program;~~
- ~~12. Collect fees as provided for in WCC 23.60.070; and~~
- ~~13. Assure that proper notice is given to interested persons and the public through news media, posting or mailing of notice.~~
- ~~14. Review administrative and management policies, regulations, plans and ordinances relative to lands under county jurisdiction that are adjacent to shorelines so as to achieve a use policy on such lands that is consistent with the Act and this program.~~
- ~~15. Review and evaluate the records of project review actions in shoreline areas shoreline environments and report on the cumulative effects of authorized development of shoreline conditions. The Administrator Director shall coordinate such review with the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Lummi Nation and Nooksack Tribe, and other interested parties.~~
- ~~16. Make recommendations to the Planning Commission for open space tax designations pursuant to Chapter 84.34 RCW.~~

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1 ~~E. The Director of Planning and Development Services shall have the authority to develop~~
2 ~~administrative guidance materials related to the interpretations of principles and terms in this~~
3 ~~program as required to provide for consistent and equitable implementation of this program. Such~~
4 ~~administrative guidance documents shall be developed in consultation with the Washington State~~
5 ~~Department of Ecology to ensure that any formal written interpretations are consistent with the~~
6 ~~purpose and intent of Chapter 90.58 RCW, the applicable guidelines, and the goals and objectives of~~
7 ~~this program.~~

Commented [RCE288]: Moved to 23.10.

~~23.70.020 SEPA official.~~

8 ~~The Whatcom County SEPA responsible official is designated by WCC 16.08.040. The responsible official~~
9 ~~or his/her designee is hereby authorized to conduct environmental review of all use and development~~
10 ~~activities subject to this program, pursuant to Chapter 197-11 WAC and Chapter 43-21C RCW.~~

Commented [CES289]: Authority in WCC 16.08

~~23.70.030 Hearing Examiner.~~

12 ~~The Whatcom County Hearing Examiner is hereby vested with the authority to conduct open record~~
13 ~~hearings and prepare a record thereof pursuant to WCC 2.11.210.~~

~~23.70.040 Planning Commission.~~

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

~~23.70.050 County Council.~~

19 ~~The Whatcom County Council is hereby vested with authority to:~~

- 20 ~~A. Initiate an amendment to this program according to the procedures prescribed in WAC 173-26-100.~~
21 ~~B. Adopt all amendments to this program, after consideration of the recommendation of the Planning~~
22 ~~Commission and pursuant to the procedural requirements of Chapter 2.02 WCC; provided, that~~
23 ~~substantive amendments shall become effective immediately upon adoption by the Department of~~
24 ~~Ecology.~~
25 ~~C. Make final decisions with regard to shoreline permit, shoreline variance or shoreline conditional use~~
26 ~~applications that require County Council action on a consolidated review as provided by Chapter~~
27 ~~22.05 WCC.~~
28 ~~D. Review and decide appeals to Hearing Examiner decisions pursuant to the procedures of WCC~~
29 ~~23.60-150.~~
30

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Chapter 23.80 Legal Provisions

Commented [MD290]: Entire chapter moved to 23.05 or 23.10

~~23.80.010 Amendments.~~

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

~~23.80.020 Violations and Penalties.~~

- ~~A. In the event any person violates any of the provisions of this chapter, the County may issue a correction notice to be delivered to the owner or operator, or to be conspicuously posted at the site. In a nonemergency situation, such notice may include notice of the intent to issue a stop work order no less than 10 calendar days following the receipt of the correction notice, and provide for an administrative predeprivation hearing within 10 calendar days of the notice. In an emergency situation where there is a significant threat to public safety or the environment, the County may issue a stop work order. The stop work order shall include, in writing, the right to request an administrative predeprivation hearing within 72 hours following receipt of the stop work order.~~

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- ~~B. In addition to incurring civil liability under WCC 23.80.030 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the Act or of this program, or other regulations adopted pursuant thereto shall be punished by:~~
- ~~1. A fine of not less than \$25.00 or more than \$1,000;~~
 - ~~2. Imprisonment in the county jail for not more than 90 days; or~~
 - ~~3. Both such fine and imprisonment;~~
- ~~provided, that the fine for the third and all subsequent violations in any five-year period shall not be less than \$500.00 nor more than \$10,000. Provided further, that fines for violations of RCW 90.58.550, or any rule adopted thereunder, shall be determined under RCW 90.58.560. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.~~
- ~~C. The penalty provided in subsection B of this section shall be assessed and may be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same. The notice shall include the amount of the penalty imposed and shall describe the violation with reasonable particularity. In appropriate cases, corrective action shall be taken within a specific and reasonable time.~~
- ~~D. Within 30 calendar days after the notice is received, the person incurring the penalty may apply in writing to the county for remission or mitigation of such penalty. Upon receipt of the application, the county may remit or mitigate the penalty upon whatever terms the county in its discretion deems proper. The county's final decision on mitigation or revisions may be reviewed by the hearing examiner if the aggrieved party files a written appeal therewith of said decision within 10 calendar days of its issuance.~~
- ~~E. If work activity has occurred on a site in violation of this program, prompt corrective action, restoration or mitigation of the site will be required when appropriate. If this provision is not complied with, the county may restore or mitigate the site and charge the responsible person for the full cost of such an activity. Additionally, any and all permits or approvals issued by the county may be denied for that site for a period of up to six years.~~
- ~~F. The county may suspend or revoke a permit if the applicant violates the conditions or limitations set forth in the permit or exceeds the scope of the work set forth in the permit.~~
- ~~G. Any person who willfully violates any court order or regulatory order of injunction issued pursuant to this program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.~~

23.80.030 Remedies.

- ~~A. The Whatcom County prosecuting attorney or administrator, where authorized, shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state located within Whatcom County in conflict with the provisions of this program, the Act, or other regulations adopted pursuant thereto, and to otherwise enforce the provisions of this program.~~

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~~B. Any person subject to the regulatory provisions of this program or the Act who violates any provision thereof, or permit, or permit condition issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The Whatcom County prosecuting attorney shall bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.~~

~~C. A person who fails to conform to the terms of a substantial development permit, conditional use permit or variance issued under RCW 90.58.140, who undertakes a development or use on shorelines of the state without first obtaining any required permit or authorization, or who fails to comply with a stop work order may be subject to a civil penalty. The penalty shall be imposed pursuant to the procedure set forth in WAC 173-27-280 and become due and recovered as set forth in WAC 173-27-290(3) and (4). Persons incurring a penalty may appeal the same to the shoreline hearings board or the county council pursuant to WAC 173-27-290(1) and (2).~~

~~D. Any order, requirement or determination by the administrator pursuant to WCC 23.80.020 may be appealed in accordance with the provisions of WCC 23.60.150(G) and (H).~~

23.80.040 Abatement.

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

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Chapter 23.11060 Definitions

23.1160.005 Generally.

The terms used throughout this program shall be defined and interpreted as indicated below. When consistent with the context, words used in the present tense shall include the future; the singular shall include the plural, and the plural the singular. Any words not defined herein shall be defined pursuant to WWC Chapter 16.16 (Critical Areas) or Titles 20 (Zoning) or 22 (Land Use and Development), or their common meanings when not defined in code.

23.1160.010 "A" definitions.

~~1. "Accessory development" means any development incidental to and subordinate to a primary use of a shoreline site and located adjacent thereto.~~

Commented [CES291]: This term is not used now; use "accessory use" throughout, which is defined in T-20.

~~2.1. "Accessory structure" means a structure that is incidental and subordinate to a primary use and located on the same lot as the primary use, such as barns, garages, storage sheds, and similar structures. Structures that share a common wall with a primary residential structure shall be considered an extension of the primary structure, rather than an accessory structure.~~

Commented [AP292]: Added for consistency with revisions made to Bulk Provisions Table per Scoping Document, Item #17d.

~~"Accessory use" means a use customarily incidental to a permitted use; provided, that such use shall be located on the same lot as the permitted use except where specifically permitted elsewhere in zoning district regulations.~~

Commented [AP293]: Captured in Zoning Code (Title 20).

~~3.2. "Accretion shoreform" means a shoreline with a relatively stable berm and backshore that has been built up by long-term deposition of sand and gravel transported by wind and/or water from a feeder bluff or other material source. Such shoreforms are scarce locally and Examples include, but are not limited to, barrier beaches, points, spits, tombolos, pocket beaches, and point and channel bars on streams.~~

~~4.3. "Act" means the Shoreline Management Act of 1971 (Chapter 90.58 RCW) as amended.~~

~~5. "Activity" means human activity associated with the use of land or resources.~~

Commented [CES294]: Term already defined in CAO.

~~6. "Administrator" or "Shoreline Administrator" means the director of the department of planning and development services who is to carry out the administrative duties enumerated in this program, or his/her designated representative.~~

Commented [CES295]: Term no longer used; has been replaced with "Director," in keeping with general direction of other, recent code overhauls.

~~7.4. "Adverse impact" means an impact that can be measured or is tangible and has a reasonable likelihood of causing moderate or greater harm to ecological functions or processes or other elements of the shoreline environment.~~

~~8.5. "Agricultural activities" means agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities; and maintaining~~

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agricultural lands under production or cultivation. ~~The construction of new structures or activities that bring a new, non-ongoing agricultural area into agricultural use are not considered agricultural activities.~~

Commented [CES296]: From the CAO definition.

9-6. "Agricultural equipment" and "agricultural facilities" include, but are not limited to:

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

10-7. "Agricultural land" means areas on which agricultural activities are conducted as of the date of adoption of this program pursuant to the State Shoreline Guidelines as evidenced by aerial photography or other documentation. After the effective date of this program, land converted to agricultural use is subject to compliance with the requirements herein.

11-8. "Agricultural products" includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within 20 years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, poultry and poultry products, and dairy products.

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

Commented [CES297]: Already defined in Ch. 16.16

13-9. "Alteration" means any human-induced change in an existing condition of a shoreline, critical area and/or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or any other activity that changes the character of the area.

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

Commented [CES298]: Term not used in this document.

15-10. "Appurtenance" means development that is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the OHWM and/or the perimeter of a wetland. ~~For the purposes of single-family residential exemptions, normal Appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which that~~ does not exceed 250 cubic yards (except to construct a conventional drainfield) ~~and that does not involve placement of fill in any wetland or waterward of the ordinary high water mark.~~

16-11. "Aquaculture" means the ~~culture or farming or culture of food fish, shellfish, or other aquatic plants or animals, in freshwater or saltwater areas, and may require development such as fish hatcheries, rearing pens and structures, and shellfish rafts, as well as use of natural spawning and rearing areas.~~ Aquaculture does not include the harvest of ~~wild geoduck associated with the state~~

Commented [CES299]: Definition amended to state definition from WAC 173-26-020(6).

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~~managed wildstock geoduck fishery free swimming fish or the harvest of shellfish not artificially
planted or maintained, including the harvest of wild stock geoducks on DNR managed lands.~~

~~17. "Aquaculture practices" means any activity directly pertaining to growing, handling, or harvesting of
aquaculture produce including, but not limited to, propagation, stocking, feeding, disease
treatment, waste disposal, water use, development of habitat and structures. Excluded from this
definition are related commercial or industrial uses such as wholesale and retail sales, or final
processing and freezing.~~

Commented [CES300]: Term not used

~~18-12.~~ "Aquatic shoreline ~~area~~environment" means an area designated pursuant to WCC

Chapter 23.230 (Shoreline Jurisdiction and Environment Designations).

~~19. "Archaeological object" means an object that comprises the physical evidence of an indigenous and
subsequent culture including material remains of past human life including monuments, symbols,
tools, facilities, graves, skeletal remains and technological byproducts.~~

~~20. "Archaeological resource/site" means a geographic locality in Washington, including, but not limited
to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that
contains archaeological objects. "Significant" is that quality in American history, architecture,
archaeology, engineering, and culture that is present in districts, sites, buildings, structures, and
objects that possess integrity of location, design, setting, materials, workmanship, feeling, and
association, and:~~

~~a. That are associated with events that have made a significant contribution to the broad patterns
of our history; or~~

~~b. That are associated with the lives of significant persons in our past; or~~

~~c. That embody the distinctive characteristics of a type, period or method of construction, or that
represent the work of a master, or that possess high artistic values, or that represent a
significant and distinguishable entity whose components may lack individual distinction; or~~

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

Commented [AP301]: Re-located to "Cultural resource" and
"Cultural resource site" definitions

~~21-13.~~ "Archaeologist" means a person who has designed and executed an archaeological study as
evidenced by a thesis or dissertation and has been awarded an advanced degree such as an M.A.,
M.S. or Ph.D. from an accredited institution of higher education in archaeology, anthropology, or
history or other germane discipline with a specialization in archaeology; has a minimum of one year
of field experience with at least 24 weeks of field work under the supervision of a professional
archaeologist, including no less than 12 weeks of survey or reconnaissance work, and at least eight
weeks of supervised laboratory experience. Twenty weeks of field work in a supervisory capacity
must be documentable with a report produced by the individual on the field work.

~~22. "Archaeology" means systematic, scientific study of the human past through material remains.~~

Commented [CES302]: Term already found in T-20 definitions.

~~23-14.~~ "Associated wetlands" means wetlands that are in proximity to tidal waters, lakes, rivers, or
streams that are subject to the Shoreline Management Act and either influence or are influenced by
such waters. Factors used to determine proximity and influence include, but are not limited to:
location contiguous to a shoreline waterbody, formation by tidally influenced geohydraulic
processes, presence of a surface connection including through a culvert or tide gate, location in part
or whole within the floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

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~~24-15.~~ “Average grade level” means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property that will be directly under a proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. 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. on that part of the lot to be occupied by the building or structure as measured by averaging the elevations at the center of all exterior walls of the proposed structure.

~~23.11~~ **60.020 “B” definitions.**

1. “Backshore” means the accretion or erosion zone, located landward of the line of ordinary high water, which is normally wetted only by storm tides. A backshore may take the form of a more or less narrow storm berm (ridge of wave-heaped sand and/or gravel) under a bluff, or it may constitute a broader complex of berms, marshes, meadows, or dunes landward of the line of ordinary high water. It is part of the littoral drift process along its waterward boundary. a zone of accretion or erosion lying landward of the average high tide mark, wetted by tides during storm events.

2. “Barrier beach” means a linear ridge of sand or gravel extending above high tide, built by wave action and sediment deposition seaward of the original coastline; includes a variety of depositional coastal landforms. accretion shoreform of sand and/or gravel berm(s) accreted waterward of bluffs, bays, marshes or estuaries by littoral drift; the berm acts as a natural dike and seawall to its backshore or marsh hinterland.

Commented [CES303]: Amended to BAS definition (from Hugh Shippman's *A geomorphic classification of Puget Sound*)

3. “Beach nourishment” means a restoration or shoreline stabilization activity in which selected beach material is deposited at one or several locations in the updrift portion of a drift sector. The material is then naturally transported by waves or currents downdrift to stabilize or restore accretion shoreforms and other berms, which may be eroding due to artificial obstructions in the shore process corridor.

4. “Bed and Breakfast” means a privately owned dwelling that is the primary residence(s) of the owner in which, for compensation, one to five rooms are used as sleeping units to house or lodge individuals or families for periods of less than 30 days as transient visitors with or without limited food service. The use of the dwelling unit for the bed and breakfast shall be clearly incidental and subordinate to its use for residential purposes and the purpose of the applicable zoning district. At least one owner shall be present overnight when a guest room is rented.

Commented [CES304]: Incorporated from Resolution 2016-039, Council's action on vacation rentals.

3-5. “Bedlands” means those submerged lands below the line of extreme low tide in marine waters and below the line of navigability or navigable lakes and rivers. Where the line of navigability has not been established, bedlands would be those submerged lands below the OHWM in lakes and rivers.

4-6. “Bedrock” means a general term for rock, typically hard, consolidated geologic material that underlies soil or other unconsolidated, superficial material or is exposed at the surface.

5-7. “Berm” or “protective berm” means one or several accreted linear mounds of sand and gravel generally paralleling the shore at or landward of OHWM; berms are normally stable because of material size or vegetation, and are naturally formed by littoral drift.

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- 6-8. "Best management practices" means conservation practices or systems of practices and management measures that:
- Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment;
 - Minimize adverse impacts to surface water and ground water flow, circulation patterns, and to the chemical, physical, and biological characteristics of waters, wetlands, and other fish and wildlife habitats;
 - Control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw material.
7. ~~"Bioengineered shoreline stabilization" means biostructural and biotechnical alternatives to hardened structures (bulkheads, walls) for protecting slopes or other erosive features. Bioengineered stabilization uses vegetation, geotextiles, geosynthetics and similar materials. An example is vegetated reinforced soil slopes (VRSS), which uses vegetation arranged and embedded in the ground to prevent shallow mass movement and surficial erosion.~~
9. "Boathouse." See "Moorage Structure."
10. ~~"Boat lift" or "lift." See Moorage Structure." means an in-water structure used for the dry berthing of vessels above the water level and lowering of vessels into the water. A boat lift as herein defined is used to berth and launch a single vessel suspended over the water's surface. A boat lift is generally a manufactured unit without a canopy cover and may be placed in the water adjacent to a dock or as stand alone structure. A boat lift may be designed either for boats or personal watercraft. A boat lift is to be differentiated from a hoist or crane used for the launching of vessels. A boat lift with a canopy cover shall be considered a covered moorage for the purposes of this program.~~
- 8-11. "Bog" means a type of wetland dominated by mosses that form peat. Bogs are very acidic, nutrient poor systems, fed by precipitation rather than surface inflow, with specially adapted plant communities.
- 9-12. "Breakwater" means an offshore structure that is generally built parallel to shore that may or may not be connected to land, and may be floating or stationary. Their primary purpose is to protect harbors, moorages and navigation activity from wave and wind action by creating stillwater areas along shore. A secondary purpose is to protect shorelines from wave-caused erosion.
- 10-13. "Buffer (buffer zone)" means the area adjacent to a shoreline and/or critical area that separates and protects the area from adverse impacts associated with adjacent land uses.
- 11-14. "Building" means any structure used or intended for supporting or sheltering any use or occupancy as defined in the International Building Code.
- 12-15. "Building area" means the entire area that will be disturbed to construct the home, normal appurtenances (except on-site sewage systems), and landscaping.
- 13-16. "Building footprint" means, for the purposes of this program, the ground area contained by the exterior walls of a building.
- 14-17. "Bulkhead" means a wall-like structure ~~such as a revetment or seawall~~ that is placed parallel to shore primarily for retaining uplands and fills prone to sliding or sheet erosion, and to protect uplands and fills from erosion by wave action.

Commented [CES305]: Now found under "Shoreline stabilization, soft-treatment"

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23.1160.030 "C" definitions.

1. "Canopy." See "Moorage Structure."

1. "Channel migration zone (CMZ)" means the area along a river or stream within which the channel can reasonably be expected to migrate over time as a result of normally occurring processes. It encompasses that area of current and historic lateral stream channel movement that is subject to erosion, bank destabilization, rapid stream incision, and/or channel shifting, as well as adjacent areas that are susceptible to channel erosion. There are three components of the channel migration zone: (a) the historical migration zone (HMZ) — the collective area the channel occupied in the historical record; (b) the avulsion hazard zone (AHZ) — the area not included in the HMZ that is at risk of avulsion over the timeline of the CMZ; and (c) the erosion hazard area (EHA) — the area not included in the HMZ or the AHZ that is at risk of bank erosion from stream flow or mass wasting over the timeline of the CMZ. The channel migration zone may not include the area behind a lawfully constructed flood protection device. Channel migration zones shall be identified in accordance with guidelines established by the Washington State Department of Ecology.

Commented [CES306]: Already defined in Ch. 16.16

2. "Channelization" means the straightening, relocation, deepening or lining of stream channels, including construction of continuous revetments or levees for the purpose of preventing gradual, natural meander progression.

3. "Cherry Point management area" means a geographic area defined as all the shoreline areas within the jurisdiction of the Whatcom County shoreline management program lying between the eastern property boundary of Tax Lots 2.27 and 2.28 within the SE 1/4 of Section 11, Township 39 North, Range 1 West, as it existed on June 18, 1987, and the southern boundary of Section 32, Township 39 North, Range 1 East, extending waterward a distance of 5,000 feet and extending landward for 200 feet as measured on a horizontal plane from the OHWM.

Commented [CES307]: Moved to "Official Map" section

3. "Clearing" means the removal or destruction of vegetation or plant cover by manual, chemical, or mechanical means and that may result in exposed soils. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.

4. "Coastal high hazard area" means the area subject to high velocity waters, including, but not limited to, storm surge or tsunamis. The area is designated on the Flood Insurance Rate Map as Zone V1-V30, VE or V.

5. "Commercial development" means those developments whose primary use is for retail, service or other commercial business activities. Included in this definition are developments such as hotels, motels, ~~bed and breakfast establishments~~, shops, restaurants, banks, professional offices, grocery stores, laundromats, recreational vehicle parks, commercial rental campgrounds and cabins, whether public or private, and indoor or intensive outdoor commercial recreation facilities. Not included are private camping clubs, marinas, signs, utilities, ~~bed and breakfasts~~, ~~short term vacation rentals~~, and other development.

Commented [Co/C308]: COTW moved to amend 12/7/21

Commented [CES309]: Incorporated from Resolution 2016-039, Council's action on vacation rentals.

6. "Commercial fish" means those species of fish that are classified under the Washington Department of Fish and Wildlife Food Fish Classification as commercial fish (WAC 220-12-010).

Commented [CES310]: Already in Ch. 16.16

7. "Compensatory mitigation" means a project for the purpose of mitigating, at an equivalent or greater level, unavoidable impacts that remain after all appropriate and practicable avoidance and

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~~minimization measures have been implemented. Compensatory mitigation includes, but is not limited to, wetland creation, restoration, enhancement, and preservation; stream restoration and relocation, rehabilitation; and buffer enhancement.~~

Commented [CES311]: Already in Ch. 16.16

~~8. "Conditional use" for the purposes of this program means a use, development or substantial development listed in the regulations as being permitted only as a conditional use, or not classified in this program. Conditional uses are subject to review and approval pursuant to the criteria in Chapter 23.60 WCC regardless of whether or not the proposal requires a substantial development permit.~~

Commented [AP312]: Moved to "Shoreline Conditional Use" definition.

~~9.6. "Conservancy shoreline area environment" means an area so designated in WCC Chapter 23.230 (Shoreline Jurisdiction and Environment Designations).~~

~~10. "Conservation" means the prudent management of rivers, streams, wetlands, wildlife and other environmental resources in order to preserve and protect them. This includes the careful use of natural resources to prevent depletion or harm to the environment.~~

Commented [CES313]: Already in Ch. 16.16

~~11. "Conservation easement" means a legal agreement that the property owner enters into to restrict uses of the land for purposes of natural resources conservation. The easement is recorded on a property deed, runs with the land, and is legally binding on all present and future owners of the property.~~

Commented [CES314]: Already in Ch. 16.16

~~12. "Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in ground water, air, or soil or that occurs at concentrations greater than those in the natural levels (Chapter 173-200 WAC).~~

Commented [CES315]: Already in Ch. 16.16

~~13.7. "County" means Whatcom County, Washington.~~

~~14.8. "Covered moorage" means a roofed floating or fixed offshore structure without walls, other than a minimal structural framework needed to support the roof, for moorage of water craft or float planes.~~

~~15. "Critical aquifer recharge area" means areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers (i.e., maintain the quality and quantity of water) used for potable water as defined by WAC 365-190-030(2).~~

Commented [CES316]: Already in Ch. 16.16

~~16.9. "Critical areas" means the following areas as designated in WCC Chapter 16.16:~~

- a. Critical aquifer recharge areas.
- b. Wetlands.
- c. Geologically hazardous areas.
- d. Frequently flooded areas.
- e. Fish and wildlife habitat conservation areas.

~~10. "Critical habitat" means habitat areas with which endangered, threatened, sensitive or monitored plant, fish, or wildlife species have a primary association (e.g., feeding, breeding, rearing of young, migrating). Such areas are identified in WCC Chapter 16.16 with reference to lists, categories, and definitions promulgated by the Washington Department of Fish and Wildlife as identified in WAC 232-12-011 or 232-12-014; in the Priority Habitat and Species (PHS) program of the Department of Fish and Wildlife; or by rules and regulations adopted by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, or other agency with jurisdiction for such designations.~~

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17-11. "Critical saltwater habitat" includes all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as Pacific herring, surf smelt and Pacific sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants; and areas with which priority species have a primary association.

Commented [AP317]: Added for consistency with CAO.

25-16. "Archaeological object/Cultural resource" refers to any archaeological, historic, cemetery, or other cultural sites or artifacts; as well as those traditional food, medicine, fibers, and objects that sustain the religious, ceremonial, and social activities of affected Native American tribes that may be regulated under state or federal laws administered by the Washington State Department of Archaeologic and Historic Preservation (DAHP). ~~means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains and technological byproducts.~~

Commented [CES318]: From DAHP guidance.

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

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

Commented [CES319]: Deleted, as LINTHO commented, "The definition that is included for this term on page 227 is taken from the Federal process and it does not apply here. Under state law a different process is followed." Proposed for removal, as term "significant" is no longer used.

18-12. "Current deflector" means an angled "stub-dike," groin, or sheet-pile structure which projects into a stream channel to divert flood currents from specific areas, or to control downstream current alignment.

23.1160.040 "D" definitions.

1. "Dam" means a barrier across a stream or river to confine or regulate flow or raise water levels for purposes such as flood or irrigation water storage, erosion control, power generation, or collection of sediment or debris.

2. "Date of filing" refers to the beginning of the state Shorelines Hearings Board's 21 day appeal period. Consistent with RCW 90.58.140(6), "date of filing" is defined as follows:

- a. For projects that only require a substantial development permit: the date that Ecology receives the County's decision.
- b. For a shoreline conditional use permit or variance: the date the Ecology's decision on the shoreline conditional use permit or variance is transmitted to the applicant and the County.

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c. For substantial development permits simultaneously mailed with a shoreline conditional use permit or variance: the date that Ecology's decision on the shoreline conditional use permit or variance is transmitted to the applicant and the County.

Commented [AP320]: Added per Periodic Review Checklist, Item 2017.d, and Scoping Document Item #2a.

~~"Debris flow" means a moving mass of rock fragments, soil, and mud; more than half of the particles being larger than sand size; a general term that describes a mass movement of sediment mixed with water and air that flows readily on low slopes.~~

Commented [CES321]: Already in Ch. 16.16

3. "Department" means the Whatcom County Department of Planning and Development Services.

~~2-4.~~ "Department of Ecology" or "Ecology" means the Washington State Department of Ecology.

Commented [AP322]: Added per Scoping Document, Item #7a.

~~3-5. "Development" means any land use activity, action, or manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, site work, and installation of utilities; land division, binding site plans, and planned unit developments; dredging, drilling, dumping, filling, grading, clearing, or removal of any sand, gravel, or minerals; shoreline stabilization works, driving of piling, placing of obstructions; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or redevelopment, a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal of any sand, gravel or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any state of water level. This term may include activities related to subdivision and short subdivisions; binding site plans; planned unit developments; clearing activity; fill and grade work; building or construction; and activities that are exempt from the substantial development permit process or that require a shoreline variance or conditional use.~~

Commented [CES323]: Amended for consistency with WAC 173-27-030.

~~4-6.~~ "Dike" means an artificial embankment placed at a stream mouth or delta area to hold back sea water for purposes of creating and/or protecting arable land from flooding.

~~7. "Dock." See "Moorage Structure." means all platform structures or anchored devices in or floating upon water bodies to provide moorage for pleasure craft or landing for water dependent recreation including, but not limited to, floats, swim floats, float plane moorages, and water ski jumps. Excluded are launch ramps.~~

Commented [CES324]: Amended to reflect DOE definitions.

~~5-8.~~ "Director" means the Whatcom County Planning and Development Services director, or his/her designee. The Director is the Shoreline Administrator and is authorized to carry out the administrative duties enumerated in his program.

~~6-9.~~ "Ditch" or "drainage ditch" means an artificially created watercourse constructed to drain convey surface or ground water. Ditches are graded (manmade) channels installed to collect and convey runoff from fields and roadways. Ditches may include irrigation ditches, waste ways, drains, outfalls, operational spillways, channels, stormwater runoff facilities or other wholly artificial watercourses, except those that directly result from the modification to a natural watercourse. Ditched channels that support fish are considered to be streams.

~~7-10.~~ "Dredge spoil" means the material removed by dredging.

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8-11. "Dredging" means the removal, displacement, and disposal of unconsolidated earth material such as silt, sand, gravel, or other submerged material from ~~the bottom~~ waterward of the OHWM of water-bodies or from wetlands. ~~With the exception of regular maintenance of an approved barge landing site,~~ maintenance dredging and other support activities are included in this definition.

12. "Drift sector" or "drift cell" means a particular reach of marine shore in which littoral drift may occur without significant interruption, and which contains any and all natural sources of such drift, and also any accretion shoreform(s) accreted by such drift. Each normal drift sector contains these shore process elements: feeder bluff or estuary, driftway, littoral drift, and accretion shoreform.

9-13. "Drift sill" means a low elevation groin, typically constructed of rock, installed along with beach nourishment filled up to height of sill, that is sometimes used to hold or slow littoral transport of placed sediment without blocking longshore drift.

10-14. "Driftway" means that portion of the marine shore process corridor, primarily the upper foreshore, through which sand and gravel are transported by littoral drift. The driftway is the essential component between the feeder bluff(s) and accretion shoreform(s) of an integral drift sector. Driftways are also characterized by intermittent, narrow berm beaches.

23.1160.050 "E" definitions.

1. "Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. See WAC 173-26-201(2)(c). Functions include, but are not limited to, habitat diversity and food chain support for fish and wildlife, ground water recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and flood water attenuation and flood peak desynchronization, and water quality enhancement through biofiltration and retention of sediments, nutrients, and toxicants. These beneficial roles are not listed in order of priority.

2. "Ecology" or "Department of Ecology" means the Washington State Department of Ecology.

3. "Ecosystem processes" or "ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

2-4. "Ells." See "Moorage Structure."

3-5. "Emergency activities" means an unanticipated and imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with the Shoreline Management Program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements; it does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Director to be the appropriate means to address the emergency situation, upon abatement of the emergency the structure(s) shall be either permitted, or if not permissible, removed; pursuant to the Shoreline Management Program and RCW 90.58.030(3)(e)(iii), WAC 173-27-040(2)(d), or their successors. As a general matter, flooding or other seasonal events that can be

Commented [AP325]: Added per Scoping Document, Item #7a.

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~~anticipated and may occur but that are not imminent are not considered an emergency. those activities that require immediate action within a time too short to allow full compliance with this program due to an unanticipated and imminent threat to public health, safety or the environment. Emergency construction does not include development of new permanent protective structures where none previously existed. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.~~

~~4-6.~~ “Enhancement” means actions performed within an existing degraded shoreline, critical area and/or buffer to intentionally increase or augment one or more functions or values of the existing area. Enhancement actions include, but are not limited to, increasing plant diversity and cover, increasing wildlife habitat and structural complexity (snags, woody debris), installing environmentally compatible erosion controls, or removing nonindigenous plant or animal species.

~~5.—~~ “Erosion” means the wearing away of land by the action of natural forces, such as wind, rain, water and other natural agents that mobilize, transport, and deposit soil particles; on a beach, the carrying away of beach material by wave actions, tidal currents, or littoral currents. a process whereby wind, rain, water and other natural agents mobilize, and transport, and deposit soil particles.

~~6-7.~~ “Erosion hazard areas” means lands or areas underlain by soils identified by the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) as having “severe” or “very severe” erosion hazards and areas subject to impacts from lateral erosion related to moving water such as river channel migration and shoreline retreat.

~~7-8.~~ “Essential public facility” means those facilities that are typically difficult to site, such as airports, state education facilities, and state or regional transportation facilities as defined in RCW 47.06.140, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, and group homes, and secure community transition facilities as defined in RCW 71.09.020 (RCW 36.70A.200, Siting of essential public facilities).

~~8-9.~~ “Excavation” means the disturbance, displacement and/or disposal of unconsolidated earth material such as silt, sand, gravel, soil, rock or other material from all areas landward of OHWM.

~~9-10.~~ “Exempt development” means a use or development activity that is not a substantial development and that is specifically listed as exempt from the substantial development permit requirement in WAC 173-27-040 and WCC ~~Chapter 23.60~~ Title 22 (Land Use and Development).

~~10-11.~~ “Extreme high water level” means the highest tide level reached in a 19-year tidal cycle, or on lakes, the highest water level reached in the past 10 years.

~~11-12.~~ “Extreme low tide” means the lowest line on the land reached by a receding tide.

~~23.11~~ **60.060 “F” definitions.**

1. “Fair market value” of a development means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment

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- and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
2. "Farm pond" means an open water depression created from a non-wetland site in connection with agricultural activities.
3. "Feasible" means an action, such as a development project, mitigation, or preservation requirement, that meets all of the following conditions:
- 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;
 - The action provides a reasonable likelihood of achieving its intended purpose; and
 - The action does not physically preclude achieving the project's primary intended legal use.
- In cases where this program requires certain actions, unless they are infeasible, the burden of proving infeasibility is on the applicant/proponent. In determining an action's infeasibility, the County may weigh the action's relative costs and public benefits, considered in the short- and long-term time frames.
4. "Feasible alternative" means an action, such as development, mitigation, or restoration, that meets all of the following conditions: (a) the action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; (b) the action provides a reasonable likelihood of achieving its intended purpose; and (c) the action does not physically preclude achieving the project's primary intended legal use. Feasibility shall take into account both short- and long-term monetary and nonmonetary costs and benefits.
5. "Feasible location" means a location that accommodates a development in a manner that achieves its intended purpose consistent with the constraints of the applicable land use regulations and characteristics of the property, including but not limited to lot size, configuration, presence/absence of critical areas and compatibility with adjacent land use/development. Feasibility shall take into account both short- and long-term monetary and nonmonetary costs and benefits.
6. "Feeder bluff" or "erosional bluff" means any bluff (or cliff) experiencing periodic erosion from waves, sliding or slumping, and/or whose eroded sand or gravel material is naturally transported (littoral drift) via a driftway to an accretion shoreform; these natural sources of beach material are limited and vital for the long-term stability of driftways and accretion shoreforms.
7. "Feeder bluff exceptional" means relatively rapidly eroding bluff segments identified by the presence of landslide scarps, bluff toe erosion, and a general absence of vegetative cover and/or portions of bluff face fully exposed. Other indicators included the presence of colluvium (slide debris), boulder or cobble lag deposits, and fallen trees across the beachface. Feeder bluff exceptional segments lack a backshore, old or rotten logs, and coniferous bluff vegetation.
8. "Feedlot" means a concentrated, confined animal or poultry operation for production of meat, milk or eggs; or stabling in yards, barns, pens or houses wherein animals or poultry are fed at the place of

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- 1 confinement; and crop or forage growth or production is not sustained within the place of
2 confinement.
- 3 9. "Filling" means the ~~act of transporting~~ or ~~placing~~ by any manual or mechanical means of fill
4 material from, to, or on ~~an area waterward of the OHWM, in wetlands, or on shorelands in a~~
5 ~~manner that raises the elevation or creates dry land~~ any soil surface, including temporary stockpiling
6 of fill material.
- 7 10. "Fill material" means any solid or semi-solid material, including rock, sand, soil, clay, plastics,
8 construction debris, wood chips, overburden from mining or other excavation activities, and
9 materials used to create any structure or infrastructure that, when placed, changes the grade or
10 elevation of the receiving site.
- 11 11. "Fish and wildlife habitat conservation areas" means ~~those areas as defined in WCC Chapter 16.16~~
12 ~~(Critical Areas) important for maintaining species in suitable habitats within their natural geographic~~
13 ~~distribution so that isolated populations are not created, as designated in Chapter 16.16 WCC.~~
- 14 12. "Fish habitat" means a complex of physical, chemical, and biological conditions that provide the life-
15 supporting and reproductive needs of a species or life stage of fish. Although the habitat
16 requirements of a species depend on its age and activity, the basic components of fish habitat in
17 rivers, streams, ponds, lakes, estuaries, marine waters, and nearshore areas include, but are not
18 limited to, the following:
- 19 a. Clean water and appropriate temperatures for spawning, rearing, and holding.
20 b. Adequate water depth and velocity for migrating, spawning, rearing, and holding, including off-
21 channel habitat.
22 c. Abundance of bank and instream structures to provide hiding and resting areas and stabilize
23 stream banks and beds.
24 d. Appropriate substrates for spawning and embryonic development. For stream- and lake-
25 dwelling fishes, substrates range from sands and gravel to rooted vegetation or submerged
26 rocks and logs. Generally, substrates must be relatively stable and free of silts or fine sand.
27 e. Presence of riparian vegetation as defined in this program. Riparian vegetation creates a
28 transition zone, which provides shade, and food sources of aquatic and terrestrial insects for
29 fish.
30 f. Unimpeded passage (i.e., due to suitable gradient and lack of barriers) for upstream and
31 downstream migrating juveniles and adults.
- 32 13. "Fisheries" means all species of fish and shellfish commonly or regularly originating or harvested
33 commercially or for sport in Puget Sound and its tributary freshwater bodies, together with the
34 aquatic plants and animals and habitat needed for continued propagation and growth of such
35 species.
- 36 14. "Fisheries enhancement" means actions taken to rehabilitate, maintain or create fisheries habitat,
37 including but not limited to hatcheries, spawning channels, lake rehabilitation, and planting of
38 fisheries stocks. Fisheries enhancement differs from aquaculture in that the increase in fisheries
39 stocks eventually becomes available for public harvest.

Commented [CES326]: Updated to be consistent with WAC
173-26-020(16)

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- 1 15. "Float" means an anchored (not directly to the shore) floating platform that is free to rise and fall
2 with water levels and is used for water-dependent recreational activities such as boat mooring,
3 swimming, or diving. Floats may stand alone with no over-water connection to shore or may be
4 located at the end of a pier or ramp, a floating platform similar to a dock that is anchored or
5 attached to pilings.
- 6 16. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of
7 normally dry land areas from the overflow of inland waters and/or the unusual and rapid
8 accumulation of runoff of surface waters from any source.
- 9 17. "Flood control works" means all development on rivers and streams designed to retard bank
10 erosion, to reduce flooding of adjacent lands, to control or divert stream flow, or to create a
11 reservoir, including but not limited to revetments, dikes, levees, channelization, dams, vegetative
12 stabilization, weirs, flood and tidal gates. Excluded are water pump apparatus.
- 13 18. "Flood management" means a long-term program to reduce flood damages to life and property and
14 to minimize public expenses due to floods through a comprehensive system of planning,
15 development regulations, building standards, structural works, and monitoring and warning
16 systems.
- 17 19. "Flood-proofing" means structural provisions, changes, adjustments or a combination thereof, to
18 buildings, structures, and works in areas subject to flooding in order to reduce or eliminate damages
19 from flooding to such development and its contents, as well as related water supplies and utility
20 facilities.
- 21 ~~20. "Floodplain, 100-year" means all lands along a river or stream that may be inundated by the base~~
22 ~~flood of such river or stream.~~
- 23 ~~21. "Floodway" means those portions of the area of a river valley lying streamward from the outer~~
24 ~~limits of a watercourse upon which flood waters are carried during periods of flooding that occur~~
25 ~~with reasonable regularity, although not necessarily annually; said floodway being identified, under~~
26 ~~normal conditions, by changes in surface soil conditions or changes in types or quality of vegetation~~
27 ~~ground cover condition, topography, or other indicators of flooding that occurs with reasonable~~
28 ~~regularity, although not necessarily annually. The floodway shall not include those lands that can~~
29 ~~reasonably be expected to be protected from flood waters by flood control devices maintained by or~~
30 ~~maintained under license from the federal government, the state, or the County. The limit of the~~
31 ~~floodway is that which has been established in the program and approved by the Department of~~
32 ~~Ecology.~~
- 33 ~~22-20.~~ "Floodway fringe" means that fringe of land in the floodplain outside the floodway, which is
34 subject to inundation by the base flood. Flooding in the fringe is limited to flood surge storage of
35 water currents moving at a negligible velocity of less than one-half mile per hour.
- 36 ~~23-21.~~ "Food chain" means the hierarchy of feeding relationships between species in a biotic
37 community. The food chain represents the transfer of material and energy from one species to
38 another within an ecosystem.
- 39 ~~24-22.~~ "Foreshore" means the intertidal area between mean higher high water and mean low water.

Commented [AP327]: Defined in CAO.

Commented [AP328]: Update per Periodic Review Checklist, Item 2007.a, and Scoping Document, Item #2g.

Commented [CES329]: Already defined in Ch. 16.16

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23. "Fossil fuels" include coal, petroleum, crude oil, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils. All contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels are not fossil fuels.

Commented [P/C330]: Showing amendments (in different color) from the P/C from their action on concurrent fossil fuel regulations in Title 20.

24. "Fossil Fuel Transshipment Facility" is a facility engaging primarily in the process of off-loading of fossil fuels materials, refined or unrefined, refinery feedstocks, products or by products from one transportation method (such as a ship, truck, or railcar) facility and loading it onto another transportation facility method for the purposes of transporting the fossil fuel such products into or and out of Whatcom County. Examples of transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and compressor stations and associated facilities. This definition shall include bulk storage or transfer facilities for the shipment of crude oil without refining or consuming within the Cherry Point Industrial District and shall excludes Small Fossil or Renewable Fuel Storage and Distribution Facilities.

26. "Fossil Fuel Refinery" means a facility that converts crude oil and other liquids into petroleum products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of fossil fuels or by products. This definition excludes Small Fossil or Renewable Fuel Storage and Distribution Facilities. "Forest land" means all land that is capable of supporting a merchantable stand of timber and is not being actively used, developed, or converted in a manner that is incompatible with timber production.

Commented [DN331]: Added per Council's pending draft fossil fuel amendments.

27. "Forest practices" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing of timber; including, but not limited to: (a) road and trail construction, (b) fertilization, (c) prevention and suppression of diseases and insects; or other activities that qualify as a use or development subject to the Act.

Commented [AP332]: Removed. Relying on Title 20 (Zoning).

28.25. Excluded from this definition is preparatory work such as tree marking, surveying and removal of incidental vegetation such as berries, greenery, or other natural products whose removal cannot normally be expected to result in damage to shoreline natural features. Also excluded from this definition is preparatory work associated with the conversion of land for non-forestry uses and developments. Log storage away from forest land is considered industrial.

Commented [AP333]: Removed. Already defined in Title 20 (Zoning).

29. "Freestanding sign" means a self-supporting sign placed off and away from the building to which it is related.

Commented [AP334]: Removed. Already defined in Title 20 (Zoning).

30.26. "Frequently flooded areas" means lands in the floodplain subject to a one percent or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as determined by the County in accordance with WAC 365-190-080(3). Classifications of frequently flooded areas include, at a minimum, the 100-year floodplain "special flood hazard area" designations of the Federal Emergency Management Agency and the National Flood Insurance Program, as designated in WCC Chapter 16.16 (Critical Areas).

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~~23.11~~**23.1160.070 “G” definitions.**

1. “Gabions” means works composed of masses of rock, rubble, or masonry tightly enclosed usually by wire mesh so as to form massive blocks. They are used to form walls on beaches to retard wave erosion or as foundations for breakwaters or jetties.

2. ~~“Gangway.” See “Moorage Structure.”~~

~~2-3.~~ “Geologically hazardous areas” means areas designated in WCC Chapter 16.16 that, because of their susceptibility to erosion, sliding, earthquake, or other geological events, pose unacceptable risks to public health and safety and may not be suited to commercial, residential, or industrial development.

~~3-4.~~ “Geotechnical report” or “geotechnical analysis/assessment” is an umbrella term used for the evaluation completed by a qualified professional to meet the requirements of WCC 16.16.255 (Critical areas assessment reports) and WCC 16.16, Article 3 (Geologically Hazardous Areas). means a scientific study or evaluation conducted by a qualified professional that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards.

~~4-5.~~ “Gradient” means a degree of inclination, or a rate of ascent or descent, of an inclined part of the earth’s surface with respect to the horizontal; the steepness of a slope. It is expressed as a ratio (vertical to horizontal), a fraction (such as meters/kilometers or feet/miles), a percentage (of horizontal distance), or an angle (in degrees).

~~5-6.~~ “Grading” means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

~~6-7.~~ “Groins” means wall-like structures extending on an angle waterward from the shore into the intertidal zone. Their purpose is to build or preserve an accretion shoreform or berm on their updrift side by trapping littoral drift. Groins are relatively narrow in width but vary greatly in length. Groins are sometimes built in series as a system, and may be permeable or impermeable, high or low, and fixed or adjustable.

~~7.~~ “Gross floor area” means, for the purposes of WCC 23.50.070(J), the sum total of the area included within the surrounding exterior walls of a building.

8. “Ground water” means all water that exists beneath the land surface or beneath the bed of any stream, lake or reservoir, or other body of surface water within the boundaries of the state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves (Chapter 90.44 RCW).

9. “Growth Management Act” means Chapters 36.70A and 36.70B RCW, as amended.

Commented [MD335]: Deleted as term removed from referenced provision.

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~~23.11~~**60.080** **"H" definitions.**

~~1.~~ "Habitat conservation areas." See "Fish and wildlife habitat conservation areas."

~~1-2.~~ "Harbor area" means the navigable waters between inner and outer harbor lines as established by the State Harbor Lines Commission waterward of and within one mile of an incorporated city.

Harbor areas have been established offshore of Bellingham and Blaine.

~~2. Repealed by Ord. 2019-013.~~

~~3.~~ "Hazard tree" See WCC Chapter 16.16 (Critical Areas).

~~3-4.~~ "Hazardous area" means any shoreline ~~area~~ environment which is hazardous for intensive human use or structural development due to inherent and/or predictable physical conditions, such as, but not limited to, geologically hazardous areas, frequently flooded areas, and coastal high hazard areas.

~~4-5.~~ "Hazardous materials" means any substance containing such elements or compounds which, when discharged in any quantity in shorelines, present an imminent and/or substantial danger to public health or welfare, including, but not limited to: fish, shellfish, wildlife, water quality, and other shoreline features and property.

~~5-6.~~ "Hazardous substance" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 or 173-303-100.

~~6-7.~~ "Hearings board" means the State Shorelines Hearings Board referenced in RCW 90.58.170.

~~7-8.~~ "Height (building)" means the distance measured from the average grade level to the highest point of a structure. Television antennas, chimneys, and similar structures or appurtenances shall not be used in calculating height except where they obstruct the view of residences adjoining such shorelines. Temporary construction equipment is excluded in this calculation (WAC 173-27-030(9) or its successor). For all moorage structures, height shall be measured from the ordinary high water mark~~the vertical dimension measured from average grade to the highest point of a structure; provided, that antennas, chimneys, and similar appurtenances shall not be used in calculating height, unless such appurtenance obstructs the view of a substantial number of adjacent residences.~~

~~8-9.~~ "High intensity land use" means land use that includes the following uses or activities: commercial, urban, industrial, institutional, retail sales, residential (more than one unit/acre), high intensity ~~new~~ agriculture (dairies, nurseries, greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), high intensity recreation (golf courses, ball fields), and hobby farms.

~~9-10.~~ "Historic preservation professional" means those individuals who hold a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

- a. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
- b. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

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~~10-11.~~ “Historic site” means those sites that are eligible or listed on the Washington Heritage Register, National Register of Historic Places, or any locally developed historic registry formally adopted by the Whatcom County Council.

~~11-12.~~ “Hydraulic project approval (HPA)” means a permit issued by the State Department of Fish and Wildlife for modifications to waters of the state in accordance with Chapter 77.55 RCW.

~~12-13.~~ “Hydric soil” means a soil that is saturated, flooded or ponded long enough during the growing season to develop anaerobic conditions in the upper part. The presence of hydric soil shall be determined following the methods described in the [NRCS “Field Indicators of Hydric Soils” Version 7](#), and/or the [Corps of Engineers Wetlands Delineation Manual](#), as amended, [Washington State Wetland Identification and Delineation Manual \(RCW 36.70A.175\)](#).

Commented [AP336]: Updated for consistency with CAO.

~~13-14.~~ “Hydrophytic vegetation” means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

~~14-15.~~ “Hyporheic zone” means the saturated zone located beneath and adjacent to streams that contain some proportion of surface water from the surface channel mixed with shallow ground water. The hyporheic zone serves as a filter for nutrients, as a site for macroinvertebrate production important in fish nutrition, and provides other functions related to maintaining water quality.

~~23.11~~**60.090 “I” definitions.**

~~1-1.~~ “Impervious surface” means a hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater. Natural surface water and open, uncovered detention/retention facilities shall not be calculated when determining total impervious surfaces. Impervious surfaces do not include surfaces created through proven low impact development techniques.

Commented [AP337]: Removed. Relying on definition in Title 20 (Zoning).

~~2-1.~~ “In-kind compensation” means to replace critical areas with substitute areas whose characteristics and functions mirror those destroyed or degraded by a regulated activity.

~~3-2.~~ “Instream structure” means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. Instream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

~~4-3.~~ “Industrial development” means facilities for processing, manufacturing, and storage of finished or semi-finished goods, including but not limited to ~~oil~~, metal or mineral product refining, power generating facilities, including hydropower, ship building and major repair, storage and repair of large trucks and other large vehicles or heavy equipment, related storage of fuels, commercial storage and repair of fishing gear, warehousing, construction contractors’ offices and

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material/equipment storage yards, wholesale trade or storage, and log storage on land or water, together with necessary accessory uses such as parking, loading, and waste storage and treatment. Excluded from this definition are mining, including on-site processing of raw materials, and off-site utility, solid waste, road or railway development, and methane digesters that are accessory to an agricultural use. This definition excludes fossil or renewable fuel refineries or transshipment facilities.

5-4. "Infiltration" means the downward entry of water into the immediate surface of soil.

6-5. "Institutional development" means those public and/or private facilities including, but not limited to, police and fire stations, libraries, activity centers, schools, educational and religious training centers, water-oriented research facilities, and similar noncommercial uses, excluding essential public facilities.

7-6. "Intertidal zone" means the substratum from extreme low water of spring tides to the upper limit of spray or influence from ocean-derived salts. It includes areas that are sometimes submerged and sometimes exposed to air, mud and sand flats, rocky shores, salt marshes, and some terrestrial areas where salt influences are present.

8-7. "Invasive species" means a species that is (a) nonnative (or alien) to Whatcom County and (b) whose introduction causes or is likely to cause economic or environmental harm, or harm to human health. Invasive species can be plants, animals, and other organisms (e.g., microbes). Human actions are the primary means of invasive species introductions.

~~23.11~~60.100 "J" definitions.

1. "Jetties" means structures that are generally perpendicular to shore extending through or past the intertidal zone. They are built singly or in pairs at harbor entrances or river mouths mainly to prevent shoaling or accretion from littoral drift in entrance channels, which may or may not be dredged. Jetties also serve to protect channels from storm waves or cross currents, and stabilize inlets through barrier beaches. On the West Coast and in this region, most jetties are of riprap mound construction.

~~23.11~~60.110 "K" definitions.

Reserved.

~~23.11~~60.120 "L" definitions.

1. "Lake." See WCC Chapter 16.16 (Critical Areas). means a body of standing water in a depression of land or expanded part of a stream, of 20 acres or greater in total area. A lake is bounded by the OHWM or, where a stream enters the lake, the extension of the lake's OHWM within the stream. Wetland areas occurring within the standing water of a lake are to be included in the acreage calculation of a lake.

2. "Landslide" means a general term covering a wide variety of mass movement landforms and processes involving the downslope transport, under gravitational influence of soil and rock material *en masse*; included are debris flows, debris avalanches, earthflows, mudflows, slumps, mudslides, rock slides, and rock falls.

Commented [DN338]: Amended per Council's pending draft fossil fuel amendments.

Commented [AP339]: Updated for consistency with CAO.

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- 1 3. "Landslide hazard areas" means areas that, due to a combination of site conditions, like slope
2 inclination and relative soil permeability, are susceptible to mass wasting, as designated in WCC
3 Chapter 16.16 (Critical Areas).
- 4 ~~3.4.~~ "Launch Rail." See "Moorage Structure."
- 5 ~~4.5.~~ "Launch Ramp" or "Boat Ramp." See "Moorage Structure." means an inclined slab, set of pads, rails,
6 planks, or graded slope used for launching boats with trailers or by hand.
- 7 ~~5.6.~~ "Levee" means a natural or artificial embankment on the bank of a stream for the purpose of
8 keeping floodwaters from inundating adjacent land. Some levees have revetments on their sides.
- 9 ~~6.7.~~ "Liberal construction" means an interpretation that applies in writing in light of the situation
10 presented that tends to effectuate the spirit and purpose of the writing.
- 11 ~~7.8.~~ "Littoral drift" means the natural movement of sediment, particularly sand and gravel, along
12 shorelines by wave action in response to prevailing winds or by stream currents (see also "drift
13 sector," "driftway").
- 14 ~~8.9.~~ "Live-aboard" means any noncommercial habitation of a vessel, as defined in WCC 23.110.220(3),
15 when any one of the following applies:
- 16 a. Any person or succession of different persons resides on the vessel in a specific location, and/or
17 in the same area on more than a total of 30 days in any 40-day period or on more than a total of
18 90 days in any 365-day period. "In the same area" means within a radius of one mile of any
19 location where the same vessel previously moored or anchored on state-owned aquatic lands. A
20 vessel that is occupied and is moored or anchored in the same area, but not for the number of
21 days described in this subsection, is considered used as a recreational or transient vessel;
- 22 b. The city or county jurisdiction, through local ordinance or policy, defines the use as a residential
23 use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is
24 moored;
- 25 c. The operator of the facility where the vessel is moored, through the moorage agreement, billing
26 statement, or facility rules, defines the use as a residential use or identifies the occupant of the
27 vessel as a resident of the vessel or of the facility; or
- 28 d. The occupant or occupants identify the vessel or the facility where it is moored as their
29 residence for voting, mail, tax, or similar purposes.
- 30 ~~9.10.~~ "Log booming" means assembling and disassembling rafts of logs for water-borne
31 transportation.
- 32 ~~10.11.~~ "Log storage" means the holding of logs in the water for more than 60 days.
- 33 ~~11.~~ "Lot" means land described by final plat, short plat or metes and bounds description and is
34 established pursuant to applicable state and local regulations in effect at the date a legal instrument
35 creating the lot is recorded at the Whatcom County auditor's office. A lot bisected by a public or
36 private road, railroad, trail or other feature is considered a single building site unless the portion of
37 the parcel on each side of the bisecting road or other feature separately meets all dimensional,
38 buffer and other requirements established by local and state regulations.
- 39 ~~12.~~ "Lot area" or "lot size" means the portion of a total parcel determined to be usable for the purpose
40 of creating a building lot, pursuant to all applicable regulations. The area below the ordinary high

Commented [AP340]: Removed. Relying on Title 20 (Zoning).

Commented [CES341]: Defined in T-20.

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~~water mark shall not be considered a part of the lot area. Lot area shall exclude any portion included within the lot description used as a public road or as an access easement for another parcel; provided, that the area of parcels of five acres or greater may be regarded as nominal and may be measured to the center of bounding roads. Easements or restrictions that preclude use to the present or future surface owner of the parcel shall be excluded from lot area.~~

~~23.11~~**23.160.130 “M” definitions.**

1. “Maintenance or repair” means those usual activities required to prevent a decline, lapse or cessation from a lawfully established condition or to restore the character, scope, size, and design of a serviceable area, structure, or land use to a state comparable to its previously authorized and undamaged condition. This does not include any activities that change the character, scope, or size of the original structure, facility, utility or improved area beyond the original design.

~~2. “Major development” means any project for which a major project permit is required pursuant to Chapter 20.88 WCC. For the purposes of this program, “major development” shall also mean any project associated with an existing development for which a major development permit has been required or other existing legal nonconforming development for which a major development permit would otherwise be required if developed under the current land use regulations outlined in WCC Title 20.~~

Commented [AP342]: Removed term as it's no longer used.

~~3.2.~~ “Marina” means a facility that provides wet moorage ~~and/or~~ dry storage ~~facility~~ for pleasure ~~craft~~ ~~and/or~~ commercial craft where goods, moorage or services related to boating may be sold commercially or provided for a fee, e.g., yacht club, etc. Launching facilities and covered moorage may also be provided. Marinas may be open to the general public or restricted on the basis of property ownership or membership. Manufacturing of watercraft is considered industrial. Shared moorage of 5 or more residential units is considered a marina.

~~4.3.~~ “Marsh” means a low flat wetland area on which the vegetation consists mainly of herbaceous plants such as cattails, bulrushes, tules, sedges, skunk cabbage or other hydrophytic plants. Shallow water usually stands on a marsh at least during part of the year.

~~5.4.~~ “Mass wasting” means downslope movement of soil and rock material by gravity. This includes soil creep, erosion, and various types of landslides, not including bed load associated with natural stream sediment transport dynamics.

~~6.5.~~ “May” means the action is allowable, provided it conforms to the provisions of this program.

~~7.6.~~ “Mean annual flow” means the average flow of a river, or stream (measured in cubic feet per second) from measurements taken throughout the year. If available, flow data for the previous 10 years should be used in determining mean annual flow.

~~8.7.~~ “Mean higher high water” or “MHHW” means the mean elevation of all higher tides, generally occurring twice each day in Whatcom County at any given location on the marine shoreline.

~~9.8.~~ “Mean lower low water” or “MLLW” means the mean elevation of all lower tides, generally occurring twice each day in Whatcom County at any given location on the marine shoreline.

~~10.9.~~ “Mining” means the removal of naturally occurring metallic and nonmetallic minerals or other materials from the earth for ~~economic-commercial and other~~ uses.

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- 1 ~~11-10.~~ "Mitigation" means individual actions that may include a combination of the following
2 measures, listed in order of preference:
3 a. Avoiding an impact altogether by not taking a certain action or parts of actions;
4 b. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
5 c. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
6 d. Reducing or eliminating an impact over time by preservation and maintenance operations
7 during the life of the action;
8 e. Compensating for an impact by replacing or providing substitute resources or environments;
9 and
10 f. Monitoring the mitigation and taking remedial action when necessary.
- 11 ~~12-11.~~ "Mitigation plan" means a detailed plan indicating actions necessary to mitigate adverse impacts
12 to critical areas.
- 13 ~~13-12.~~ "Mixed use" means a combination of uses within the same building or site as a part of an
14 integrated development project with functional interrelationships and coherent physical design.
- 15 ~~13.~~ "Monitoring" means evaluating the impacts of development proposals over time on the biological,
16 hydrological, pedological, and geological elements of ecosystem functions and processes and/or
17 assessing the performance of required mitigation measures through the collection and analysis of
18 data by various methods for the purpose of understanding and documenting changes in natural
19 ecosystems and features compared to baseline or pre-project conditions and/or reference sites.
- 20 ~~14.~~ "Moorage Buoy." See "Moorage Structure."
21 ~~15.~~ "Boat Lift" or lift. See "Moorage Structure."
22 ~~16.~~ "Mooring Pile" or piling. See "Moorage Structure."
- 23 ~~17.~~ "Moorage Structure" means any in- or overwater structures, used for mooring, launching, or storing
24 vessels and may contain any one or combination of the following:
25 a. Piers and docks adjoin the shoreline, extend over the water, and serve as a landing or
26 moorage place for commercial, industrial and pleasure watercraft.
27 i. Piers are built on fixed platforms and sit above the water.
28 ii. Docks float on the water and are anchored to the land, substrate, or the pier with pilings
29 or anchors.
30 b. Gangways are walkways that connect the pier to the dock. Gangways are often used in areas
31 where the water level changes due to tides or seasonal variations.
32 c. Ells are extensions of piers, often in a U-shape or L shape, that provide additional watercraft
33 moorage.
34 d. Recreational floats are platforms that float on the water's surface. They are anchored offshore
35 and are used for swimming and fishing. Some floats have components such as slides and
36 trampolines.
37 e. Boathouses basically serve as garages for boats. They have walls and a roof, and are situated
38 on the water or just above the water's edge.
39 f. Mooring buoys typically include an anchoring system with an anchor and anchor line, a float
40 marking its location, and a fitting for a vessel's mooring chain or hawser. Washington laws

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establish two categories for mooring buoys -- commercial and recreational [RCW 79.105.430].
Commercial buoys are typically used for temporary moorage of a vessel that is awaiting transit
or loading or offloading. Recreational buoys are used as semi-permanent moorage for
recreational vessels.

g. Mooring piles or pilings are fixed poles or groups of poles set in the substrate and extending
above the water line.

h. Lifts or boat lifts raise watercraft out of the water for launching or storing. They may be
attached to the substrate, a pier or dock, bulkhead or float or be located upland.

i. Canopies are covers that protect watercraft from the sun and rain.

j. Boat or launch ramps are solid or relatively solid surfaces that bridge land and water and are
used for moving watercraft into and out of the water.

k. Railways are rails attached to the substrate used for launching and retrieving watercraft,
usually with a cradle and winch system.

l. Others such as Jet Ski floats and boat dry docks provide storage of watercraft out of the water.
Some floats serve as helicopter pads, while others are used for docking seaplanes.

m. "Finger" means a narrow extension to a fixed-pile pier, usually extending perpendicular
to the pier walkway along with an ell to form an enclosed area for boat moorage.

14. "Multifamily dwelling" means a single building, or portion thereof, designed for or occupied by three
or more families living independently of each other in separate dwelling units on one lot of record
and, for the purpose of this code, includes triplexes, fourplexes, apartment buildings, and residential
condominiums.

15-18. "Must" means a mandate; the action is required.

23.1160.140 "N" definitions.

1. "Native vegetation" means plant species that are indigenous to the Whatcom County and the local
area.

2.1. "Natural shoreline area environment" means an area designated pursuant to WCC
Chapter 23.320 (Shoreline Jurisdiction and Environment Designations).

3.2. "Navigable waters" means a waterbody that in its ordinary condition, or by being united with other
water-bodies, forms a continued route or area over which commerce or recreational activities are or
may be carried on in the customary modes in which such commerce or recreation is conducted on
water.

4.3. "Nearshore habitat" or "nearshore zone" means the area of marine and estuarine shoreline,
generally extending from the top of the shoreline bank or bluff to the depth offshore where light
penetrating the water falls below a level supporting plant growth, and upstream in estuaries to the
head of the tidal influence. It includes bluffs, beaches, mudflats, kelp and eelgrass beds, salt
marshes, gravel spits, and estuaries zone that extends waterward from the marine shoreline
(OHWM) to a water depth of approximately 20 meters (66 feet). Nearshore habitat is biologically
rich, providing important habitat for a diversity of plant and animal species.

Commented [CES343]: From DOE shoreline manual.

Commented [Co/C344]: Amended pursuant to Resolution
2022-027

Commented [AP345]: Already defined in Title 20 (Zoning).

Commented [AP346]: Already defined in Title 20 (Zoning).

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4. “No net loss” ~~as a public policy goal~~ means the maintenance of the aggregate total of the county’s shoreline ecological and/or critical area functions and values at its current level of environmental resource productivity. As a development and/or mitigation standard, no net loss requires that the impacts of a particular shoreline development and/or use, whether permitted or exempt, be identified and prevented or mitigated, such that it has no resulting adverse impacts on shoreline ecological functions or ~~processes~~values. Each project shall be evaluated based on its ability to meet the no net loss standard commensurate with its scale and character.

5. ~~“Nonconforming lot” means, for the purposes of WCC 23.50.070(K) and 23.90.060(B)(3), a vacant lot under contiguous ownership and with less than a total of 20,000 square feet, including within shoreline jurisdiction, a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.~~

~~that was lawfully established prior to the effective date of this program (August 27, 1976) or amendments hereto, but which does not conform to the setback or buffer standards of this program.~~

6. ~~“Nonconforming structure” means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.~~

7. ~~“Nonconforming use,” “nonconforming development” or “nonconforming structure” means an existing shoreline use, development or structure that was lawfully constructed or established prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendments thereafter hereto, but which does not conform to present use regulations due to subsequent changes to or standards of the master program.~~

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

~~23.1160.150~~ **“O” definitions.**

~~16. “Off-premises sign” means a sign situated on premises other than those premises to which the sign’s message is related.~~

1. “Oil” means petroleum or any petroleum product in liquid, semi-liquid, or gaseous form including, but not limited to, crude oil, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredging spoil. See Fossil Fuels.

2. “Ongoing agriculture” means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including, but not limited to, operation and maintenance of existing farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities, and maintenance or repair of existing serviceable structures and facilities. Activities that bring an area into agricultural use are not part of an ongoing activity. An

Commented [AP347]: Differentiating nonconforming lots, structures, and uses per Periodic Review Checklist, Item 2017.g, and Scoping Document, Item #2d and 10a.

Commented [AP348]: Already defined in Title 20 (Zoning).

Commented [DN349]: Added per Council’s pending draft fossil fuel amendments.

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operation ceases to be ongoing when the area on which it was conducted has been converted to a nonagricultural use, or has lain idle for more than five consecutive years unless that idle land is registered in a federal or state soils conservation program. Forest practices are not included in this definition.

~~3. "On-premises sign" means a sign situated on the premises to which the sign's message is related.~~

Commented [AP350]: Already defined in Title 20 (Zoning).

~~4.3.~~ "Open space" means any parcel or area of land or water not covered by structures, hard surfacing, parking areas and other impervious surfaces except for pedestrian or bicycle pathways, or where otherwise provided by this title or other County ordinance and set aside or, dedicated, for active or passive recreation, visual enjoyment, or critical area development buffers as established in WCC Chapter 16.16. Submerged lands and/or tidelands within the boundaries of any waterfront parcel that are located waterward of the ordinary high water mark shall not be used in open space calculations. Required open space percentages, as applicable, are not to be used for purposes of calculating total impervious surface.

~~5.4.~~ "Ordinary high water mark (OHWM)" ~~or "OHWM" means the mark or line~~ on all lakes, rivers, streams, and tidal water ~~means that mark~~ that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition existed on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with approved development; provided, that in any area where the OHWM cannot be found, the OHWM adjoining saltwater shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water. For braided streams, the OHWM is found on the banks forming the outer limits of the depression within which the braiding occurs.

~~23.1160.160~~ "P" definitions.

1. "Party of record" means all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on an application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.
2. "Permit or approval" means any form or permission required under this program prior to undertaking activity on shorelines of the state, including substantial development permits, variance permits, shoreline conditional use permits, permit revisions, and shoreline exemptions from the substantial development permit process.
3. "Person" means any individual, trustee, executor, other fiduciary, corporation, firm, partnership, association, organization, or other entity, either public or private, acting as a unit ~~an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, state agency or local governmental unit, however designated, or Indian nation or tribe.~~
4. "Pier." See "Moorage Structure." ~~means any platform structure, fill, or anchored device in or floating upon waterbodies and extending waterward from ordinary high water to provide moorage for~~

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~~industrial, commercial, and/or pleasure watercraft engaged in commerce, including, but not limited to: wharves, mono-buoys, sea islands, quays, ferry terminals, and fish weighing stations.~~

~~5. "Planned unit development (PUD)" means one or a group of specified uses, such as residential, resort, commercial or industrial, to be planned and constructed as a unit. Zoning or subdivision regulations with respect to lot size, building bulk, etc., may be varied to allow design innovations and special features in exchange for additional and/or superior site amenities or community benefits.~~

Commented [AP351]: Already defined in Title 20 (Zoning).

~~6.5.~~ "Pocket beach" means an isolated beach existing usually without benefit of littoral drift from sources elsewhere. Pocket beaches are produced by erosion of immediately adjacent bluffs or banks and are relatively scarce and therefore valuable shoreforms in Whatcom County; they are most common between rock headlands and may or may not have a backshore.

~~7.6.~~ "Point" means a low profile shore promontory that may be either the wave-cut shelf remaining from an ancient bluff or the final accretional phase of a hooked spit that closed the leeward side gap. Points are accretion shoreforms characterized by converging berms accreted by storm waves that enclose a lagoon, marsh, or meadow, depending on the point's development stage.

~~8.7.~~ "Point bar" means an accretion shoreform created by deposition of sand and gravel on the inside, convex side of a meander bend. Most material is transported downstream as sediment and bedload at times of high current velocity, or flood stage, from eroding banks or other bars upstream.

~~9.8.~~ "Pond" means an open body of water, generally equal to or greater than 6.6 feet deep, that persists throughout the year and occurs in a depression of land or expanded part of a stream and has less than 30 percent aerial coverage by trees, shrubs, or persistent emergent vegetation. Ponds are generally smaller than lakes. Farm ponds are excluded from this definition. Beaver ponds that are two years old or less are excluded from this definition. For the purpose of this program, any pond whose surface water extends into the OHWM of any shoreline of the state shall be considered part of that shoreline of the state.

~~10.9.~~ "Port development" means public or private facilities for transfer of cargo or passengers from water-borne craft to land and vice versa, including, but not limited to: piers, wharves, sea islands, commercial float plane moorages, offshore loading or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas, boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat building or repair. The latter group is considered industrial or accessory to other uses. This definition excludes fossil or renewable fuel transshipment facilities.

Commented [DN352]: Added per Council's pending draft fossil fuel amendments.

~~11.10.~~ "Potable" means water that is suitable for drinking by the public (Chapter 246-290 WAC).

~~12.11.~~ "Preservation" means actions taken to ensure the permanent protection of existing, ecologically important areas that the County has deemed worthy of long-term protection.

~~13.12.~~ "Primary association" means the use of a habitat area by a listed or priority species for breeding/spawning, rearing young, resting, roosting, feeding, foraging, and/or migrating on a frequent and/or regular basis during the appropriate season(s), as well as habitats that are used less

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frequently/regularly but which provide for essential life cycle functions such as breeding, nesting, or spawning.

~~14-13.~~ "Priority habitat" means a habitat type with unique or significant value to one or more species.

An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; important marine mammal haulout; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife (WAC 173-26-020(24)).

~~15-14.~~ "Priority species" means wildlife species of concern due to their population status and their sensitivity to habitat alteration, as defined by the Washington Department of Fish and Wildlife.

~~16-15.~~ "Private dock" means a dock and/or float for pleasure craft moorage or water recreation for exclusive use by one waterfront lot owner.

~~17-16.~~ "Private sign" means a sign used on a private residence to indicate only the owner's name or address, that the premises are for rent or sale, or for other reasonable purposes related to residential use including permitted home occupations.

~~18-17.~~ "Project" means any proposed or existing activity regulated by Whatcom County.

~~19.~~ "Project permit" or "project permit application" means any land use or environmental permit or approval required by Whatcom County, including, but not limited to, building permits, subdivisions, binding site plans, planned unit developments, conditional uses, shoreline substantial development permits, variances, lot consolidation relief, site plan review, permits or approvals authorized by a comprehensive plan or subarea plan.

~~20.~~ "Projecting sign" means a sign that is attached to and projects at an angle from a building's exterior wall.

Commented [AP353]: Already defined in Title 20 (Zoning).

Commented [CES354]: Already defined in Title 20 (Zoning).

~~21-18.~~ "Public access" means the public's right to get to and use the state's public waters, both saltwater and freshwater, the water/land interface and associated shoreline ~~area~~ environment. It includes physical access that is either lateral (areas paralleling the shore) or perpendicular (an easement or public corridor to the shore), and/or visual access facilitated by means such as scenic roads and overlooks, viewing towers and other public sites or facilities.

~~22-19.~~ "Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from adverse effects of a use or development.

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23. ~~"Public utility" means a use owned or operated by a public or publicly licensed or franchised agency that provides essential public services such as telephone exchanges, electric substations, radio and television stations, wireless communications services, gas and water regulation stations, and other facilities of this nature.~~

Commented [AP355]: Already defined in Title 20 (Zoning).

23.1160.170 "Q" definitions.

1. ~~"Qualified professional" or "qualified consultant." See WCC 16.16 (Critical Areas). means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries, geology, geomorphology or related field, and related work experience and meet the following criteria:~~
- ~~a. A qualified professional for wetlands must have a degree in biology, ecology, soil science, botany, or a closely related field and a minimum of three years of professional experience in wetland identification and assessment associated with wetland ecology in the Pacific Northwest or comparable systems.~~
 - ~~b. A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or closely related field and a minimum of three years' professional experience related to the subject species/habitat type.~~
 - ~~c. A qualified professional for geologically hazardous areas must be a professional engineering geologist or geotechnical engineer, licensed in the state of Washington.~~
2. ~~1. A qualified professional for critical aquifer recharge areas means a Washington State licensed hydrogeologist, geologist, or engineer.~~

23.1160.180 "R" definitions.

1. "Recharge" means the process involved in the absorption and addition of water from the unsaturated zone to ground water.
2. "Recreation" means an experience or activity in which an individual engages for personal enjoyment and satisfaction. Most shore-based recreation includes outdoor recreation such as: fishing, hunting, clamming, beach combing, and rock climbing; various forms of boating, swimming, hiking, bicycling, horseback riding, camping, picnicking, watching or recording activities such as photography, painting, bird watching or viewing of water or shorelines, nature study and related activities.
3. "Recreational development" means the modification of the natural or existing environment to accommodate recreation. This includes clearing land, earth modifications, structures and other facilities such as parks, camps, camping clubs, launch ramps, golf courses, viewpoints, trails, public access facilities, public parks and athletic fields, hunting blinds, wildlife enhancement (wildlife ponds are considered excavation), and other low intensity use outdoor recreation areas. Recreational homes/condominiums and related subdivisions of land are considered residential; resorts, motels, hotels, recreational vehicle parks, intensive commercial outdoor or indoor recreation, and other commercial enterprises are considered commercial.

4. ~~"Recreational Float." See "Moorage Structure."~~

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- 1 ~~4-5.~~ "Reestablishment" means measures taken to intentionally restore an altered or damaged natural
2 feature or process including:
3 a. Active steps taken to restore damaged wetlands, streams, protected habitat, and/or their
4 buffers to the functioning condition that existed prior to an unauthorized alteration;
5 b. Actions performed to reestablish structural and functional characteristics of a critical area that
6 have been lost by alteration, past management activities, or other events; and
7 c. Restoration can include restoration of wetland functions and values on a site where wetlands
8 previous existed, but are no longer present due to lack of water or hydric soils.
- 9 ~~5.~~ "Rehabilitation" means a type of restoration action intended to repair natural or historic functions
10 and processes. Activities could involve breaching a dike to reconnect wetlands to a floodplain or
11 other activities that restore the natural water regime.
- 12 ~~6.~~ "Renewable biomass" includes but is not limited to the following:
13 a. Planted crops and crop residue harvested from agricultural land.
14 b. Planted trees and tree residue from a tree plantation.
15 c. Animal waste material and animal byproducts.
16 d. Slash and pre-commercial thinnings.
17 e. Organic matter that is available on a renewable or recurring basis.
18 f. Algae.
19 g. Separated yard waste or food waste, including recycled cooking and trap grease.
20 ~~a-h.~~ Items a through g including any incidental, de minimis contaminants that are impractical to
21 remove and are related to customary feedstock production and transport.
- 22 ~~7.~~ "Renewable Fuel" means liquid fuels produced from renewable biomass and limited in terms of
23 blending with fossil fuels. Common renewable fuels include ethanol and biodiesel:
24 a. "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which
25 the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by
26 volume that complies with the most recent version of American society of testing and materials
27 specification D 5798.
28 b. "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable
29 sources, including vegetable oils and animal fats, that meets the registration requirements for
30 fuels and fuel additives established by the federal environmental protection agency in 40 Code
31 of Federal Regulations (C.F.R.) Part 79 ~~(2008)~~ and meets the requirements of American society
32 of testing and materials specification D 975.
33 c. Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission
34 reduction of at least 50% or more under the Federal Clean Air Act. Renewable fuels shall not
35 include products produced from palm oil or other feedstocks that cannot be proven to reduce
36 greenhouse gas emissions utilizing accepted methods of the Washington State Department of
37 Ecology or US EPA.
- 38 ~~5-8.~~ "Renewable Fuel Refinery" means a facility that processes or produces renewable fuels. This
39 definition excludes Small Fossil or Renewable Fuel Storage and Distribution Facilities.

Commented [P/C356]: Deleted by the P/C during their deliberations on concurrent fossil fuel regulations in Title 20, since federal regulations may be amended over time.

Commented [DN357]: Added per Council's pending draft fossil fuel amendments.

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6-9. "Renovate" means to restore to an earlier condition as by repairing or remodeling. Renovation shall include any interior changes to a building and those exterior changes that do not substantially change the character of an existing structure.

7-10. "Residential development" means ~~buildings, earth modifications, development subdivision~~ and use of land primarily for human residence, including, but not limited to: single-family and multifamily dwellings, condominiums, mobile homes and mobile home parks, boarding homes, family daycare homes, adult family homes, retirement and convalescent homes, ~~bed and breakfasts, and vacation rental units~~, together with accessory uses common to normal residential use. Camping sites or clubs, recreational vehicle parks, motels, ~~and~~ hotels, ~~and other transient housing~~ are not included in this definition.

Commented [CES358]: Incorporated from Resolution 2016-039, Council's action on short-term rentals.

11. "Resource shoreline ~~area~~ environment" means an area designated pursuant to WCC Chapter 23.230 (~~Shoreline Jurisdiction and Environment Designations~~).

8-12. "Responsible Party" or "Party Responsible." The "responsible party" shall be assumed, in singular or plural, to be any individual, business, organization, or entity, property owner, or person having control of a property who has created or allowed to exist a violation of any applicable regulations, whether or not the violation is known to that person at the time the violation occurred or is occurring. A responsible party includes any person who aids, assists, or perpetuates a violation.

9-13. "Restore," "restoration" or "ecological restoration" means 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~~ environment to aboriginal or pre-European settlement conditions.

10-14. "Revetment" means a ~~sloped wall~~ sloping structure built to protect a scarp, embankment, or shore against erosion by waves or currents. Usually built of riprap, with heavy armor layer, one or more filter layers of smaller rock or filter cloth, and "toe" protection. A revetment slopes shoreward and has a rough or jagged face. Its sloping face absorbs wave energy and differentiates it from a bulkhead, which is a ~~near vertical structure constructed of riprap or other suitable material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement.~~

Commented [CES359]: Updated to be more accurate.

11-15. "Riprap" means dense, hard, angular rock free from cracks or other defects conducive to weathering used for revetments or other flood control works.

12-16. "Riparian zone" means the area adjacent to a waterbody (stream, lake or marine water) that contains vegetation that influences the aquatic ecosystem, nearshore area and/or fish and wildlife habitat by providing shade, fine or large woody material, nutrients, organic debris, sediment filtration, and terrestrial insects (prey production). Riparian areas include those portions of terrestrial ecosystems that significantly influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian zones provide important wildlife habitat. They provide sites for foraging, breeding and nesting; cover to escape predators or weather; and corridors that connect different parts of a watershed for dispersal and migration.

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~~13-17.~~ “Riparian vegetation” means vegetation that tolerates and/or requires moist conditions and periodic free-flowing water, thus creating a transitional zone between aquatic and terrestrial habitats which provides cover, shade and food sources for aquatic and terrestrial insects for fish species. Riparian vegetation and their root systems stabilizes stream banks, attenuates high water flows, provides wildlife habitat and travel corridors, and provides a source of limbs and other woody debris to terrestrial and aquatic ecosystems, which, in turn, stabilize stream beds.

~~14-18.~~ “River delta” means those lands formed as an aggradational feature by stratified clay, silt, sand and gravel deposited at the mouths of streams where they enter a quieter body of water. The upstream extent of a river delta is that limit where it no longer forms distributary channels.

~~15-19.~~ “Rock shore” means those shorelines whose bluffs and banks are typically composed of natural rock formations.

~~16-20.~~ “Roof sign” means a sign erected upon, against, or directly above a roof, or on top of or above the parapet of a building; signs on mansard roofs shall be considered wall signs.

~~17-21.~~ “Rural shoreline ~~area~~ environment” means an area designated pursuant to WCC Chapter 23.~~230~~ (~~Shoreline Jurisdiction and Environment Designations~~).

~~23.1160.190~~ “S” definitions.

1. “Seismic hazard areas” means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

2. “Shall” means a mandate; the action must be done.

3. “Shared moorage” means moorage for pleasure craft and/or landing for water sports for use in common by shoreline residents of a certain subdivision or community within shoreline jurisdiction or for use by patrons of a public park or quasi-public recreation area, including rental of non-powered craft. If a shared moorage provides commercial services or is of a large scale (~~more than four 5 or more~~ slips), it shall be considered a marina. Shared moorage proposed to ~~be leased~~ ~~serve~~ ~~to~~ upland property owners shall also be considered ~~as~~ a marina. If a proposal includes covered moorage, commercial sale of goods or services, or a means of launching other than a ramp, swinging boom, or davit style hoist, it shall be considered a marina.

4. “Shellfish” means invertebrates of the phyla Arthropoda (class Crustacea), Mollusca (class Pelecypoda) and Echinodermata.

5. “Shellfish habitat conservation areas” means all public and private tidelands suitable for shellfish, as identified by the Washington Department of Health classification of commercial growing areas, and those recreational harvest areas as identified by the Washington Department of Ecology are designated as shellfish habitat conservation areas pursuant to WAC 365-190-080. Any area that is or has been designated as a shellfish protection district created under Chapter 90.72 RCW is also a shellfish habitat conservation area.

6. “Shellfish protection district” means the Drayton Harbor shellfish protection district (DHSPD) (Ordinance 95-036) and the Portage Bay shellfish protection district (PBSPD) (Ordinance 98-069), or other area formed by the County based on RCW Title 90, in response to State Department of Health (DOH) closures or downgrades of a commercial shellfish growing area due to a degradation of water

Commented [Co/C360]: Amended pursuant to Resolution 2022-027

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- quality as a result of pollution. These areas include the watershed draining to the shellfish beds as part of the shellfish habitat conservation area.
7. "Shorelands" or "shoreland areas" means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes and tidal waters which are subject to the provisions of Chapter 90.58RCW.
8. "Shorelines" means all of the water areas of the state as defined in RCW 90.58.030, including reservoirs and their associated shorelands, together with the lands underlying them except:
- Shorelines of statewide significance;
 - Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
 - Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.
9. "Shoreline Administrator" means the Director of the [Department of Planning and Development Services](#) ~~Department, or his/her designee, who is authorized to carry out the administrative duties enumerated in this program~~ ~~or staff member designated by the director to perform the review functions required in this program.~~
10. "Shoreline Conditional Use" for the purposes of this program means a use, development or substantial development listed in the regulations as being permitted only as a [shoreline conditional use](#), or not classified in this program. ~~Shoreline C~~onditional uses are subject to review and approval pursuant to the criteria in WCC ~~Chapter 23.60~~[Title 22 \(Land Use and Development\)](#) regardless of whether or not the proposal requires a substantial development permit.
11. "Shoreline jurisdiction" means all "shorelines of the state" and "shorelands."
12. "Shoreline permit" means a shoreline substantial development permit, a shoreline conditional use, or a shoreline variance, or any combination thereof issued by Whatcom County pursuant to Chapter 90.58 RCW.
13. "Shoreline residential ~~area~~[environment](#)" means an area designated pursuant to WCC Chapter 23.230 ~~(Shoreline Jurisdiction and Environment Designations)~~.
14. "Shoreline stabilization" means structural or nonstructural modifications to the existing shoreline intended to reduce or prevent erosion of uplands or beaches. They are generally located parallel to the shoreline at or near the OHWM. Other construction classified as shore defense works include groins, jetties and breakwaters, which are intended to influence wave action, currents and/or the natural transport of sediments along the shoreline.
15. "Shoreline stabilization, bioengineered" means biostructural and biotechnical alternatives to hardened structures (bulkheads, walls) for protecting slopes or other erosive features including soft-treatment techniques. Bioengineered stabilization uses vegetation reinforced soil slopes (VRSS), which uses vegetation arranged embedded in the ground to prevent shallow mass-movements and surficial erosion.
16. "Shoreline stabilization, nonstructural" means a soft treatment which does not use driftwood, logs, geotextile fabric, or other organic or nonorganic structural materials. Examples include:

Commented [AP361]: Relocated from "Conditional Use."

Commented [CES362]: All shoreline stabilization definitions from WAC and DOE guidance.

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- 1 a. Addressing upland drainage issues;
- 2 b. Planting stabilization vegetation without fill, grading, or use of nonbiodegradable geotextile fabric,
- 3 gabions or other stabilizing structures to provide temporary erosion control.
- 4 17. "Shoreline stabilization, replacement" means the construction of a new structure to perform a
- 5 shoreline stabilization function of an existing legally established shoreline stabilization structure
- 6 which can no longer adequately serve its purpose. Where ordinary high water has established
- 7 behind the structure replacement is considered a new shoreline stabilization.
- 8 18. "Shoreline stabilization, soft-treatment" means shore erosion control and restoration practices
- 9 using only plantings or organic materials to restore, protect or enhance the natural shoreline
- 10 environment. This technique mimics natural conditions for ecological functions and ecosystem-wide
- 11 processes. When used, organic/biodegradable structural components are to be placed to avoid
- 12 significant disruption of sediment recruitment, transportation, and accretion. Examples include:
- 13 a. Bioengineered shoreline stabilization;
- 14 b. Beach nourishment/replenishment;
- 15 c. Vegetated soil stabilization retention methods;
- 16 d. Driftwood;
- 17 e. Coir fiber logs or other natural materials;
- 18 f. Nonstructural shoreline stabilization;
- 19 g. Beach berm.
- 20 19. "Shoreline stabilization, hard structure" means shore erosion control practices using hardened
- 21 structures that armor and stabilize the shoreline landward of the structure from further erosion.
- 22 20. "Shoreline stabilization, hybrid structure" means an approach to erosion control that combines soft-
- 23 treatment shoreline treatment placed waterward of more conventional structural shoreline
- 24 stabilization elements. The soft treatment preserves natural beach contours and mimics habitat
- 25 structure in order to preserve ecological functions. The hard structure provides long-term stability to
- 26 the upland site, but is located sufficiently landward of the OHWM as not to impair ecological
- 27 processes.
- 28 21. Shoreline Stabilization, New. Placement of shoreline stabilization where no such structure previously
- 29 existed, including additions to or increases in size of existing shoreline stabilization measures, are
- 30 considered new structures.
- 31 22. "Shoreline stabilization, structural" means shoreline stabilization which includes a footing,
- 32 foundation, or anchors. Materials are typically hardened structures which armor the shoreline. See
- 33 also "shoreline stabilization, hard structure" and "shoreline stabilization, hybrid structure."
- 34 ~~15-23.~~ 23. "Shoreline view area" means any area looking waterward within the jurisdiction of this program
- 35 between the OHWM and a public road, park, pathway, or other public area that is undeveloped or
- 36 developed with accessory uses only; and that does not obstruct the view of the shoreline or would
- 37 not obstruct the view if natural vegetation, fences, walls, antennas or similar obstructions were
- 38 removed.
- 39 ~~16-24.~~ 24. "Shorelines of statewide significance" means the following shorelines in Whatcom County:
- 40 a. Those areas of Puget Sound and adjacent saltwaters between the ordinary high water mark and
- 41 the line of extreme low tide as follows: Birch Bay from Point Whitehorn to Birch Point; and

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- b. Those areas of Puget Sound and adjacent saltwaters north to the Canadian line and lying waterward from the line of extreme low tide; and
- c. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of 1,000 acres or more measured at the ordinary high water mark including Lakes Whatcom, Baker and Ross; and
- d. Those natural rivers or segments thereof as follows: any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at 1,000 cubic feet per second or more; including the Nooksack River's mainstream, the North Fork upstream to its confluence with Glacier Creek in Section 6, Township 39 North, Range 7 East, W.M.; and the South Fork upstream to its confluence with Hutchinson Creek in Section 9, Township 37 North, Range 5 East, W.M.
- e. Shoreline jurisdiction associated with subsections ~~(15)~~(a), (c), and (d) of this section.
25. "Shorelines of the state" means the total of all "shorelines" and "shorelines of statewide significance" within the state.
- ~~17.~~ 18-26. ~~"Short term rental" means a dwelling unit where the owner is not present on site during the rental period, which, for compensation, is used to lodge individuals or families for a period of less than 30 days;~~
- 18-26. "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Act and this chapter, against taking the action.
- 19-27. "Sign" means any placard, billboard, display, message, design, letters, symbol, light, figure, illustration, set of pennants, or other device intended to identify, inform, advertise, or attract attention to any private or public premises, and placed mainly outdoors so as to be seen from any public or quasi-public place. Double-faced signs are counted as two signs. Excluded from this definition are official traffic, directional or warning devices, other official public notices, signs required by law, or flag of a government or other noncommercial institution.
- ~~20-28.~~ 20-28. "Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant impacts to ecological functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.
- ~~21-29.~~ 21-29. "Single-family development" means the development of a single-family residence permanently installed and served with utilities on a lot of record.
- ~~22-30.~~ 22-30. "Site" means any parcel or combination of contiguous parcels, or right-of-way or combination of contiguous rights-of-way under the applicant's/proponent's ownership or control that is the subject of a development proposal or change in use.
- ~~23-31.~~ 23-31. "Slope" means:
- a. Gradient.
- b. The inclined surface of any part of the earth's surface delineated by establishing its toe and top and measured by averaging the inclination over at least 10 feet of vertical relief.

Commented [Co/C363]: COTW moved to delete, 12/7/21.
This definition is duplicative of the definition of "vacation rental" and is not needed.

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- 1 32. "Small Fossil or Renewable Fuel Storage and Distribution Facilities" means:
2 a. Equipment and buildings used for purposes of direct sale or distribution to consumers of fossil
3 fuels or renewable fuels, or
4 b. Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed
5 commercial or industrial operation, and that does not meet the definitions of fossil fuel or
6 renewable refinery or transshipment facilities
- 7 24-33. "Soil" means all unconsolidated materials above bedrock described in the Soil Conservation
8 Service Classification System or by the Unified Soils Classification System.
- 9 25-34. "Solid waste" means all putrescible and non-putrescible solid and semi-solid waste including
10 garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned
11 vehicles and parts thereof, and any other discarded commodities.
- 12 35. "Spit" means an accretion shoreform that is narrow in relation to length and extends parallel to or
13 curves outward from shore; spits are also characterized by a substantial wave-built sand and gravel
14 berm on the windward side, and a more gently sloping silt or marsh shore on the lagoon or leeward
15 side; curved spits are called hooks.
- 16 36. "Standing" is the status required for a person, agency, or other entity to bring an action before an
17 appeal body. A person has standing per RCW 36.70C.060 if they are:
18 a. The applicant and the owner of property to which the land use decision is directed; or
19 b. Another person, county department, and/or public agency aggrieved or adversely affected by
20 the land use decision, or who would be aggrieved or adversely affected by a reversal or
21 modification of the land use decision. A person is aggrieved or adversely affected within the
22 meaning of this section only when all of the following conditions are present:
23 i. The land use decision has prejudiced or is likely to prejudice that person;
24 ii. That person's asserted interests are among those that the local jurisdiction was required to
25 consider when it made the land use decision;
26 iii. A judgment in favor of that person would substantially eliminate or redress the prejudice to
27 that person caused or likely to be caused by the land use decision; and
28 iv. The petitioner has exhausted his or her administrative remedies to the extent required by
29 law.
- 30 26-37. "Statement of exemption" means a written statement by the ~~administrator~~ Director that a
31 particular development proposal is exempt from the substantial development permit requirement
32 and is generally consistent with this program including the policy of the Act (RCW 90.58.020),
33 pursuant to WCC ~~23.60-020~~ Title 22 (Land Use and Development).
- 34 27-38. "Streams" means those areas where surface waters produce a defined channel or bed. A
35 defined channel or bed is an area that demonstrates clear evidence of the annual passage of water
36 and includes, but is not limited to, bedrock channels, gravel beds, sand and silt beds, and defined
37 channel swales. The channel or bed need not contain water year-round. This definition includes
38 drainage ditches or other artificial water courses where natural streams existed prior to human
39 alteration, and/or the waterway is used by anadromous or resident salmonid or other fish
40 populations or flows directly into shellfish habitat conservation areas.

Commented [P/C364]: Added by the P/C during their deliberations on concurrent fossil fuel regulations in Title 20.

Commented [DN365]: Added per Council's pending draft fossil fuel amendments.

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~~28-39.~~ “Strict construction” means an interpretation that considers only the literal words of a writing.
~~29-40.~~ “Structure” means a permanent or temporary building or edifice of any kind, or any piece of work artificially built up or composed of parts joined together in some definite matter whether installed on, above, or below the surface of the ground or water, except for vessels ~~(after~~ [International Building Code](#)).

~~30-41.~~ “Substantial development” means any development [of which the total cost or fair market value exceeds \\$5,718 or as amended by the State Office of Financial Management, or any development which](#) materially interferes with the normal public use of the water or shorelines of the state; except the classes of development, listed in [WCC 23-60-022\(A\) through \(P\)](#) ~~WAC 173-27-040~~.

~~31-42.~~ “Substantially degrade” means to cause significant ecological impact.

~~32.~~ “Surface mining” means all or any part of the processes involved in mining by removing the soil or rock overburden and mining directly from deposits thereby exposed, including also open pit mining, gravel bar scalping and mining of deposits naturally exposed at earth’s surface, and including production of surface mining refuse.

~~33-43.~~ “Sustained yield” means the continuing yield of a biological resource, such as timber from a forest, by controlled and periodic harvesting.

~~34-44.~~ “Swamp” means a wetland that is often inundated and composed of woody vegetation.

~~23.1160.200~~ **“T” definitions.**

1. “Tideland” means the land on the shore of marine water-bodies between OHWM and the line of extreme low tide which is submerged daily by tides.
2. “Timber” means forest trees, standing or down, of a commercial species, including Christmas trees.
3. “Toe” means the lowest part of a slope or cliff; the downslope end of an alluvial fan, landslide, etc.
4. “Tombolo” means an accretion shoreform that began as a spit and accreted into a causeway-like connection to an island or offshore rock; tombolos normally develop from offshore bars (submarine berms) that build up in a low energy “wave-shadow” zone between the offshore, wave barrier element and an active driftway.
5. “Top” means the top of a slope; or in this program it may be used as the highest point of contact above a landslide hazard area.
6. “Transportation” means roads and railways, related bridges and culverts, fills, embankments, causeways, parking areas, truck terminals and rail switchyards, sidings, spurs, and air fields. Not included are recreational trails, highway rest areas, ship terminals, seaplane moorages, nor logging roads; they are included respectively under “recreation,” “pier,” “dock,” “residential,” and “forest practices.”

~~23.1160.210~~ **“U” definitions.**

1. “Unavoidable” means adverse impacts that remain after all appropriate avoidance and minimization measures have been implemented.
2. “Upland” means dry lands landward of OHWM.
3. “Urban conservancy shoreline ~~area~~ [environment](#)” means an area designated pursuant to WCC Chapter ~~23-30-23.20~~ [\(Shoreline Jurisdiction and Environment Designations\)](#).

Commented [AP366]: Updated per Periodic Review Checklist, Items 2019.a, 2017.a, and 2016.a, and Scoping Document, Item #1a and 1e.

Commented [AP367]: Already defined in Title 20 (Zoning).

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4. "Urban resort shoreline ~~area~~ environment" means an area designated pursuant to WCC Chapter ~~23.30~~ 23.20 (Shoreline Jurisdiction and Environment Designations).
5. "Urban shoreline ~~area~~ environment" means an area designated pursuant to WCC Chapter ~~23.30~~ 23.20 (Shoreline Jurisdiction and Environment Designations).
6. "Utilities" means all lines and facilities used to distribute, collect, transmit, or control electrical power, natural gas, petroleum products, information (telecommunications), water, and sewage.
- a. "Accessory utilities" means on-site utility features such as a water, sewer, septic, electrical, or gas lines serving a primary use. Accessory utilities shall be considered part of the primary use.
- b. "Local utilities" means utilities that serve adjacent properties and include, but are not limited to, powerlines, water, sewer, and stormwater facilities, fiber optic cable, pump stations and hydrants, switching boxes, and other structures normally found in a street right-of-way.
- c. "Regional utilities" means utilities that serve more than one community or major attractions; examples include, but are not limited to, two hundred thirty (230) kv power transmission lines, natural gas transmission lines, and regional water storage tanks and reservoirs, regional water transmission lines or regional sewer collectors and interceptors. Regional utilities may also include facilities serving an entire community, such as subregional switching stations (one hundred fifteen (115) kv and smaller), and municipal sewer, water, and storm water facilities. Regional utilities include regional transmission pipelines for the bulk conveyance of natural gas, or pipelines termed a distribution pipeline but having characteristics that fit the definition of a transmission pipeline. Natural gas pipelines which are owned and operated by a gas utility company regulated by the State Utilities and Transportation Commission and which are distribution lines owned by the utility that provide natural gas service directly to county citizens and businesses shall not be considered regional transmission lines.
- 6-7. "Utility development" means development including, but not limited to, facilities for distributing, processing, or storage of water, sewage, solid waste, storm drainage, electrical energy including electronic communications, and their administrative structures, as well as pipelines for petroleum products, and fire-fighting facilities. Power plants are considered industrial.
- 23.1160.220 "V" definitions.-**
1. "Vacation Rental Unit" means a single-family dwelling unit, detached accessory dwelling unit, or accessory apartment that, for compensation, is rented as a single unit used to lodge individuals or families for a period of less than 30 days and where the owner is not present in the rented unit during the rental period. Individual sleeping rooms shall not be rented individually.
- 1-2. "Variance" means an adjustment in the application of this program's bulk and dimensional regulations to a particular site pursuant to WCC ~~Chapter 23.60~~ Title 22 (Land Use and Development).
- 2-3. "Vegetative stabilization" means planting of vegetation to retain soil and retard erosion, reduce wave action, and retain bottom materials. It also means ~~utilization~~ use of temporary structures or netting to enable plants to establish themselves in unstable areas.
- 3-4. "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self-propulsion and use as a means of transportation, and meets all applicable laws and regulations

Commented [AP368]: Language from WCC 20.82.030(2).

Commented [CES369]: Definitions added per Scoping Document, Item #7b to distinguish different levels of utility facilities.

Commented [CES370]: Incorporated from Resolution 2016-039, Council's action on short-term rentals.

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pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency. -

23.1160.230 “W” definitions.

~~1. “Wall sign” means a sign placed upon and parallel to the exterior of a building.~~

Commented [AP371]: Already defined in Title 20 (Zoning).

~~2.1.~~ “Waterbody” means a body of still or flowing water, fresh or marine, bounded by the OHWM.

~~3.2.~~ “Water-dependent use” means a use or portion of a use that requires direct contact with the water and cannot exist at a non-water location due to the intrinsic nature of its operations.

~~4.3.~~ “Water-enjoyment use” means a recreational use, or other use facilitating public access to the shoreline as the primary character of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general character of the use and that through the location, design and operation assure the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the water-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

~~5.4.~~ “Water-oriented use” means any one or a combination of water-dependent, water-related or water-enjoyment uses and serves as an all-encompassing definition, together with single-family residences, for priority uses under the Act.

~~6.5.~~ “Water quality” means the characteristics of water, including flow or amount, and related physical, chemical, aesthetic, recreation-related, and biological characteristics.

~~7.6.~~ “Water-related use” means a use or portion of a use that is not intrinsically dependent on a waterfront location but depends upon a waterfront location for economic viability. These uses have a functional relationship to the water, or the use provides a necessary support service for a water-dependent use and physical separation is not feasible.

~~8.7.~~ “Watershed” means a geographic region within which water drains into a particular river, stream or body of water. There are approximately 122 watersheds (e.g., Bertrand, Ten Mile, Dakota, Canyon Creek, Lake Whatcom, Lake Samish) identified in WRIA 1 and WRIA 3. These are nested within approximately 14 sub-basins (e.g., North Fork Nooksack, Drayton Harbor, Sumas River, Friday Creek), which are nested within four basins (e.g., Nooksack River, Fraser River, Samish River, Coastal).

~~9.8.~~ “Watershed restoration plan” means a plan developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, recreation, or enhancement of the natural resource character and ecology of a stream, stream segment, drainage area or watershed for which agency and public review have been conducted pursuant to Chapter 43.21C RCW, the State Environmental Policy Act.

~~10.9.~~ “Watershed restoration project” means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or part of the plan and consists of one or more of the following activities:

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- a. A project that involves less than 10 miles of stream reach, in which less than 25 cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
- b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control erosive forces of flowing water; or
- c. A project primarily designated to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state; provided, that any structures, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than 200 square feet in floor area and is located above the ordinary high water mark.

~~11-10.~~ "Weir" means a structure in a stream or river for measuring or regulating stream flow.

~~12-11.~~ "Wet season" means the period generally between November 1st and March 30th of most years when soils are wet and prone to instability. The specific beginning and end of the wet season can vary from year to year depending on weather conditions.

~~13-12.~~ "Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created for non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-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.

~~14-13.~~ "Wetland edge" means the boundary of a wetland as delineated based on the definitions contained in ~~WCC this e~~Chapter ~~16.16~~ (Critical Areas).

~~15-14.~~ "Wood waste" means solid waste consisting of wood pieces or particles generated as a byproduct or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps. This includes, but is not limited to, sawdust, chips, shavings, bark, pulp, hog fuel, and log sort yard waste, but does not include wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenate.

~~23.1160.240~~ "X" definitions.

Reserved.

~~23.1160.250~~ "Y" definitions.

Reserved.

~~23.1160.260~~ "Z" definitions.

Reserved.