Shoreline master programs: Making sense of tough issues

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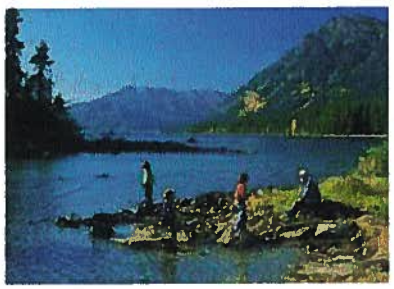
Introduction

To promote a healthy dialogue with the public and our local government partners, the Washington Department of Ecology (Ecology) has crafted this document to help answer an array of tough questions that have come up as we work together to manage Washington's shorelines for future generations. The state Shoreline Management Act, adopted by voters in 1972, ensures that all of us – the public, interest groups, local, state and tribal governments – work together to ensure our shorelines:



- Are kept safe and unpolluted.
- Are developed and managed fairly.
- Give our children and future generations that special "sense of place" we cherish in Washington.

The mechanism for putting new shoreline development regulations and policies in place is called a "shoreline master program." Many people have questions and concerns about how changes to a local shoreline program might affect their homes, the environment, access to public waters and shorelines, and future development in their community.

With more than 30 updated shoreline master programs now in place, we have some on-the-ground experience regarding many issues people are concerned about – and how cities and counties have dealt with them including:

- Home repair and expansion within shoreline buffers and setbacks.
- The impacts of "no net loss of shoreline ecological functions" requirements.
- Shoreline erosion and potential impacts to property and the shoreline environment.

WHY IT MATTERS

Across Washington, about 260 local governments have or soon will be crafting new shoreline development policies and regulations that may affect you.

Many people have raised questions and concerns about how changes to their local "shoreline master program" might affect them, their homes, and future shoreline development in their community.

Ecology and local governments work together to update each shoreline program under an open public process. We want to help address some of the tough issues citizens have raised about shoreline master programs and the updating process.

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Special accommodations

To ask about the availability of this document in a version for the visually impaired, call the Shorelands and Environmental Assistance Program at 360-407-6600.

Persons with hearing loss, call 711 for Washington Relay Service. Persons with a speech disability, call 877-833-6341.

- Public access requirements and private property.
- Use of scientific information for shoreline master program regulations.

Newly updated shoreline programs address these issues by recognizing and responding to local conditions and needs while fulfilling the statewide vision for shoreline development, protection, and uses set forth by the people of Washington.

Updating local shoreline master programs

Voters adopted the state Shoreline Management Act (SMA) in 1972. More than 260 Washington towns, cities and counties have marine, lake, and stream shorelines that fall under SMA jurisdiction. The Act requires local governments to regularly review and revise their shoreline regulations and policies. However, most jurisdictions haven't done a thorough update of their shoreline master programs since the 1970s. Many changes have occurred along Washington's lakes, rivers, and marine waters in the last 40 years.

In the late 1990s, the Washington Legislature and Ecology recognized that most local shoreline plans, policies and regulations are a generation out-of-date. These old shoreline master programs need to be modernized, reviewed, and updated to:

- Address current shoreline conditions.
- Apply new scientific information about managing and protecting our shorelines.
- Accommodate future development while protecting the ecological functions of our shorelines.
- Align better with current environmental and land-use laws such as salmon recovery and watershed management plans, state Growth Management Act and critical areas ordinances, port development plans, park and trail systems, etc.

As the result of a 2003 negotiated settlement between Ecology and business interests, ports, environmental groups, shoreline user groups, and cities and counties, Ecology revised its legally- binding guidelines that outline the essential elements each local shoreline master programs must address (www.ecy.wa.gov/programs/sea/SMA/guidelines/index.html).

The 2003 Legislature set up a timetable for all 260 local governments to update their shoreline programs by December 2014. Each shoreline master program then must be reviewed every seven years to ensure it still complies with state law. To help local governments meet the 2014 goal, state lawmakers have provided about $12 million to towns, cities, and counties to modernize their individual shoreline programs. When Ecology approves a local shoreline master program, it becomes part of the overall statewide shoreline master program.

Shoreline master programs benefits

Shoreline master programs contribute to local and statewide economic vitality by:

- Protecting lives and property by keeping development out of unstable or unsafe areas.
- Helping communities fulfill their vision for future waterfront development and uses in our shoreline areas.
- Providing more certainty to the development community through more consistent shoreline building ordinances and permitting requirements.
- Providing for public access and recreational opportunities in shoreline areas.
- Giving preference to water-dependent uses that rely on shorelines for economic viability.

Master programs also contribute to local and statewide environmental vitality by:

- Helping protect our marine waters, lakes, and stream systems from pollution.
- Protecting the overall health and functions of shorelines and public waters for both public and private use.
- Protecting critical fish and wildlife habitat.
- Restoring unhealthy shorelines and increasing the health of public waters.

Roles and responsibilities: Shoreline master programs

Under the comprehensive shoreline master program update process currently under way, local governments:

- Provide shoreline planning leadership within their jurisdictions and ensure all interests are brought to the table.
- Prepare, adopt, oversee, and enforce their locally-crafted shoreline master programs.
- Send minor and comprehensive shoreline master program updates to Ecology for approval.
- Periodically review and keep their shoreline master programs current.

Under the shoreline program update process, Ecology:

- Provides state guidelines outlining the essential elements that local shoreline master programs must address.
- Provides grants and technical assistance to local governments.
- Reviews and approves local shoreline master programs to confirm consistency with state law and rules.
- Once approved, individual local shoreline master programs become part of the overall state shoreline master program.

Shoreline master programs do not:

- Take away constitutional protections for private property rights.
- Require existing shoreline homes to be relocated.
- Try to return our shorelines to pre-settlement conditions.

Responding to public concerns

A number of issues have come up during efforts to update local shoreline master programs. Here are some responses we hope address these issues of public concern.

Issue 1: Updating a shoreline master program will impact existing homes

A number of shoreline property owners are concerned that updating local shoreline master programs will put their existing home in peril, because their home could be "out-of-compliance" or "non-conforming" under new shoreline regulations.

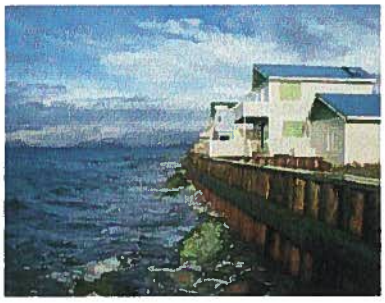
Important things to know about new shoreline master programs and your existing shoreline home:

- Updated shoreline master programs are not retroactive.
- Existing single-family homes are "grandfathered." Expansions of existing single-family structures are reviewed on a case-by-case basis.
- Shoreline programs must be designed and put in place so they are consistent with constitutional protections of private property.

Similar to most land-use laws, provisions of new shoreline master programs are not "retroactive." This means existing homes are not "out of compliance" with new shoreline master program regulations. New regulations only apply to new development and uses. In Washington, residential lots created and homes built under older land use laws are "grandfathered in" under those laws so that new standards do not apply retroactively – if no new development is proposed.

Shoreline homeowners can make improvements, and can enlarge or expand their current homes under most conditions. For instance, Whatcom County updated their shoreline master program in 2008 using Ecology's new shoreline guidelines. Since then, the county has received more than 56 applications to make improvements to existing homes, including making additions and building garages. Every homeowner's permit request was approved and issued in a timely manner.

Issue 2: Protecting a house from erosion by armoring the shoreline is no longer allowed



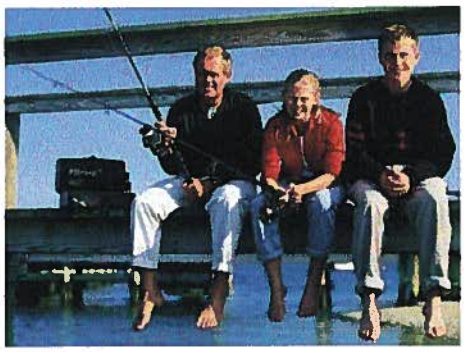
In the past, shoreline erosion threatening a home or business was fought by armoring the shoreline with concrete bulkheads and seawalls, riprap and "revetments" such as sandbags or cement, and other structures designed to harden a shoreline. We now know that hardening a shoreline can endanger neighboring properties and threaten valuable resources, such as salmon, and is best used as a last resort.

The best way to safeguard homes and businesses is to leave enough room between the shoreline and new structures. That way if erosion occurs, it doesn't threaten those structures. During the past 40 years, we've learned that shoreline erosion is much more a process of nature we need to learn to live with. Eroding marine bluffs feed the growth of beaches that protect existing homes. When we try to stop erosion in these places, it robs existing homes of their natural protection. In some cases, armoring pushes the force of waves and water to nearby properties, hastening erosion there. Our approach to managing shoreline erosion needs to be done thoughtfully and carefully.

Important things to know about shoreline armoring and new shoreline master programs:

- Armoring is expensive and may only provide a short-term solution. We need to have a better set of policies and regulations that don't put properties and homes in harm's way.
- Updated shoreline programs are designed to reduce the need for armoring.
- Private property owners can protect their houses or business structures but are asked to use approaches that respect other people's properties and the natural shoreline.

Issue 3: What "no-net-loss of ecological functions" means to homeowners



It's clear that development along our beaches and shorelines can affect their long-term health and prevent people from using and enjoying them. To insure this doesn't happen in the future, new shoreline policies and regulations must meet a standard of "no net loss of ecological functions."

This means existing shoreline functions should be protected and maintained over time while properly sited shoreline development goes on. This is accomplished by modifying development designs to avoid the loss, or making up for – or "mitigating" – adverse impacts.

The no-net-loss standard doesn't mean that your house needs to be removed. You can continue to live in, maintain and repair your house. The no-net-loss of ecological functions goal helps ensure one person's shoreline development doesn't decrease the overall benefits of our shorelines for everyone – while still allowing development to move forward.

Important things to know about no-net-loss

- It ensures that the economic and environmental benefits of healthy shorelines are preserved for future generations. The first step is good planning for future land use and development. It does not stop shoreline development. Local governments must review proposed projects during the permitting process to see if they interfere with shoreline ecological functions.
- It does not mean returning to a pre-settlement environment. Today is the starting point for measuring no-net-loss. It is defined by a shoreline inventory and characterization prepared by the town, city, or county updating their shoreline master program – a critical part of any shoreline program update.

Issue 4: Public access to shoreline areas

Some shoreline homeowners are concerned that public access means allowing strangers to cross their property to get to the beach, river or lake. That's not the case. The Shoreline Management Act and Ecology's shoreline guidelines focus on access to public waters from publicly-owned property. Public access may also be required at large private shoreline developments such as hotels, marinas, and mixed-use projects as part of the original design.

Unlike Oregon and some other coastal states, Washington's tidelands and beaches are not all in public ownership. From 1889 statehood until the 1972 Shoreline Management Act was adopted, the state sold off many of its tidelands and beaches. It's estimated that 60-70 percent of our tidelands are privately owned. According to data from Ecology's Marine Shoreline Public Access Project, only 37 percent of all of Washington's marine shorelines – including those in Puget Sound and our coastal shores – are publicly accessible. This doesn't include information about public access to any freshwater water bodies such as lakes and streams.

Important things you should know about public access to public waters and shorelines:

- State waters – Washington's lakes, streams, rivers, Puget Sound, Pacific Ocean – belong to us all. We have a right to boat, swim, and fish in these waters and enjoy their associated public shorelines.
- The people of Washington want to see, touch and enjoy the shorelines of the state. They embodied this desire in the 1972 voter-approved Shoreline Management Act (SMA).
- One of the primary goals of the SMA is to protect the public's right to access public waters and shorelines.
- They help ensure that both the public's right to access and private property rights are respected. Local shoreline programs help communities plan the best locations for public access to public waters and shorelines.

Issue 5: What shoreline buffers and setbacks mean to homeowners

Shoreline property owners have voiced concern about new buffer and setback standards under updated shoreline master programs. Some worry they will have to tear out existing landscaping or their garden, or lose waterfront views because they'll be forbidden from pruning their trees and shrubs. Ecology has adopted more than 30 shoreline programs under the 2003 guidelines. All have included allowances for tree trimming and maintaining natural views, as well as provisions for accessing the water. New shoreline master programs do not require homeowners to remove their existing landscaping.

Buffers are intended to protect homes from erosion, filter polluted run-off, provide shade, and protect other ecological functions. They protect our water quality by helping filter out toxic and other pollutants in stormwater runoff, help stabilize slopes, and provide organic material to both the land and water food webs. Buffers also provide shade and habitat for critical fish and wildlife species.

Shoreline setbacks are the minimum distance between a structure and the shoreline, or the structure and the buffer. They are not retroactive so they won't affect existing homes. Setbacks keep new homes and developments out of harm's way and prevent the future need for shoreline armoring. Setting a new home back from the shoreline in a low bank area can reduce the need for armoring when sea levels rise over time or unusual floods come. Setbacks also keep homes from being built too close to the water's edge, making our residences safer and less expensive to maintain.

Important things you should know about shoreline buffers and setbacks:

- Shoreline master programs do not necessarily set rigid "one-size-fits-all" standards. Buffer and setback sizes can be tailored based on environmental conditions, current development patterns, and future planned development.
- Buffers and setbacks help protect environmental and economically important shoreline resources.
- Shoreline buffers and setbacks offer opportunities for unique landscaping, screen nearby developments from view, and block noise and glare from adjacent properties and water-based activities.

Issue 6: Science and shoreline master program updates

It's important to remember that at the core, shoreline master programs are a planning process informed by community input, science and many other factors. It is not a process driven solely by science.

In some areas, shoreline homeowners have questioned whether Ecology uses credible science to help local jurisdictions update their shoreline master programs. On the surface, it may be difficult to assess the quality of the methods and statistics reported in a document. Technical documents that Ecology uses include a clear description of the methods used and undergo a rigorous review by reputable experts in the field. This ensures that proper scientific methods, research procedures, and review protocols were used.

Local experience and anecdotal evidence provided by interested parties also may offer valuable information to supplement scientific information. However, nonscientific information can't substitute for valid, available scientific information. Local governments should carefully and objectively review the relative merits of all information.

Ecology's 2003 shoreline master program guidelines require local governments to "make use of and, where applicable, incorporate all available scientific information." This includes reports, documents and materials such as inventory, monitoring, research and survey data, technical assistance materials, mathematical and computer modeling, manuals and services from reliable scientific sources, and aerial photography.

Important things you should know about scientific information:

- Local governments and Ecology use science to inform the policies and regulations that protect and restore shorelines. Scientific information based on reputable methods and reviewed by scientists from the same fields of study, logical conclusions and reasonable deductions, context, and references is considered the most credible.
- Ecology and local governments also consider residents' knowledge about our shorelines to be valuable.
- A document that contains a lot of numbers and statistics is not always based on credible science. Technical documents should always include a clear description of the methods used and undergo a rigorous review by other experts in the field. This ensures proper scientific methods, research procedures, and review protocols were used.

For more information

Shoreline Master Programs
http://www.ecy.wa.gov/programs/sea/shorelines/smp/index.html

Citizen Guide to Shoreline Master Programs
http://www.ecy.wa.gov/programs/sea/shorelines/smp/citizen.html

Shoreline Management Data and Information
http://www.ecy.wa.gov/programs/sea/sma/data/index.html

Draft

Shoreline Master Program

City of Oak Harbor
Grant No. G1100126

Shoreline Master Program
PLANNING COMMISSION REVIEW DRAFT
September 18, 2012

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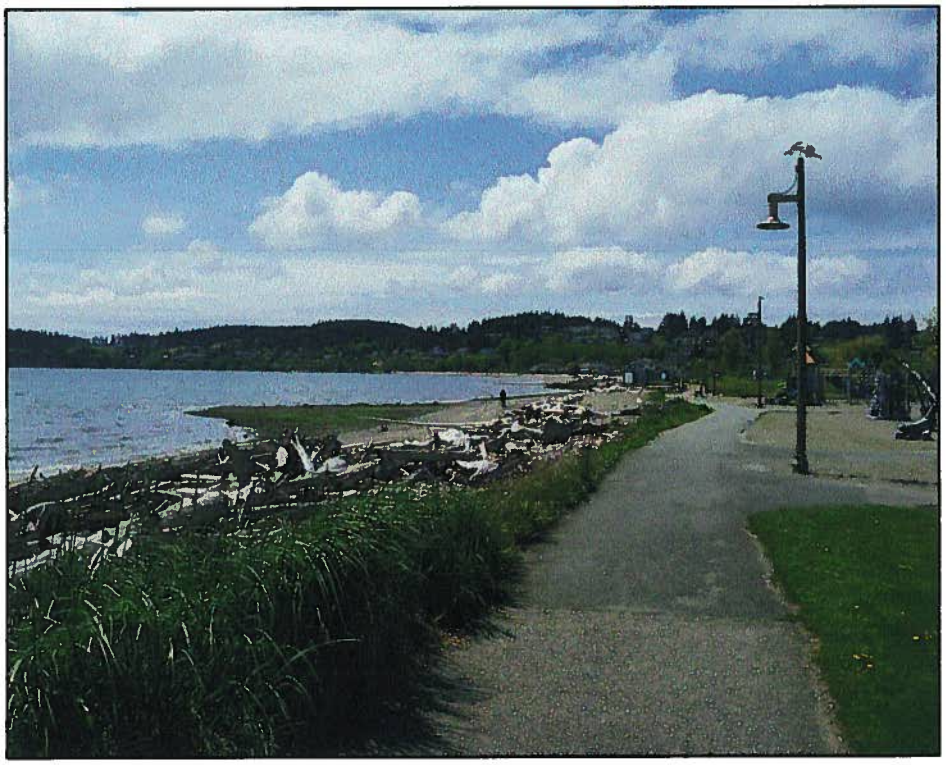

This report was funded in part through a grant from the Washington Department of Ecology.

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Attachment 1: Figure 1 – Shoreline Environment Designations
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Attachment 3: Ordinance 1440, OHMC Title 20 "Environment."

Chapter 1: **INTRODUCTION**

A. Purpose of the Shoreline Management Act

Washington's **Shoreline Management Act** (Act) was adopted by the public in a 1972 referendum "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The primary purpose of the Act is to provide for the management and protection of the state's shoreline resources by planning for reasonable and appropriate uses. In order to protect the public interest in preserving these shorelines, the Act establishes a coordinated planning program between the state and local jurisdictions to address the types and effects of development occurring along the state's shorelines. The Act has three broad policies:

1. Encourage water-dependent uses: "uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the states' shorelines..."
2. Protect shoreline natural resources, including "...the land and its vegetation and wildlife, and the waters of the state and their aquatic life..."
3. Promote public access: "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."

This Act recognizes that "shorelines are among the most valuable and fragile" of the state's resources. The Act, and the City of Oak Harbor, recognize and protect private property rights along the shoreline, while aiming to preserve the quality of this unique resource for all state residents.

B. Purpose of the Shoreline Master Program

The purpose of this Master Program is:

1. To carry out the responsibilities imposed on the City of Oak Harbor by the Washington State Shoreline Management Act (RCW 90.58).
2. To promote the public health, safety, and general welfare, by providing a guide and regulation for the future development of the shoreline resources of the City of Oak Harbor in a manner that reflects local conditions.
3. To further, by adoption, the policies of RCW 90.58, and the policies of this Master Program.
4. To comply with the Shoreline Master Program Guidelines (WAC Chapter 173-26), including standards to ensure that development under the Shoreline Master Program will not result in a net loss of ecological functions.

C. Shoreline Jurisdiction

1. SMA Jurisdiction Definition

As defined by the Shoreline Management Act of 1971, shorelines include certain waters of the state plus their associated "shorelands." At a minimum, the waterbodies designated as shorelines of the state are marine waters, streams whose mean annual flow is 20 cubic feet per second (cfs) or greater, and lakes whose area is greater than 20 acres. Shoreline jurisdiction includes these waters, together with the lands underlying them and all lands extending landward 200 feet in all directions, as measured on a horizontal plane from the ordinary high water mark, as well as all associated wetlands.

The extent of the shoreline jurisdiction shall be determined for specific cases based on the actual location of the ordinary high water mark (OHWM), floodway, and the presence and delineated boundary of associated wetlands as may be determined on a site by site basis based on adopted definitions and technical criteria.

2. Applicable Area in Oak Harbor

The marine shoreline within the City of Oak Harbor is approximately 13 miles long, and the City's shoreline jurisdiction includes all shorelands within 200 feet of the ordinary high water mark of Oak Harbor and Crescent Harbor within the City limits, as well as all associated wetlands that are hydraulically connected to these two waterbodies, including, but not necessarily limited to, Freund Marsh, Crescent Marsh and the Maylor Point wetland complex. There are no streams, rivers, or lakes within the City's shoreline jurisdiction that qualify for regulation under the Shoreline Management Act.

3. Official Map of Shoreline Jurisdiction

The shoreline jurisdiction map for the City of Oak Harbor is included as Figure 1. Each shoreline environment designation is described in Chapter 2, including the extent of designated areas. While the Shoreline Environment Designation map is a tool to present the extent of the shoreline jurisdiction and the location of specific environments to the public, the definition of the City's shoreline jurisdiction, as described in Section 1.C.1 and 1.C.2 above, and in RCW 90.58 shall control in the event of a conflict.

D. Applicability

1. General Applicability

The Shoreline Master Program (SMP) shall apply to all land and waters under the jurisdiction of the City of Oak Harbor as identified in Section 1.C.2 above. If the provisions of the SMP conflict with other applicable local ordinances, policies and regulations, the requirement that most supports the provisions of the Shoreline Management Act as stated in RCW 90.58.020 shall apply, as determined by the Administrator.

2. Applicability to Federal Agencies

Direct federal agency actions and projects occurring in areas covered by the Oak Harbor SMP shall comply with WAC 173-27-060. 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, regulations adopted pursuant to the SMA and the Oak Harbor SMP. The SMP, including the permit system, shall apply to all nonfederal developments and uses undertaken on federal lands.

3. Applicability to All Persons and Development

This SMP shall apply to all uses, activities and development by persons or parties on lands subject to the SMP as identified in Section 1.C.2. Please see Section 1.E below for more information on when a permit is required. Regardless of whether a use, activity or development is exempt, all proposals must comply with the policies and regulations contained in the SMP.

E. Shoreline Master Program Basics

1. How is the SMP Used?

The Oak Harbor Shoreline Master Program is a planning document that outlines goals and policies for the shoreline of the city and establishes regulations for development occurring in that area.

In order to preserve and enhance the shoreline of Oak Harbor, all development proposals relating to the shoreline area should be evaluated in terms of the City's Shoreline Master Program, and the City Shoreline Administrator should be consulted. Some developments may be exempt from obtaining a Shoreline Substantial Development Permit (SSDP) as detailed in Section 6.F.2 and RCW 90.58.030(3)(e), while others will require an SSDP, and/or may require a conditional use permit application or variance application.

2. When is a Permit Required?

Chapter Six provides a definition for a Shoreline Substantial Development (SSD) for which a Shoreline Substantial Development Permit (SSDP) is required. Section 6.F provides more information on the SSDP process. A development or activity is exempt if it meets the criteria listed in WAC 173-27-040 and the exemption criteria listed in Section 6.F.2; approval of a Shoreline Exemption from the City's Shoreline Administrator is still necessary before construction of an exempt development can begin. Some development may require a Shoreline Conditional Use Permit, if listed as such in the Use Tables contained in Section 4.B of this SMP; or a Shoreline Variance. Conditional Use Permits and Variances are discussed in more detail in Sections 6.H and 6.G, respectively. Review under the State Environmental Policy Act (SEPA), as well as other federal, state and local laws may also be required. Please note that routine maintenance of upland structures and landscapes does not require a permit or City approval, provided it complies with the requirements of the SMP.

3. Shoreline Permits and the Review Process

The City's Shoreline Administrator can help determine if a project is classified as a shoreline substantial development and identify which regulations in the SMP may apply to the proposed project. The Administrator can also provide information on the permit application process and how the SMP process

relates to other local development permits required by the Oak Harbor Municipal Code, the State Environmental Policy Act (SEPA) review process and federal and state permits.

4. Relationship to Other Plans and Regulations

The permitting process for a shoreline development or use does not exempt an applicant from complying with any other federal, state or local statutes or regulations which may also be applicable to such development or use. These may include, but are not limited to, Hydraulic Project Approval (HPA) from the Washington Department of Fish and Wildlife (WDFW), Section 401 Permit by the Army Corps of Engineers (ACOE) and Section 404 Permit by the Washington Department of Ecology (DOE). Proposals must also comply with the regulations developed by the City to implement its plans, such as the planning (Title 18) and zoning codes (Title 19 of the Oak Harbor Municipal Code), as well as regulations relating to building construction and safety (Title 17). In Oak Harbor, other plans and policy documents that must be considered include the Oak Harbor Comprehensive Plan and the adopted Surface Water Design Manual.

At the time of a permit application or of an initial inquiry, the City's Shoreline Administrator should inform the applicant of those regulations and statutes which may be applicable to the best of the administrator's knowledge; PROVIDED, that the final responsibility for complying with all statutes and regulations shall rest with the applicant.

5. Need for Consistency

The Shoreline Management Act requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the local shoreline master program. Conversely, local comprehensive plans provide the underlying framework within which master program provisions should fit. The Growth Management Act requires that shoreline master program policies be incorporated as an element of the comprehensive plan, and that all elements be internally consistent. In addition, under the Growth Management Act, all development regulations must be consistent with the comprehensive plan.

The Shoreline Guidelines identify three criteria for use in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

a. Provisions Not Precluding One Another

Comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criterion, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

b. Use Compatibility

Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent existing or potential future water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby non-water-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

c. Sufficient Infrastructure Required

Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

F. Organization of the this Shoreline Master Program

This Master Program is divided into seven Chapters:

Chapter 1: ***Introduction*** provides general background information on the state Shoreline Management Act; the development of the Shoreline Master Program in Oak Harbor; and a general discussion of when and how a shoreline master program is used.

Chapter 2: ***Shoreline Environments***, defines and maps the shoreline jurisdiction in the City of Oak Harbor and defines and maps the environment designations of all the shorelines of the state in the City's jurisdiction. Policies and regulations specific to the seven designated shoreline environments (Maritime, Residential, Residential Bluff Conservancy, Conservancy, Urban Mixed Use, Urban Public Facility, and Aquatic) are detailed in this chapter.

Chapter 3: ***General Provisions***, sets forth the general policies and regulations that apply to uses, developments, and activities in *all* shoreline areas of Oak Harbor.

Chapter 4: ***Shoreline Use Policies and Regulations***, sets forth policies and regulations governing specific categories of uses and activities typically found in shoreline areas. Specific setback regulations, reduction incentives and dimensional and density standards for each of the Shoreline Environments are also detailed in this chapter.

Chapter 5: ***Shoreline Modification Provisions*** provides policies and regulations for those activities that modify the physical configuration or qualities of the land-water interface.

Chapter 6: ***Administration***, provides the system by which the Oak Harbor Shoreline Master Program will be administered, and provides specific information on the application process and criteria used in evaluating requests for shoreline substantial development permits, conditional use permits, and variances.

Chapter 7: ***Definitions***, defines terms found in this document.

G. Title

This document shall be known and may be cited as the City of Oak Harbor Shoreline Master Program. This document may refer to itself as "The Master Program."

H. Oak Harbor's SMP: A Brief History

After the state adoption of the Shoreline Management Act in 1972, Island County adopted a shoreline master program as required by the Act. The City of Oak Harbor was part of the County's Shoreline Master Program and operated under that program until 1995. Concurrent with the adoption of the Oak Harbor Comprehensive Plan in 1995, the City developed and adopted its own Shoreline Master Program. For the first time, the City administered its own shoreline master program which emphasized local goals and policies for future development. According to community discussions from the 1995 plan, the key planning objectives considered in preparing the plan were: (1) support downtown waterfront redevelopment goals, (2) provide policy support for regulation of shoreline critical areas, (3)allow for continued development of the shoreline while protecting existing uses and (4) guide public use and development of the shoreline, emphasizing public access. While changes to the master program document were made, the bulk of the master program continued to resemble the original Island County document adopted in 1974. After submitting the draft master program to the Department of Ecology for review, a final draft of the master program was adopted in 1998 following further changes requested by the Department and additional local conversations.

In 2003, the state legislature established funding, timelines, and guidelines requiring all cities and counties to update their SMP. Beginning in 2010 and extending into 2013, the City of Oak Harbor conducted a comprehensive SMP update with the assistance of a grant administered by the Washington Department of Ecology. The SMP update contained in this document has been prepared consistent with the SMA and its implementing guidelines.

Consistent with state guidelines (WAC 173-26-201), Comprehensive Process to Prepare or Amend Shoreline Master Programs) a first step in the comprehensive Master Program update process is development of a shoreline inventory and characterization. The inventory and characterization documents current shoreline conditions and provides a basis for updating the City's Master Program goals, policies, and regulations. The characterization identifies existing conditions, evaluates existing functions and values of shoreline resources, and explores opportunities for conservation and restoration of ecological functions.

During the development of the SMP update, the City worked with the Shoreline Advisory Committee for seven months. Special thanks go to Committee members Helen Chatfield-Weeks, Rick Almberg, Keith Fakkema, Jill Johnson, Mahmoud Abdel-Monem, and Jennifer Meyer.

Chapter 2: **ENVIRONMENT DESIGNATION PROVISIONS**

A. Introduction

1. Shoreline Environment Designations

The basic intent of a shoreline environment designation is to preserve and enhance shoreline ecological functions and to encourage development that will enhance the present or desired future character of the shoreline as described in the Comprehensive Plan, other adopted plans and this SMP. To accomplish this, shoreline segments are given an environment designation based on existing development patterns, biological capabilities and limitations, and community objectives.

This Master Program establishes seven shoreline environments for the City of Oak Harbor. These shoreline environments shall include the shorelines of the City of Oak Harbor, including shorelands, surface waters, and bedlands. These environments are derived from and build on policy direction contained in the Oak Harbor Shoreline Inventory and Characterization Report, the Oak Harbor Comprehensive Plan, the Shoreline Management Act and the Shoreline Master Program Guidelines. The seven Oak Harbor shoreline environment designations are:

- Maritime,
- Urban Mixed Use,
- Residential,
- Residential - Bluff Conservancy,
- Urban Public Facility,
- Conservancy, and
- Aquatic.

These shoreline environments are shown in the Shoreline Management Environment Designations Map, included as Figure 1, and described in detail in the text below. Any undesignated shorelines are automatically assigned a Conservancy environment designation. The map is a general depiction of the extent of the City's shoreline jurisdiction and the relative locations of shoreline environment designations. In the event of a conflict between the designation map and the text of this Master Program, the environment descriptions provided in this chapter shall control.

B. Environments

1. Maritime Environment

a. Purpose

The purpose of the Maritime environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses and development while protecting existing ecological

functions. A secondary purpose is to restore ecological functions in a manner that is compatible with intensive water-oriented uses and development, in areas that have been previously degraded.

b. Designation Criteria

Areas designated Maritime are those areas within the Oak Harbor shoreline jurisdiction that currently support high-intensity uses and development related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses. Existing uses in the Maritime environment include marinas, yacht club, boat launch ramps, parking lots, boat repair, boat storage yards and a wide range of Navy uses.

c. Designated Areas

Areas designated Maritime include the following areas as shown in Figure 1:

- The Marina Lease Area (including the Oak Harbor Yacht Club and Oak Harbor Marina) and adjoining Naval Air Station Whidbey Island (NASWI) property extending approximately 400 feet south
- Crescent Harbor Marina – Those areas adjacent to Crescent Harbor between the radar station and the northern extent of the former seaplane base tarmac.

d. Management Policies

1. First priority should be given to water-dependent uses and development. Second priority should be given to water-related and water-enjoyment uses and development. 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 there is not direct access to the shoreline.
2. Provisions allowing for a mix of water-dependent and non-water-dependent uses in the vicinity of the Oak Harbor Marina should be established to foster economic development and support the vision of the Oak Harbor Marina Redevelopment Program. Standards should be applied to assure no additional degradation of shoreline conditions and no net loss of ecological functions.
3. Full utilization of the high-intensity waterfront areas should be achieved before further expansion of this environment is allowed. Reasonable long-range projections of future growth in the vicinity of the Oak Harbor Marina and the Whidbey Island Naval Exchange should guide any future expansions of the Maritime environment. However, priority should be given to encouraging the relocation of nonwater-oriented uses when analyzing full utilization of Maritime areas and before considering expansion of such areas.
4. The City should implement the Marina Redevelopment Program in compliance with the provisions of this master program.

5. The City should explore redevelopment possibilities for the Seaplane Base, in coordination with the Navy, for economic development purposes.
6. Policies and regulations should assure no net loss of shoreline ecological functions as a result of new development. New development should include environmental cleanup in accordance with any relevant state and federal law and enhancement of shoreline ecological functions wherever practicable.
7. Where safety and feasibility allow, waterfront development in the Maritime environment should provide visual and physical public access to the shoreline.
8. Aesthetic objectives should be implemented by means such as height limits, setbacks, natural vegetative buffers, screening requirements, sign regulations and other development standards.

2. Urban Mixed Use Environment

a. Purpose

The purpose of the Urban Mixed Use environment designation is to provide for a variety of water-oriented commercial, residential, and private recreational uses in areas where the shoreline has already been developed at urban intensities while protecting existing ecological functions.

b. Designation Criteria

The Urban Mixed Use environment designation is applied to shoreline properties adjacent to Oak Harbor designated on the City's future Land Use Map as Central Business District, Residential Office and High Density Residential. These areas are suited for a range of commercial and residential uses, but are generally less suited for intensive water-dependent and water-related uses requiring commercial moorage structures, passenger or cargo terminals, launching ramps for motorized vessels and similar over-water and in-water structures.

c. Designated Areas

The Urban Mixed Use environment designation applies to all properties east of Windjammer Park and west of the Oak Harbor Marina, with the exception of Flintstone Park. Please see Figure 1.

d. Management Policies

1. Development should be located, sited, designed and maintained to protect and enhance the shoreline environment and to be compatible with adjacent public and private uses of the shoreline, including Windjammer Park and Flintstone Park. Please see Chapter 3, Section B.8.c for regulations pertaining to Vegetation Conservation. Please see Chapter 4, Section C for Development Standards, including setbacks.
2. First priority should be given to water-dependent uses that are consistent with the designation criteria. Second priority should be given to water-oriented uses, including residential development and passive recreation, such as the Waterfront Trail.

3. Non-water-oriented commercial uses should be allowed on sites without direct access to the shoreline, such as properties on the north side of SE Bayshore Drive and SE Pioneer Way.
4. Non-water oriented commercial uses should also be allowed where navigation is severely limited, such as properties south of SE Bayshore Drive, between Windjammer Park and Flintstone Park, if proposed as part of mixed-use developments with a residential component. The proposal must include a significant public benefit with respect to the Shoreline Management Act's objectives, such as providing public access and ecological restoration.
5. Moorage structures are discouraged in this environment because conditions are generally not suitable, but when allowed through a conditional use permit, joint-use piers or public piers should be required.
6. Multi-family and multi-lot residential developments should provide joint use facilities for the recreational needs of their residents. Where such development is located near the Waterfront Trail, pedestrian connections should be provided to the trail to the greatest extent feasible.
7. Public access should be provided pursuant to Chapter 3, Section 6. Public access priorities for this area include the Waterfront Trail, visual access and connections to the Waterfront Trail.
8. Property owners should be encouraged to preserve and enhance native shoreline vegetation and use environmentally friendly landscaping practices, through non-regulatory incentives, information, outreach and other assistance. Please see Chapter 3, Section B.8 for regulations pertaining to Vegetation Conservation.
9. Policies and regulations should assure no net loss of shoreline ecological functions as a result of new development. New development should include environmental cleanup in accordance with any relevant state and federal law and enhancement of shoreline ecological functions wherever practicable.

3. Residential Environment

a. Purpose

The Residential environment designation is designed to provide for residential uses where the necessary facilities for development can be provided. An additional purpose is to provide appropriate recreational uses.

b. Designation criteria

The Residential environment designation is assigned to shoreline areas that are predominantly single-family residential development or are planned and platted for residential development and are free from significant environmental constraints and hazards.

c. *Designated Areas*

Residential areas include those parcels adjacent to Oak Harbor that are currently zoned residential and lie east of Freund Marsh, and west of Windjammer Park, as shown in Figure 1.

d. *Management Policies*

1. Residential activities and recreational uses are preferred over other land and resource consumptive development or uses.
2. Development should be located, sited, designed and maintained to protect and enhance the shoreline environment and to be compatible with adjacent public and private uses of the shoreline, including Windjammer Park and Freund Marsh open space. Please see Chapter 3, Section B.8.c for regulations pertaining to Vegetation Conservation. Please see Chapter 4, Section C for Development Standards, including setbacks.
3. Ecological functions and remaining natural features should be protected and conserved. Mitigation shall be provided for all development to ensure no net loss.
4. Multi-lot residential and recreational developments should provide joint use facilities for community recreational needs and provide public access to the shoreline where feasible.
5. Development should not negatively impact visual or physical public access to the shoreline, including access to tidelands and waters of the state below the ordinary high water mark (beach walk access). Please see Chapter 3, Section 6 for public access requirements.
6. Property owners should be encouraged to preserve and enhance native shoreline vegetation and use environmentally friendly landscaping practices, through non-regulatory incentives, information, outreach and other assistance.

4. Residential - Bluff Conservancy Environment

a. *Purpose*

The primary purpose of the Residential - Bluff Conservancy Environment is to accommodate existing and future residential development on more suitable portions of lots that contain geologically hazardous slopes, while preserving the ecological functions of natural bluff areas and shorelines. Voluntary restoration and enhancement of modified and degraded shoreline areas is a secondary purpose of the designation.

b. *Designation Criteria*

The Residential - Bluff Conservancy environment designation is applied to shoreline properties that are currently zoned for single-family residential development and are located in areas characterized by the presence of geologically hazardous shoreline bluffs.

c. *Designated Areas*

The Residential - Bluff Conservancy environment designation applies to those parcels currently zoned for residential development and located south of Freund Marsh, commonly known as the Scenic Heights neighborhood as shown in Figure 1.

d. *Management Policies*

1. Residential uses located and designed in a manner that does not accelerate bluff erosion and slope failure are the preferred uses for upland portions of the Residential - Bluff Conservancy environment. Within slope buffer, bluff and beach areas, passive recreation, public access, open space and voluntary shoreline enhancement and restoration activities are preferred uses.

2. Upland development should be located, sited, designed and maintained to protect and enhance the shoreline environment; specifically, development should be sited to avoid the potential for slope erosion and failure over the useable life of the structure, and designed to prevent bluff erosion, including adequate provisions for stormwater.

3. Upland development should be located, sited, and designed to avoid clearing of vegetation or other alterations of steep slopes and buffer areas. Pruning of vegetation in accordance with accepted arboricultural standards to maintain and enhance views should be allowed. Trees should not be topped. Enhancement of shoreline bluff areas with native vegetation to prevent shoreline erosion should be encouraged. Please see Chapter 3, Section B.8.c for regulations pertaining to Vegetation Conservation. Please see Chapter 4, Section C for Development Standards, including setbacks.

4. Shoreline access structures, such as trails, walkways, and stairs, should be located, designed, and maintained to minimize alteration of shoreline bluffs and clearing of vegetation. Where feasible, shoreline access from multiple properties should be coordinated and consolidated to reduce the number of access structures.

5. Hard structural shoreline armoring in the Residential - Bluff Conservancy environment should be discouraged in favor of soft stabilization techniques, such as bioengineering, beach nourishment, and vegetative stabilization. Property owners should be encouraged to coordinate shoreline stabilization solutions across multiple properties.

6. Private property owners should be encouraged to preserve and enhance native shoreline vegetation and use environmentally friendly landscaping practices, through incentives, information and other assistance.

7. Development should not negatively impact visual or physical public access to the shoreline, including access to tidelands and waters of the state below the ordinary high water mark (e.g. beach walk access). Please see Chapter 3, Section 6 for public access requirements.

8. The City should coordinate with residents who live in the residential bluff conservancy environment and other properties within the related subbasin to identify bluff erosion and stormwater runoff issues, as well as potential future improvements, and funding sources for

identified problems. Funding sources may include a combination of private, public, and non-profit monies.

5. Urban Public Facility Environment

a. Purpose

The purpose of the Urban Public Facility environment designation is to provide for water-oriented public recreational facilities and public access to the shoreline for residents and visitors, in areas that are not encumbered by wetlands or other severe site limitations. A secondary purpose is to provide necessary water-oriented public facilities, such as wastewater treatment plants and stormwater outfalls. Restoration of degraded shoreline areas is also a secondary purpose of this environment designation.

b. Designation Criteria

The Urban Public Facility environment designation is applied to shoreline areas zoned for parks and public facilities and currently occupied by a publicly-owned park or facility, utility infrastructure and buildings and appurtenances related to community uses and visitor services.

c. Designated Areas

The Urban Public Facility environment designation applies to Windjammer Park and Flintstone Park, as shown in Figure 1.

d. Management Policies

1. Water-dependent, water-related, and water-enjoyment uses that are fully accessible to the general public should be given first priority. Limited non-water-oriented accessory commercial uses may be appropriate if they support a water-oriented public access or recreational use.
2. Public recreation and public access uses should be preferred uses in the Urban Public Facility environment, provided that such development does not result in a net loss of shoreline ecological function.
3. Incorporation of shoreline enhancement and restoration efforts as part of recreational and public access development should be encouraged.
4. Development should, to the greatest extent feasible, preserve native shoreline vegetation. Where vegetation is cleared for development, replacement plantings should consist of native species.
5. New and expanded public utility facilities, such as wastewater treatment plants and stormwater outfalls, should be allowed, provided public access is maintained and enhanced, even if some areas of the utility facility may not be accessible to the public due to safety or other concerns.

6. Conservancy Environment

a. Purpose

The purpose of the Conservancy environment designation is to protect and restore the ecological functions of open space and other sensitive lands, provide primarily passive water-oriented recreation and public access in a manner that protects ecological function, and allow a variety of other uses that preserve or enhance ecological function and recreational opportunities. On-going current Navy uses on lands contained within NASWI, including, but not limited to, training and residential uses, are consistent with the purpose of this environment.

b. Designation Criteria

Areas designated Conservancy are those areas generally unsuitable for intensive water-dependent uses such as moorage, but which may be appropriate for recreation uses such as swimming, fishing, non-motorized boating, and trails, and where one or more of the following characteristics apply:

1. They are suitable for water-related or water-enjoyment uses, but not for water-dependent uses involving structural modification of the shoreline,
2. They are open space or other sensitive areas that should not be more intensively developed,
3. They have potential for ecological restoration,
4. They retain important ecological functions, even though partially developed, or
5. They have the potential for limited development that is compatible with ecological restoration.

c. Designated Areas

Conservancy areas include those generally depicted in Figure 1:

- Parcels in designated wetland areas associated with Freund Marsh;
- Those areas within the City limits, within shoreline jurisdiction that are located on Naval Air Station Whidbey (NASWI), including:
    - Maylor Point adjacent to Oak Harbor and located generally south of the Oak Harbor Marina and south of Maritime environment on NASWI; and
    - Shorelines lying north and east of the Maritime environment (e.g. areas north and east of the Whidbey Island Naval Exchange), including Crescent Harbor, Crescent Marsh, and Polnell Point.

Please note that wetland boundaries that in part define the extent of this environment are approximate. The actual delineated boundary of a wetland shall determine the extent of shoreline jurisdiction and thus the extent of this environment in the vicinity of Freund Marsh.

d. Management Policies

1. Uses that preserve the natural character of the area or promote preservation of open space or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be encouraged if the use is otherwise compatible with the purpose of the environment and the setting.
2. Water-related recreation uses, such as swimming beaches, fishing areas, and waterfront trails, shall be the highest priority, provided they can be located, designed, constructed, operated, and mitigated in a manner that ensures no net loss of ecological function. Moorage facilities, such as piers, docks, buoys, and floats, should be discouraged.
3. Public access and public recreation objectives should be implemented whenever feasible and whenever significant ecological impacts can be mitigated.
4. Water-oriented recreation uses, such as viewing trails, benches and shelters, should be emphasized and non-water-oriented uses should be minimized and allowed only as an accessory use; for example picnic areas, shoreline trails and small playground areas would be acceptable, but tennis courts and developed sports fields would not.
5. Standards should be established for shoreline stabilization, vegetation conservation, water quality, and shoreline modifications to ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
6. New and expanded public utility facilities, such as wastewater treatment plants and stormwater outfalls, should be allowed, provided that, in addition to ensuring no net loss of ecological function, public access is maintained and enhanced, even if some areas of the utility facility may not be accessible to the public due to safety or other concerns.
7. The City, with appropriate partners and when adequate funding is available, should commission a study of the Maylor Point wetland complex that examines the existing fill in this area, the impact of shoreline processes on this fill, including erosion and deposition in Oak Harbor, and potential restoration alternatives.

7. Aquatic Environment

a. Purpose

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

b. Designation Criteria

The Aquatic environment designation is assigned to areas waterward of the ordinary high water mark, extending to the in-water jurisdictional boundary.

c. *Designated Areas*

The Aquatic Environment is assigned to all areas within the shoreline jurisdiction waterward of the ordinary high water mark, including Oak Harbor, waters adjacent to Maylor Point, Crescent Harbor, and waters adjacent to Polnell Point, as generally shown in Figure 1.

d. *Management Policies*

1. Allow new over-water structures, development, or uses only for water-dependent uses, public access, or ecological restoration.
2. The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
3. To reduce the impacts of shoreline development and increase effective use of water resources, shared use and public use of over-water facilities should be encouraged.
4. All developments, uses, and structures on or over waters or their beds should be located and designed to minimize interference with surface navigation, to mitigate impacts to public views and physical public access, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
5. Uses and development that adversely impact the ecological functions of critical saltwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201(2)(e) as necessary to assure no net loss of ecological functions.
6. Long-term moorage of vessels in the Aquatic environment should be discouraged outside marinas.
7. Shoreline uses and modifications should be designed and managed consistent with mitigation sequencing to meet no net loss.

Chapter 3: **GENERAL PROVISIONS**

A. Introduction

The following policies and regulations apply to all uses, developments, and activities in the shoreline area of the City of Oak Harbor. The intent of these provisions is to be inclusive, making them applicable to all environments, as well as particular shoreline uses and activities. Topics include the following:

- Universally Applicable Policies and Regulations
- Economic Development
- Archaeological and Historic Resources
- Critical Areas
- Environmental Impacts and Mitigation
- Public Access
- Shorelines of Statewide Significance
- Vegetation Conservation
- Critical Saltwater Habitat
- Water Quality, Stormwater, and Non-Point Pollution

The regulations of this chapter are in addition to other adopted ordinances and rules. Where conflicts exist between regulations, the requirement that most supports the provisions of the Shoreline Management Act as stated in RCW 90.58.020 shall apply, as determined by the Administrator. These interlocking development regulations are intended to make shoreline development responsive to specific design needs and opportunities along the City's shorelines, protect the public's interest in the shorelines' recreational and aesthetic values and assure, at a minimum, no net loss of ecological functions necessary to sustain shoreline natural resources.

These provisions address the elements of a SMP as required by RCW 90.58.100(2) and implement the governing principles of the Shoreline Master Program Guidelines as established in WAC 173-26-186.

B. Policies and Regulations

1. Universally Applicable Policies and Regulations

a. Applicability

1. The following provisions describe how this SMP is to be applied and the requirements for all shoreline uses and modifications in all shoreline environment designations.

b. Policies

1. The City should keep records of all project review actions within shoreline jurisdiction, including shoreline permits and letters of exemption.
2. The City should involve affected federal, state, and tribal governments in the review process of shoreline applications.
3. The City should periodically review the shoreline master program and shoreline conditions, at a minimum on a seven-year schedule in accordance with RCW 90.58.080, to determine whether or not other actions are necessary to ensure no net loss of ecological functions, protect and enhance visual quality, and enhance residential and recreational uses and development on the City's shoreline. The update should focus on physical development, environmental impacts, changes in the natural environment, new scientific information and federal and state regulatory changes since the last periodic update was completed.
4. The "policies" listed in this SMP are intended to provide broad guidance and direction for the "regulations" applied by the City. The policies, taken together, constitute the Shoreline Element of the Oak Harbor Comprehensive Plan.

c. Regulations

1. All proposed shoreline uses and development, including those that do not require a shoreline permit, must conform to the Shoreline Management Act, Chapter 90.58 RCW, and to the policies and regulations of this SMP.
2. If provisions within this SMP conflict, or where there is a conflict with other City policies and regulations, the provisions most directly implementing the objectives of the Shoreline Management Act, as determined by the Administrator, shall apply unless specifically stated otherwise.
3. Shoreline uses, modifications, and conditions listed as "prohibited" shall not be eligible for consideration as a Shoreline Variance or Shoreline Conditional Use Permit. See Chapter 4 for Shoreline Use regulations and Chapter 6 for Exemptions, Variances, Conditional Uses, and Nonconforming Use Provisions.

2. Economic Development

a. Applicability

Because of its location on Whidbey Island, the economy of Oak Harbor has always been closely tied to the water. Economic development along Oak Harbor's shorelines can provide a balanced and diversified economy for the city's long-term well-being while enhancing the shoreline's physical and social qualities. The following policies apply to all economic development activities proposed within the shoreline jurisdiction.

b. Policies

1. Commercial and industrial development should be constructed in a manner that minimizes adverse effects on the upland and aquatic environments and results in no net loss of ecological function, consistent with the provisions of this Master Program.
2. The City recognizes the inherent link between the shoreline environment and the economy. A high quality shoreline environment will help attract water-dependent, water-related, and water-oriented industries, tourism, and jobs.
3. The City should study the feasibility of attracting job-generating commercial and industrial uses to its shorelines. Such study shall analyze the potential to attract a broad range of water-oriented employers, especially "green" employers whose development and operations harmonize with the policies and regulations of this master program.
4. Encourage water-dependent, water-related, or water-enjoyment commercial and industrial development in appropriate shoreline environments outside of single family residential areas.
5. Proposed economic development along the shoreline should be consistent with the City's Comprehensive Plan and other adopted land use and community plans, including the Waterfront Redevelopment, Branding, and Marketing Program.
6. Development of recreational uses along the shoreline, such as those found at Windjammer Park, that can provide an economic asset for the City and enhance public enjoyment of shorelines should be encouraged.
7. The City recognizes the benefits of the marina as a recreational and economic asset and supports its continued operation and upgrade in accordance with the Marina Redevelopment Program.

3. Archaeological and Historic Resources

a. Applicability

The following provisions apply to archaeological and historic resources that are either recorded at the state historic preservation office and/or by local jurisdictions or have been inadvertently uncovered. Archaeological sites located both in and outside shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian graves and records) and chapter 27.53 RCW (Archaeological sites and records) and development or uses that may impact such sites shall comply with chapter 25-48 WAC as well as the provisions of this chapter.

b. Policies

1. The City should protect sites in collaboration with appropriate tribal, state, federal and local governments. Encourage public agencies and private parties to cooperate in the identification, protection and management of cultural resources.
2. When and/or where appropriate, make access to such sites available to parties of interest, provided that access to such sites must be designed and managed in a manner that gives maximum protection to the resource.

3. Provide opportunities for education related to archaeological, historical and cultural features when and/or where appropriate and incorporated into public and private programs and development.

4. The City should work with tribal, state, federal and local governments and special districts as appropriate to maintain an inventory of all known significant local historic, cultural and archaeological sites while adhering to applicable state and federal laws protecting such information from 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.

5. 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.

6. Owners of property containing identified historic, cultural or archaeological sites are encouraged to make development plans known well in advance of application, so that affected Tribes, as well as the 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.

7. 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.

8. Site development should be planned and carried out so as to prevent impacts to historic, cultural, and archeological resources. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.

9. 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.

10. The cultural resource provisions of this Program are consistent with RCW 27.44, RCW 27.53 and WAC 25-48-060. In accordance with state law, all applicants are subject to these requirements.

c. *Regulations*

1. Known Archaeological, Historic and Cultural Resources

    a. Upon receipt of application for a shoreline or demolition permit on sites where archaeological, historic, and cultural resources are known to be present 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 City 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. Buildings or structures over 40 years in age shall be inventoried in a DAHP Historic Property Inventory Database entry and archaeological site shall be recorded on DAHP Archaeological Site Inventory Forms. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. The applicant shall submit a minimum of five (5) copies of the site assessment to the Administrator for distribution to the applicable parties for review.

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

1. A CRMP shall contain the following minimum elements:

   i. The purpose of the project;

   ii. A site plan for proposed on-site development, including indication of any existing buildings or structures on-site as well as any that are proposed for removal;

   iii. Depth and location of all ground disturbing activities including, but not limited to, utilities, paved areas, clearing and grading landscaping or new landscape features (i.e. fencing, walls, etc.);

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

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

   vi. A description of the historic/archaeological resources present, including any building or structure over 40 years of age affected by the proposal;

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

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

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

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

1. 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;
2. Adaptive re-use of buildings or structures according to the U.S. Secretary of the Interior's Standards for Rehabilitation.
3. Preservation in place;
4. Re-internment in the case of grave sites;
5. Covering an archaeological site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);
6. Excavation and recovery of archaeological resources;
7. Inventorying prior to covering of archaeological resources with structures or development; and
8. 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:

1. A statement that work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the Administrator and other appropriate governments and agencies.
2. Contact information for applicable parties, agencies and governments including the Shoreline Administrator, the Washington State Department of Archaeology and Historic Preservation, affected Tribes, professional archaeologist or historic preservation professional; and in the event of inadvertent discovery of human remains, additional contact information for the Oak Harbor Police Department, Island County Medical Examiner, State Physical Anthropologist, and/or appropriate Tribal Repatriation Office. The address for the State Physical Anthropologist is: P.O. Box 48343, Olympia, WA 98504.
3. Proposed measures to stabilize, contain, or otherwise protect the area of inadvertent discovery until a site investigation and/or site assessment is conducted.

xii. Where provision of public access for the purpose of public education related to a private or publicly owned building or structure of historic significance is desired by the property owner, a public access management plan shall be

developed in consultation with the Washington State Department of Archaeology and Historic Preservation and/or other agencies, as appropriate, and affected Tribes to address the following:

1. The type and/or level of public access that is consistent with the long term protection of both historic resource values and shoreline ecological functions and processes;

2. An access management plan is developed in accordance with site-and resource-specific conditions in consultation with the Washington State Department of Archaeology and Historic Preservation, affected Tribes, and/or other agencies, as appropriate, to address the following:
   - hours of operation,
   - interpretive and/or directional signage,
   - lighting,
   - pedestrian access, and/or
   - traffic and parking.

xiii. For archaeological and cultural resource sites, the Washington State Department of Archaeology and Historic Preservation, and/or other agencies, as appropriate, and relevant Tribes shall be in agreement prior to providing public access to the site. An access and resource management plan shall be developed in consultation with the Washington State Department of Archaeology and Historic Preservation, and affected Tribes.

2. The recommendations and conclusions of the CRMP shall be used to assist the Administrator in making final administrative decisions concerning the presence and extent of historic/archaeological resources and appropriate mitigating measures. The Administrator shall consult with the Washington State Department of Archaeology and Historic Preservation, and affected Tribes prior to approval of the CRMP and any associated shoreline development permits.

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

c. Within 15 days of receipt of a complete development permit application in an area of known historic/archaeological resources, the City shall notify and request a recommendation from appropriate agencies such as the Washington State Department of Archaeology and Historic Preservation, and affected Tribes. Recommendations of such agencies and other affected persons shall be duly considered and adhered to whenever possible and reasonable. Notification shall include the following information:

1. The date of application, the date of notice of completion for the application, and the date of the notice of application;
2. The date, time, place, and type of the hearing, if applicable, scheduled at the date of notice of the application;
3. A site map including the street address, tax parcel number, township, range, and section of the proposed project area;
4. 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 City;
5. The identification of other permits not included in the application to the extent known by the City;
6. 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;
7. Any other information determined appropriate by the City;
8. 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;
9. A statement of the limits of the comment period, the right of each agency to comment on the application within a fifteen (15) day time period, receive notice of and participate in any hearings, request a copy of the decision once made, and to appeal a decision when allowed by law. In addition, the statement shall indicate that any agency wishing to receive personal notice of any hearings must notify the Administrator within 15 days of the date of the notice of application.

d. In granting shoreline permits or statements of exemption for such development, the City may attach conditions to provide sufficient time and/or conditions for consultation with the Washington State Department of Archaeology and Historic Preservation, and relevant Tribes, 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, structures or areas, shall be incorporated to the maximum extent practicable. Permit or other requirements administered by the Washington State Department of Archaeology and Historic Preservation pursuant to RCW 27.44 and RCW 27.53 may apply in addition.

2. Inadvertent Discovery

a. Whenever historic, cultural or archaeological sites or artifacts of potential significance are discovered in the process of development on shorelines, work on that portion of the

development site shall be stopped immediately, the site secured, stabilized, or otherwise protected and the find reported as soon as possible to the Administrator.

b. The Administrator shall then notify the Washington State Department of Archaeology and Historic Preservation, affected Tribes, and other appropriate agencies and shall require that an immediate site assessment be conducted by a professional archaeologist or historic preservation professional, as applicable, pursuant to Chapter 3, Section B.3.c.1(a) to determine the significance of the discovery and the extent of damage to the resource. The site assessment shall be distributed to the Washington State Department of Archaeology and Historic Preservation, the affected Tribes 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.

c. Upon receipt of a positive determination of a site's significance, the Administrator may invoke the provisions of Chapter 3, Section B.3.c.1.b above for a Cultural Resource Management Plan, if such action is reasonable and necessary to implement related SMP objectives.

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

4. Critical Areas and Flood Hazard Areas

a. Applicability

1. Critical areas located within the City of Oak Harbor's shoreline jurisdiction are regulated by the Critical Areas Regulations, Ordinance No. 1440 § 1-6, 2005 and codified under Title 20 of the Oak Harbor Municipal Code, which are herein incorporated into this SMP, except as specifically modified or exempted in this Section.

2. Flood hazard areas located within the City of Oak Harbor's shoreline jurisdiction are regulated by Flood Damage Prevention Regulations, Ordinances Nos. 835 (1989) and 1462 (2006) and codified under Chapter 17.20 of the Oak Harbor Municipal Code, which are herein incorporated into this SMP, except as specifically modified or exempted in this Section.

3. Where the Critical Areas Regulations or Flood Damage Prevention Regulations conflict with other parts of the SMP, the requirement that most supports the provisions of the SMA as stated in RCW 90.58.020 shall apply, as determined by the Shoreline Administrator.

4. Provisions of the Critical Areas Regulations that are not consistent with the Shoreline Management Act, Chapter 90.58 RCW, and supporting Washington Administrative Code chapters shall not apply in shoreline jurisdiction, as follows:

   a. The provisions of the Critical Areas Regulations shall not modify the extent of the shoreline jurisdiction as described in Chapter 1.C of this SMP. For regulations addressing critical area buffers that are outside of Shoreline Jurisdiction, see Oak Harbor Municipal Code, Title 20.

   b. Provisions in OHMC 20.12.040 relating to exemptions from the Critical Areas Regulations shall not relieve the applicant from obtaining a Shoreline Substantial Development Permit or other permit approval required under this SMP, or from meeting the specific requirements identified in other sections of this SMP, including requirements for no net loss.

   c. Provisions relating to "reasonable use," specifically those contained in OHMC 20.12.060, shall not apply within the shoreline jurisdiction.

   d. Provisions relating to variance procedures under the Critical Areas Regulations, specifically OHMC 20.12.120, shall not apply within the shoreline jurisdiction. Shoreline Variance procedures and criteria have been established in this SMP, Chapter 6.G, and in WAC 173-27-170.4.

   e. The provisions of OHMC 20.28.040 relating to modifications and alterations on steep or unstable slopes shall not apply within the shoreline jurisdiction.

   f. Provisions in OHMC 20.25.040(1) relating to buffer widths for marine shorelines identified as fish and wildlife habitat conservation areas shall not apply within the shoreline jurisdiction.

   g. Provisions for riparian buffer reductions contained in OHMC 20.25.040(3) shall apply within the shoreline jurisdiction, except that buffer reductions associated with shoreline restoration may not be added to buffer reductions associated with other incentives, such as Lower Impact Land Uses (OHMC 20.25.040(2)). Within the shoreline jurisdiction, incentive-based buffer reductions shall not exceed a total of 25%. Provisions for buffer averaging contained in OHMC 20.25.040(4) shall apply within the shoreline jurisdiction, except that no buffer shall be reduced to less than the required setback for the environment designation as listed in Chapter 4, Table 2 of this document, or as otherwise allowed under averaging provisions in footnotes 4 and 5 of Table 2.

   h. Provisions in OHMC 20.24.010(1) relating to identification and rating of wetlands shall not apply within the shoreline jurisdiction. Identification of wetlands and delineation of their boundaries pursuant to this Chapter shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements. All areas within the shoreline jurisdiction meeting the wetland designation criteria in that

procedure are hereby designated critical areas and are subject to the provisions of this Chapter.

i. Within the shoreline jurisdiction, the definitions contained within this Master Program shall supersede and be used in lieu of the definitions contained with OHMC 20.02.020.

5. Provisions of the Flood Damage Prevention Regulations shall be modified as follows:

a. New or enlarged structural flood hazard reduction measures shall be allowed only by conditional use permit when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, impacts to ecological functions and priority species and habitats can be successfully mitigated so as to ensure no net loss and vegetation conservation standards consistent with Chapter 3, Section 8 are implemented to the maximum feasible extent.

b. New or enlarged structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan that evaluates cumulative impacts to the watershed system.

c. Existing structural flood hazard facilities that are damaged or have deteriorated may be repaired and replaced to their previous extent, provided all areas disturbed by construction are revegetated with native species and such action complies with all other standards of this SMP.

d. Where feasible, new or enlarged structural flood hazard reduction measures shall be placed landward of associated wetlands and vegetation conservation areas, except for projects that increase ecological functions, such as wetland restoration.

e. New or enlarged structural flood hazard reduction measures, such as dikes or levees, that are built on public property or receive public funding shall dedicate and improve public access pathways unless such public access improvement would not be consistent with the public access regulations in Chapter 5, Section B.6.

f. The removal of gravel or other excavation for flood management purposes shall be consistent with a City adopted flood hazard reduction plan and shall only be allowed after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological function, and is part of a comprehensive flood management solution.

g. All structural flood hazard protection measures shall be consistent with mitigation sequencing and shall result in no net loss of ecological function.

b. Policies

1. In addressing issues related to critical areas, use scientific and technical information, as described in WAC 173-26-201(2)(a).

2. Critical areas within the City's shoreline jurisdiction should be managed and protected to ensure no net loss of ecological functions. When feasible, restore degraded ecological functions and ecosystem-wide processes.
3. Promote human uses and values that are compatible with other objectives of the Shoreline Management Act, such as public access, water-dependent uses, and aesthetic values, provided they do not significantly adversely impact ecological functions.

5. Environmental Impacts and Mitigation

a. Applicability

The Shoreline Management Act is concerned with the environmental impacts that both a use and activity may have on the fragile shorelines of the state. This section applies to all development, use or activities within shoreline jurisdiction that are subject to the SMP.

b. Policies

1. Protect shoreline processes and ecological functions through regulatory and non-regulatory means that may include regulation of development within the shoreline jurisdiction, incentives to encourage ecologically sound design, specific enhancements, conservation easements, and acquisition of key properties. .
2. Preserve the scenic aesthetic quality of shoreline areas and vistas to the greatest extent feasible.
3. Adverse impacts on the natural environment should be minimized during all phases of development (e.g. design, construction, operation, and management).
4. Shoreline developments that propose to enhance environmentally sensitive areas, other natural characteristics, resources of the shoreline, and provide public access and recreational opportunities to the shoreline are consistent with the fundamental goals of this Master Program, and should be encouraged.

c. Regulations

1. All shoreline uses and developments shall be located, designed, constructed and mitigated to result in no net loss of ecological functions necessary to sustain shoreline natural processes.
2. All shoreline uses and activities shall be located and designed to prevent or minimize the need for shoreline protection structures and stabilization (bulkheading, riprap, etc.), fills, groins, jetties, or substantial site regrades.
3. Where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority:
    a. Avoiding the impact altogether by not taking a certain action or parts of an action;

b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

d. Reducing or eliminating the impact over time by preservation and maintenance operations;

e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

4. Compliance with Clean Water Act Section 311 is required. Solid waste, liquid waste, and untreated effluent shall not be allowed to enter any bodies of water or to be discharged onto the land. Only biodegradable cleaners shall be used to wash boats at the City marina.

5. The direct release of oil and hazardous materials or chemicals onto the land or into water is prohibited.

6. All shoreline uses and activities shall utilize best management practices (BMPs) to minimize any increase in surface runoff and to control, treat and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected during both construction and operation. BMPs are identified in the City's adopted stormwater manual.

7. All shoreline developments shall be located, constructed and operated so as not to be a hazard to public health and safety.

8. Land clearing, grading, filling and alteration of natural drainage features and land forms shall be limited to the minimum necessary for development. When required by the Shoreline Administrator, surface drainage systems or substantial earth modifications shall be designed by a civil engineer registered to practice in the State of Washington. The Administrator may also require additional studies prepared by a qualified soils specialist. These designs shall seek to prevent maintenance problems, avoid adverse impacts to adjacent properties or shoreline features, and result in no net loss of shoreline ecological functions.

9. Identified significant short term, long term, or cumulative adverse environmental impacts lacking appropriate mitigation that is likely to achieve no net loss of ecological functions necessary to sustain shoreline processes shall be sufficient reason for permit denial.

10. New development and uses within the shoreline environment shall be designed to have minimal negative effects on existing hydrologic connections between wetlands and the marine nearshore environment or associated fresh water bodies. Development that would disrupt such existing hydrologic connections shall be required to provide mitigation according to the sequence specified in this section.

6. Public Access

a. Applicability

Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Extensive shoreline access is provided in the City of Oak Harbor on publicly owned lands, roads and trails. Existing public access to shorelines within the shoreline jurisdiction includes Windjammer Park, Freund Marsh, Flintstone Park, Oak Harbor Marina, Bayshore Drive, SE Pioneer Way and the Waterfront Trail. Public access to Navy property on Maylor Point and in Crescent Harbor (i.e. the Seaplane Base) can be allowed subject to the discretion of NAS Whidbey leadership. Access to the Seaplane Base can be suspended or revoked at any time.

b. Policies

1. Provide and enhance shoreline access to Oak Harbor and Crescent Harbor through continued use and improvement of existing sites and infrastructure, installation and maintenance of identifiable signage for public access points, and purchase or retention of access easements.

2. Physical or visual public access to shorelines should be incorporated in all new developments when the shoreline administrator makes a finding that development would either generate a demand for one or more forms of access or would impair existing legal physical or visual public access opportunities or rights.

3. Public access priorities in Oak Harbor include enhancements and extensions of the Waterfront Trail from Scenic Heights to Maylor Point, improvements to existing parks, continued access and access improvements to open space areas on Navy lands, and enhanced public access associated with future public (e.g. Marina) or private development in the Maritime shoreline environment.

4. Developments, uses, and activities in the shoreline jurisdiction should be designed to avoid blocking or disrupting public visual and physical access to the water and the shoreline. New development should minimize conflicts with existing or planned public access projects and provide appropriate mitigation if impacts cannot be avoided.

5. Shoreline views from public property should be protected. Existing views and view corridors should be inventoried, including views of Oak Harbor, Crescent Harbor, Mt. Rainier, Mt. Baker, the Olympic Mountain range and Saratoga Passage.

6. Private views of the shoreline, although considered during the review process, are not expressly protected. Property owners concerned with the protection of views from private property are encouraged to obtain view easements, purchase intervening property and/or seek other similar private means of minimizing view obstruction.

7. Impacts to public access from new development should be mitigated through provision of on-site physical and visual public access, unless such access would create safety or security hazards, would negatively impact shoreline ecological function, or the shoreline

administrator determines that alternative off-site access or improvements would better serve the public interest.

8. The level of public access should be commensurate with the degree of uniqueness or fragility of the shoreline.
9. Ensure that upland facilities associated with shoreline public access sites, such as parking and play areas, as well as the development of in-water and nearshore structures for public access, such as docks and swimming areas, are located and designed in ways that result in no net loss of ecological function.
10. Access should be provided for a range of users including pedestrians, bicyclists and boaters to the greatest extent feasible. Such access should conform to applicable provisions of the Americans with Disabilities Act.
11. Public access provisions should be required for all new public shoreline development and uses, unless such access is shown to be incompatible due to reasons of safety, security or impact to the shoreline.
12. Public access required on private property should be consistent with all relevant constitutional and legal limitations on public use of private property, including nexus and proportionality principles.
13. Integrate shoreline public access with existing and planned regional trails or routes, such as the Waterfront Trail, to provide improved non-motorized access and community connections.
14. Ensure public access and recreational uses (including upland auxillary facilities) do not adversely affect the ecological integrity and character of the shoreline, threaten fragile shoreline ecosystem, or impair or detract from the public's visual or physical access to the water.
15. Physical access for swimming and non-motorized boating, passive recreation (such as interpretive trails) and habitat enhancement should be important planning and management objectives for shoreline public access sites. These include, but are not limited to, improvements to the swimming lagoon at Windjammer Park, interpretive trails in Freund Marsh and improvements for non-motorized boaters at both Windjammer Park and Flintstone Park.

c. *Regulations*

1. Except as provided in Regulations 2 through 4 below, public access shall be required to the extent allowed by law for all shoreline substantial developments and conditional uses when any of the following conditions are present:
    a. The project is publicly funded or occurs on public lands, provided that such access would not result in a net loss of ecological function;
    b. The proposed development would create or increase demand for public access to the shoreline;

c. The project adversely impacts existing public access by creating a physical or visual obstruction or discourages use of existing access;

d. The development interferes with public use of waters of the state; or

e. The proposed use is not water-dependent and is not a preferred use under the SMA. Preferred uses include single family residences, ports, shoreline recreational uses, water-dependent industrial and commercial developments and other developments, such as marinas, that provide public access opportunities.

2. Public access shall not be required for single-family residential development of four (4) or fewer lots. Single-family residential development of five (5) units or more shall provide public access according to the standards of this section.

3. Additional public access shall not be required where public access is already provided by an existing public facility on or adjacent to the site, such as the Waterfront Trail, and the Shoreline Administrator makes a finding that the proposed development would not negatively impact existing visual or physical public access or create a demand for shoreline public access that could not be accommodated by the existing public access system and existing public recreational facilities in the immediate vicinity.

4. Public access shall not be required on-site where one or more of the following conditions apply:

   a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;

   b. Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions;

   c. The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development or other constitutional or legal limitations preclude public access.

   d. Unacceptable environmental harm will result from the public access which cannot be mitigated; or

   e. Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.

5. To meet any of the conditions under Regulation 4 above, the applicant must first demonstrate and the Shoreline Administrator must determine that all reasonable alternatives have been exhausted, including but not limited to:

   a. Regulating access by such means as limiting hours of use to daylight hours.

   b. Designing separation of uses and activities, with such means as fences, terracing, hedges, and landscaping.

   c. Providing access that is physically separated from the proposal, such as a nearby street end, an offsite viewpoint, or a trail system.

d. Sharing the cost of providing and maintaining public access between public and private entities.

6. Projects that meet the criteria of Regulation 4 above shall either contribute toward off-site public access facilities or improvements or, if approved by the shoreline administrator and agreed to by the applicant, contribute a proportional fee to the local public access fund (payment in lieu).

7. All new private development along the shoreline shall accommodate the Waterfront Trail and dedicate a minimum 12-foot public access and recreational use easement that is located landward of the OHWM, subject to the requirements and limitations in Regulation 1 above.

8. Where an existing easement granting public access for the Waterfront Trail is located on a site where new development is proposed, the Shoreline Administrator may determine that such easement is adequate to accommodate the Waterfront Trail, notwithstanding the requirements of Regulation 7 above.

9. If the City determines that public access is required pursuant to Regulation 1 above, the City shall impose permit conditions requiring the provision of public access that is roughly proportional to the impacts caused by the proposed use or development. The City shall demonstrate in its permit decision document that any such public access has a nexus with the impacts of the proposed development and is consistent with the rough proportionality standard.

10. Public access sites shall be connected directly to the nearest public street or non-motorized trail through a parcel boundary, tract, or easement, wherever feasible.

11. Public access sites shall be made barrier free for the physically disabled where feasible and conform to all provisions of the Americans with Disabilities Act.

12. Required public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.

13. Public access easements and permit conditions shall be recorded on the deed where applicable or on the face of a plat, if applicable, or short plat as a condition running in perpetuity with the land. Recording with the Island County Auditor's Office shall occur at the time of permit approval (RCW 58.17.110; relating to subdivision approval).

14. The standard state approved logo and other approved signs that indicate the public's right of access and hour of access shall be constructed, installed, and maintained by the applicant in conspicuous locations at public access sites.

15. Future actions by the applicant or other parties shall not diminish the usefulness or value of the public access site.

16. Physical public access shall be designed to prevent significant impacts to sensitive natural systems, and shall be constructed and maintained in a manner that does not result in a net loss of shoreline ecological function.

17. The City shall require the use of environmentally friendly materials and technology in such things as building materials, paved surfaces, porous pavement, etc., to the extent feasible when developing public access to the shoreline.

18. Minimum width of public access easement shall be at least 12 feet, unless the administrator determines that undue hardship to the proponent would result. In such cases easement width may be reduced to the minimum necessary to relieve the hardship.

19. Where public access is to be provided by a trail, the following requirements shall apply:

    a. The trail shall be no greater than 10 feet in total improved width, which may include 1 foot gravel shoulders. Not including landscaping; no more than 8 feet of improved surface is preferable in most cases.

    b. Pervious pavement or boardwalk should be used for public access within the shoreline management area unless the Shoreline Administrator determines that such use is not in the public interest because of safety, durability, aesthetic or functionality concerns.

    c. Where feasible, the trail shall be placed at least 25 feet from the Ordinary High Water Mark (OHWM), except where the trail connects with an existing trail located closer to the OHWM, there is no other feasible location for the trail, or where the design incorporates overlooks or other access features that do not result in a loss of ecological function, as approved by the Shoreline Administrator.

    d. Landscaping should be native, salt tolerant and site appropriate.

    e. Other specific conditions described in a trail or parks plan or other City approval.

20. Development, uses, and activities shall be located, designed and operated to minimize obstruction or degradation of shoreline views from public parks, roads and walkways. In providing visual access to the shoreline, natural vegetation shall not be excessively removed either by clearing or by topping.

21. The Shoreline Administrator may require the applicant to prepare a view study when the City determines based on available information that views from public property may be significantly impacted by proposed shoreline development. A view study shall not be required for single family home development.

22. Given that nearly all development projects will increase the extent to which structures and other potential view obstructions occupy a given site, the significance of view impacts and required mitigation shall be determined by the Shoreline Administrator based on a view study and other available information that addresses the following factors:

    a. The nature, significance and extent or expanse of existing public shoreline view across the property, including the number and location of points from which such views exist, the content and quality of the view available from such viewpoints and the extent to which views might be impacted by new development on other property, both shoreline and non-shoreline in the immediate area of both the project site and viewpoints.

b. The nature, significance and extent of public shoreline view loss or gain that would likely result from the proposed development, including the number and extent of viewpoints impacted, whether views within an officially recognized view corridor would be impacted, whether views would be enhanced or created by the new project and whether there would be a net gain or loss of public shoreline views.

c. The extent to which public shoreline views are already being preserved or enhanced by the applicant's development proposal.

d. The extent to which the application of view preservation requirements and limitation on the subject proposal would reduce the value of the subject property.

e. The extent to which development or facilities on other properties in the immediate area have already degraded or preserved public shoreline views.

23. When a proposed development would completely obstruct or significantly reduce the aesthetic quality of public views as determined by the Shoreline Administrator based on the factors in Regulation 22 above, mitigation shall be required to address view impacts.

    a. The City may require administrative modifications to standard setbacks, impervious surface limits, clustering of proposed structures, and modifications to landscaping and building massing when the Shoreline Administrator determines that such modifications are necessary to maintain public views of the shoreline.

    b. The City shall work with the applicant to minimize the economic impacts of view mitigation. While upper story setbacks and other changes to building placement and massing may be required to provide view corridors, in no case shall the applicant be required to reduce the maximum building height.

    c. The City shall require specific public access improvements, such as public viewing decks, as mitigation in lieu of more significant modifications to site and building design when the Shoreline Administrator determines that such modifications would be an unreasonable financial burden on the applicant. All structures shall be limited to 35 feet in height to protect shoreline views.

24. The Shoreline Administrator may require recorded easements when necessary to ensure public view corridors or other public access improvements associated with this subsection are maintained in perpetuity.

7. Shorelines of Statewide Significance

a. Applicability

The Shoreline Management Act of 1971 designated certain shoreline areas as shorelines of statewide significance. Those areas lying waterward of the line of extreme low tide in Oak Harbor Bay and Crescent Harbor are recognized as a shoreline of statewide significance. Such shorelines are considered major resources from which all people of the state derive benefits, thus preference is given to uses which place special emphasis on the priority of uses established in RCW 90.58.020 and the statewide interest.

b. Policies

In implementing the objectives for shorelines of statewide significance (RCW 90.58.020), the City will base decisions related to the preparation, administration and enforcement of this SMP on the following policies in order of priority, 1 being the highest and 6 being the lowest.

1. Recognize and protect the state-wide interest over local interest.
    a. Make all information associated with this SMP and proposed amendments publicly available, and solicit comments and opinions from groups and individuals representing state-wide interests when developing and amending the SMP.
    b. Solicit comments and opinions from individuals with expertise in scientific fields relevant to shoreline management when developing or amending the Shoreline Master Program.
2. Preserve the natural character of the shoreline.
    a. Designate and administer shoreline environments and use regulations to protect and restore the shoreline ecology and character.
    b. Protect and restore diversity of vegetation and habitat resources, as well as wetland and riparian areas, associated with the shoreline.
    c. Concentrate future high-intensity uses and development into areas where such uses already exist, rather than allow high-intensity uses and development to spread to less intensely developed areas.
3. Support actions that result in long-term benefits over short-term benefits.
    a. Restrict or prohibit uses and development that would irreversibly damage shoreline resources.
4. Protect the resources and ecology of the shoreline.
    a. Minimize development activity that will interfere with the natural functioning of the shoreline ecosystem, including stability, drainage, and water quality.
    b. All shoreline uses and development should be located, designed, constructed and managed to avoid disturbance of and minimize adverse impacts to wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.
    c. Preserve environmentally sensitive wetlands for use as open space or buffers and implement restoration of presently degraded wetland areas.
5. Increase public access to publicly owned areas of the shorelines.
    a. Implement a comprehensive wayfinding signage program that directs the public to publicly owned shoreline areas.
    b. Work with the U.S. Navy to preserve and enhance public access on federal property along Maylor Point and Crescent Bay.

6. Increase recreational opportunities for the public in the shoreline.
    a. Plan for and encourage development of facilities for recreational use of the shoreline.

8. Vegetation Conservation

a. Applicability

1. The following provisions apply to any activity, development, or use that result in the removal of or impact to shoreline vegetation, whether or not that activity requires a shoreline permit. Such activities include clearing, grading, grubbing, and trimming of vegetation. These provisions also apply to vegetation protection and enhancement activities.
2. Important functions of shoreline vegetation include, but are not limited to:
    a. Regulating microclimate in riparian and nearshore areas.
    b. Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macroinvertebrates, such as insects, worms and crayfish.
    c. Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
    d. Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
    e. Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
    f. Providing a source of large woody debris to moderate flows, help stabilize shorelines and increase habitat diversity for salmonids and other species.
    g. Providing habitat elements for riparian-associated species, including downed wood, snags, migratory corridors, food, and cover.
3. See Chapter 7 for definitions of "significant vegetation removal," "ecological functions," "clearing," "grading," and "restore."

b. Policies

1. Conserve native vegetation. Where new developments and/or uses or redevelopments are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes. Vegetation conservation and restoration should be used to mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible.
2. Noxious and invasive weeds. Encourage management and control of noxious and invasive weeds. Control of such species should be done in a manner that retains onsite native vegetation, provides for erosion control, and protects water quality. Use of non-toxic or natural controls is preferred.

3. Restrict clearing and grading within the shoreline environment to minimum necessary to accommodate development. In particular, trees and other vegetation on slopes and bluffs should be preserved; maintenance of shoreline views should be accomplished through pruning, rather than removal.

4. Provide incentives for the retention and planting of native vegetation, and discourage extensive lawns due to their limited value for bank stability, limited water retention capacity, and negative effects from chemical and fertilizer applications. Incentives could include additional flexibility with building setbacks, a simplified permit approval with recommended planting plans and/or city participation in a pilot-project that promotes shoreline enhancement.

5. Existing landscaping and structures. Allow for the maintenance of existing ornamental landscaping and structures, including those that do not currently conform to vegetation conservation standards contained in this subsection or the setbacks contained in Chapter 5, Section C.

c. *Regulations*

1. Minimize clearing, grading and fill. Vegetation clearing, grading and fill within shoreline jurisdiction shall be limited to the minimum necessary to accommodate approved shoreline development and shall comply with mitigation sequencing as outlined in Section 3.B.4, Environmental Impacts.

2. Vegetation retention, maintenance and replacement. Shoreline developments shall comply with the Landscape and Screening standards in OHMC Chapter 19.46. (Ordinance No. 1615 § 1, 2011), the additional standards contained within this subsection, and any other regulations specific to vegetation management that may be contained in other chapters of this SMP. In addition, removal, topping, and damage to oak trees is also regulated under OHMC 20.16 –Tree Protection.

3. The Shoreline Administrator may waive or modify vegetation conservation standards for water-dependent industrial and commercial uses in the Maritime environment when a landscape plan is submitted that demonstrates no net loss of ecological function.

4. Shoreline landscaping plan. A shoreline landscaping plan shall be required for development proposals that exceed the thresholds identified in Chapter 6, Section J, Nonconforming Development. In addition, all land surface modifications within shoreline setbacks, except the planting of native species, modification of existing nonconforming development that does not include expansion, the removal of hazard trees, or the removal of fewer than three trees in a three year period from Setback Zone 2, shall include a landscaping plan for review and approval by the City. The Shoreline Administrator may waive this requirement when the applicant demonstrates that existing and proposed vegetation within the setback complies with Regulation 8 below.

a. The plan must demonstrate compliance with mitigation sequencing as outlined in Section 3.B.4, all standards contained in this subsection, and all relevant SMP standards.

b. When required, landscaping plans shall be prepared by a qualified professional and shall include a written report identifying specific objectives of the compensation proposed, measurable specific criteria for evaluating success, a detailed description of the mitigation proposed, a monitoring program, a listing of corrective measures to be taken in the event that performance standards are not being met, and financial guarantees (e.g. performance bonds) to ensure full implementation of the mitigation plan (OHMC 20.12.100).

c. The plan shall be designed to stabilize soil surfaces, filter run-off, provide native vegetation for ecological functions, and ensure no net loss. Landscaping plans shall describe actions that will ensure no net loss of ecological functions to the maximum extent practicable at the site scale. All new plantings installed in shoreline setbacks must be native species, except as otherwise provided in this Section.

d. Mitigation measures shall be maintained over the life of the use and/or development.

e. Shoreline landscaping plans may be combined with any landscape plan required under OHMC 19.46 or this SMP.

5. The native vegetation area standards contained in OHMC 19.46.140 shall apply to any proposal that exceeds the thresholds for nonconforming development identified in Chapter 6, Section J. Areas within the Shoreline Setback may be counted towards the native vegetation retention area required under OHMC 19.46.140.

6. Setback Zone 1 - Vegetation Management Zone (VMZ) established. The first thirty (30) feet of shoreline setback area landward of the OHWM shall be established as a VMZ, except in the Conservancy environment where the VMZ shall include the entire required setback area, and in the Residential Bluff Conservancy environment, where the VMZ shall include the entire shoreline setback and all steep or unstable slopes and required slope setbacks. Vegetation preservation shall be the highest priority within the VMZ, and the purpose of this zone shall be to protect and enhance shoreline ecological function and slope stability associated with native vegetation.

a. Where replacement planting is required as mitigation for removal or disturbance of upland vegetation to meet no net loss, replacement plants shall be located within the VMZ to the greatest extent feasible.

b. Existing lawns and other non-native landscaping and improvements are allowed in the VMZ and may be maintained without a permit, provided existing native vegetation is to be preserved and new non-native vegetation is not permitted.

c. Establishment of the VMZ shall not be construed as a requirement to obstruct visual access to the shoreline through planting of sight-obscuring trees. Normal pruning and maintenance of trees within the vegetation management zone to preserve views shall be

allowed, except that topping of trees shall not be allowed. Mitigation plantings in the VMZ may accommodate the preservation of shoreline views.

d. Pervious paths no more than 6 feet wide, and oriented generally perpendicular to the OHWM, are allowed in the VMZ.

e. Improvements necessary for the City's Waterfront Trail are allowed, provided the proposal complies with mitigation sequencing and no net loss. Zone 2 shall be the preferred location, and pervious materials shall be used where feasible.

7. Setback Zone 2. The following vegetation conservation and development standards apply to those remaining portions of the setback outside of the VMZ.

   a. Existing lawns and other existing non-native ornamental vegetation are allowed, provided healthy native vegetation shall be preserved, except as provided below.

   b. Impervious surface coverage shall be limited as shown in Section 4.C, Table 2. The following water-oriented improvements shall be allowed in Zone 2, subject to the impervious surface limits and the requirements of Subsection d below.

      i. Pervious patios and free draining, uncovered decks that are less than 42 inches above finished grade.

      ii. Pervious paths no more than 6 feet wide, oriented generally perpendicular to the OHWM.

      iii. Gazebos, boathouses and other accessory structures less than 12 feet in height that are directly related to water-oriented activities.

      iv. Hot tubs, spas, pools and similar structures.

   c. Improvements necessary for the City's Waterfront Trail, provided the proposal complies with mitigation sequencing and no net loss. Pervious materials shall be used where feasible.

   d. New non-native ornamental landscaping may be planted and existing ornamental landscaping may be expanded, subject to compliance with Regulation 5 below.

8. Minimum native vegetation in setback. At least 60% of Zone 2 and 80% of Zone 1 shall be planted or maintained in native vegetation, including ground covers, shrubs and trees, where appropriate. This standard will be applied for all proposals that exceed the thresholds for non-conforming development identified in Chapter 6, Section J, and when new development is proposed in Zone 2 that would disturb native vegetation under Subsection 3 and 4 above. The City may modify these prescriptive requirements based on a landscaping plan prepared by a qualified professional that results in equal or greater ecological function.

9. Tree Removal in Shoreline Setback. For any trees removed within the shoreline setback, after implementation of standard mitigation sequencing, the following tree replacement strategies shall be implemented:

a. Significant trees removed shall be replaced at a 3:1 ratio within Setback Zone 1 and 2:1 within Setback Zone 2. Other (nonsignificant) trees shall be replaced at a 1:1 ratio.

b. Replacement trees shall be a minimum of 2.5 inches in diameter at breast height for deciduous trees and a minimum of 6 feet tall from grade for conifers.

c. All retained and replacement trees shall be maintained in a healthy condition. Trees found to be diseased, dying or dead within 1 year of planting shall be replaced. Trees planted as part of mitigation shall be replaced at a 1:1 ratio. Retained trees that die or become diseased shall be replaced at the ratio identified above.

d. All trees removed from the shoreline setback must be replaced in the shoreline setback, and only by native species.

e. The City may modify these requirements based on a landscaping plan prepared by a qualified professional that results in equal or greater ecological function.

10. Tree Pruning and Hazard Tree Removal. Selective pruning of trees for safety or view protection is allowed in shoreline jurisdiction if consistent with the provisions of OHMC 19.46 – Landscaping and Screening. Non-hazard trees located in steep slope and bluff areas shall be retained, and pruning shall not include topping, pollarding or stripping; no more than 40% of the crown shall be removed. Where trees pose a significant safety hazard as indicated in a written report by a certified arborist or other qualified professional, they may be removed from shoreline jurisdiction if the hazard cannot be alleviated by a technique that maintains some habitat function, such as more aggressive pruning or conversion of the tree into a wildlife snag that does not pose a hazard.

11. Unauthorized vegetation removal. Vegetation removal conducted without the appropriate review and approvals anywhere within shoreline jurisdiction also requires the submittal and approval of a shoreline landscaping plan as outlined in Regulation 4 above. The landscaping plan must utilize only native vegetation, and should be designed to compensate for temporal loss of function and address the specific functions adversely impacted by the unauthorized vegetation removal.

12. Non-native vegetation. With the exception of hand removal or spot-spraying of invasive or noxious weeds, the determination of whether non-native vegetation removal may be allowed in shoreline jurisdiction must be evaluated in conformance with Section 3.B.4, Environmental Impacts and any relevant requirements of OHMC 19.46. Such removal of noxious weeds and/or invasive species shall be incorporated in landscaping plans, as necessary, to prevent erosion and facilitate establishment of a stable community of native plants. Non-native vegetation removal outside of shoreline setbacks does not require mitigation, except as otherwise noted in this Section.

13. Aquatic vegetation control, including both mechanical and chemical, shall only occur when native plant communities and associated habitats are threatened or where an existing water-dependent use is restricted. Aquatic vegetation control shall occur in compliance with all other applicable laws and standards, including Washington Department of Fish and Wildlife and/or Washington Department of Ecology requirements.

14. Dumping of yard waste, including debris from tree pruning, invasive plant removal, and regular yard maintenance, within the shoreline setback area or on steep slopes designated under OHMC 20.28.010, shall be prohibited.

9. Critical Saltwater Habitat

a. Applicability

Kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association are classified as critical saltwater habitat under WAC 173-26-221(2)(iii) – Shoreline Master Program Guidelines. The Washington Department of Fish and Wildlife has identified kelp beds, eelgrass beds, and sand lance and surf smelt spawning habitat within the City of Oak Harbor's shoreline jurisdiction.

b. Policies

1. Critical salt water habits should be protected in recognition of their importance to the marine ecosystem of the City of Oak Harbor and the State of Washington. SEPA analysis of project alternatives should be conducted for any project proposed within mapped Critical Saltwater Habitat. In compliance with WAC 173-26-211(5), space should be reserved for critical saltwater habitats including existing shellfish protection districts and critical habitats.

2. Water-dependent uses, including recreational facilities, marinas, and essential public facilities may be permitted in Critical Saltwater Habitat, provided the application demonstrates compliance with required mitigation sequencing and on-site or off-site mitigation is provided that results in no net loss of ecological function.

3. The composition of beach and bottom substrate should be protected from alteration by development and uses. Projects proposed within the shoreline jurisdiction in areas where Critical Saltwater Habitat exists should avoid altering beach and bottom substrate except for restoration projects or installation of pilings associated with uses approved under this SMP.

c. Regulations

1. Water-dependent development and uses, including marinas, docks, piers, mooring areas, and shoreline modifications, shall not intrude into or be built over Critical Saltwater Habitat unless it can be demonstrated that the project meets all of the following criteria.:

    a. An overriding public need for the structure, development, or use can be clearly demonstrated, and an alternative location that would avoid the critical habitat is not feasible or would result in unreasonable and disproportionate cost.

    b. The project is consistent with the statewide interest in preservation of sensitive resources and species recovery.

    c. It can be demonstrated that the project, including required mitigation, will result in no net loss of ecological function associated with critical saltwater habitat.

2. Sand, gravel, and other fill materials shall not be placed or removed from Critical Saltwater Habitat, except when part of an approved habitat restoration or beach nourishment project.
3. New outfall structures, including stormwater and sewer outfall pipes, shall not be located in Critical Saltwater Habitat where the discharge from such structures may adversely affect saltwater habitat or species, unless the applicant demonstrates all of the following:
   a. No feasible alternative location for the outfall exists;
   b. The outfall can be placed below the surface of the beach or below the bed of the water body;
   c. The outfall will discharge waterward of the intertidal zone (ie, below the extreme low tide line); and
   d. Any vegetated area disturbed will be revegetated with native species.

10. Water Quality, Stormwater, and Non-Point Source Pollution

a. Applicability

The following section applies to all development and uses in shoreline jurisdiction that affect water quality and storm water quantity. Maintaining high water quality standards and restoring degraded systems has been mandated in RCW 90.58. The City maintains a stormwater management program in compliance with their Phase II National Pollutant Discharge Elimination System (NPDES) permit. The Phase II Permit contains a series of requirements for the City intended to improve water quality through efforts in the following areas:

- Public Education and Outreach
- Public Involvement and Participation
- Elimination of Illicit Discharge
- Control of Runoff from New Development, Redevelopment, and Construction Sites
- Pollution Prevention and Operations Maintenance for Municipal Operations

The Phase II permit also requires the City to assess the effectiveness of its implementation measures and report its findings to the Department of Ecology.

b. Policies

1. All shoreline uses and activities should be located, designed, constructed and maintained to mitigate adverse impacts to water quality, water quantity, or hydrology.
2. The City should require reasonable setbacks, buffers, and storm water facilities, and encourage low-impact development techniques and materials to achieve the objective of minimizing impervious surfaces and lessening negative impacts on water quality.
3. Stormwater impacts should be addressed through the application of the most recent edition of the Adopted Surface Water Design Manual and all applicable City stormwater regulations.

4. The City should provide general information to the public about the impacts of land and human activities on water quality, and encourage homeowners and property managers to use non-chemical weed and pest control solutions and natural fertilizers.

c. Regulations

1. All shoreline development, both during and after construction, shall minimize impacts related to surface runoff through control, treatment and release of surface water runoff such that there is no net loss of receiving water quality in the shoreline environment.
2. Shoreline development and uses shall adhere to all required setbacks, buffers and standards for stormwater facilities.
3. All shoreline development shall comply with the applicable requirements of the City's adopted Surface Water Design Manual and all applicable City stormwater regulations.
4. All shoreline development shall implement applicable Low Impact Development techniques to the maximum extent feasible, pursuant to the standards contained in the adopted Surface Water Design Manual and the *Low Impact Development Technical Guidance Manual for Puget Sound* or its successor.
5. The City should discourage on-site sewage systems (OSS), commonly referred to as septic systems, and connection to the City sewer system should be encouraged.[1]

[1] The City is currently developing a policy approach to discontinue septic use which would influence policy language in this document.

Chapter 4: **SHORELINE USE PROVISIONS**

A. Applicability

The provisions in this section apply to specific uses and types of development that typically occur in shoreline areas. Provisions in other sections of this SMP also apply to the uses and types of development identified in this chapter. Shoreline uses are allowed only if permitted by the underlying zoning. A use that occurs on both uplands and overwater must meet the requirements of both the upland and aquatic environment designation. Refer to specific use policies and regulations in Section D below.

B. Shoreline Use Table

TABLE 1 – Shoreline Use Table

KEY **P** = Permitted Use **C** = May be permitted as a conditional use **X** = Prohibited, not eligible for a variance or CUP **N/A** = Not applicable **SHORELINE USES**	**Maritime**	**Urban Mixed Use**	**Residential**	**Residential Bluff Conservancy**	**Urban Public Facility**	**Conservancy**	**Aquatic**
Agriculture							
Primary (e.g. farm or livestock operation)	X	X	X	X	X	X	X
Accessory (e.g. garden or pea patch in park)	P	P	P	P	P	P	X
Aquaculture[1]	C	X	X	X	X	X	C
Boating Facilities							
Marinas (public or private)	P	X[2]	X	X	X/C[3]	X	See adjacent Upland Environ-ment
Private joint-use piers	P	C	X	X	X	X	
Public piers	P	C	X	X	X/P[4]	X	
Boat launch	P	X	X	X	P	C	
Commercial[5]							

[1] Non-commercial aquaculture by a public agency or tribal government for recovery of a native population is preferred and should be allowed in all environments.

[2] Expansion of the existing marina is allowed into Aquatic areas waterward of this designation, but all upland facilities must be located in the Maritime or Urban Public Facility designation. No other marina development shall be allowed.

[3] Marinas are not permitted at Windjammer Park, but are a conditional use at Flintstone Park.

[4] Public piers are permitted in Flintstone Park, but are not permitted in other areas within this designation.

[5] Home occupations are allowed as an accessory use to residential development pursuant to the requirements of Oak Harbor Municipal Code, Chapter 19.36. Accessory commercial uses such as concession stands are allowed in the Maritime and Urban Public Facility Zone as a permitted use, but are limited to water-oriented commercial uses in the Aquatic environment, e.g. boat rental, fueling, boat sales, etc.

KEY **P** = Permitted Use **C** = May be permitted as a conditional use **X** = Prohibited, not eligible for a variance or CUP **N/A** = Not applicable **SHORELINE USES**	**Maritime**	**Urban Mixed Use**	**Residential**	**Residential Bluff Conservancy**	**Urban Public Facility**	**Conservancy**	**Aquatic**
Water-dependent	P	P	X	X	C	X	C
Water-related, water-enjoyment	P	P	X	X	C	X	X
Non-water-oriented	C	C	X	X	C	X	X
Forest Practices	X	X	X	X	X	X	N/A
Industry/Manufacturing	P	X	X	X	X	X	C
Mining/Mineral Extraction	X	X	X	X	X	X	X
Parking							
Parking (As a Primary Use)	X	X	X	X	X	X	X
Parking (As an Accessory Use)	P	P	P	P	P	C	X
Recreational Facilities							
Water-oriented[6]	P	P	P	P	P	P	P
RV Park	X	X	X	X	P	X	X
Non-water-oriented (As a Primary Use)	X	X	X	X	X	X	X
Non-water-oriented (As an Accessory Use)	P	P	P	P	P	C	X
Residential Development							
Single family	X	P	P	P	X	X	X
Multi-family	X	P	X	X	X	X	X
Transportation Facilities							
New roads related to permitted shoreline activities	P	P	P	C	P	C	X
Expansion of existing circulation systems and driveways	P	P	P	C	P	C	X[7]
Ferry Terminals	P	X	X	X	C	X	P
Trails	P	P	P	P	P	P	C[8]
Utilities (Primary)							
Solid Waste Disposal or Transfer Sites (excluding storage of recyclable materials)	X	X	X	X	X	X	X
Waste Water Treatment Plant	C	C	X	X	C	C	X[9]
Transmission Lines and Other Primary Facilities	C	C	C	C	C	C	C
Utilities (Accessory to Permitted Development)	P	P	P	P	P	C	C

[6] For purposes of this use table, water-oriented recreational uses shall not include Boating Facilities (including Marinas) or RV Parks, which are regulated separately.

[7] New or expanded bridges intended for vehicular use are allowed pursuant to a shoreline conditional use in the Aquatic environment.

[8] Pedestrian bridges shall be permitted outright subject to the standards in the SMP. Overwater walkways that run generally parallel to the OHWM shall require a CUP.

[9] Water-dependent appurtenances to a wastewater treatment plant, such as outfall pipes, are allowed subject to a conditional use permit.

KEY **P** = Permitted Use **C** = May be permitted as a conditional use **X** = Prohibited, not eligible for a variance or CUP **N/A** = Not applicable **SHORELINE USES**	**Maritime**	**Urban Mixed Use**	**Residential**	**Residential Bluff Conservancy**	**Urban Public Facility**	**Conservancy**	**Aquatic**
Other Uses and Activities							
Restoration activities	P	P	P	P	P	P	P

C. Shoreline Development Standards

TABLE 2 – Summary of Shoreline Development Standards

DEVELOPMENT STANDARD	Maritime	Urban Mixed Use	Shoreline Residential	Shoreline Residential Bluff Conservancy	Urban Public Facility	Conservancy	Aquatic
Maximum Height[1]	35 feet, 55 feet for water-dependent structures	35 feet (CBD-1 and CBD-2), 55 feet (CBD)	35 feet	35 feet	35 feet	25 feet	N/A
Shoreline Setback[2, 9]	50 feet[3]	50 feet[4]	50 feet[5]	50 feet[6]	75 feet	100 feet	N/A
Maximum Total Impervious Surface Coverage (Standard Applies to Entire Lot or Portion Thereof in Shoreline Jurisdiction)	80%	80%	40%	30%	40%/ 80%[7]	10%	N/A
Maximum Impervious Surface Coverage - Setback Zone 1 (VMZ)[8]	20%[3]	0%	0%	0%	0%	0%	N/A
Maximum Impervious Surface Coverage - Setback Zone 2[8]	40%[3]	20%	20%	0%[9]	20%	0%[9]	N/A
Minimum Lot Frontage and Width	N/A	N/A	60 feet	60 feet	N/A	N/A[10]	N/A
Minimum Lot Size	N/A	N/A	7,200 SF	7,200 SF	N/A	N/A[10]	N/A

1. Height limits apply to all structures, except as noted. Development shall also be subject to the height limits established by the underlying zoning; in the event of a conflict between the standards contained in this SMP and in the underlying zone, the more restrictive shall apply. The height limit shall not apply to television antennas, chimneys, flagpoles, public utilities, and similar appurtenances. A height of more than thirty-five feet (35) can only be achieved in those environments where specifically permitted and if the applicant prepares a view corridor study consistent with the requirements of Chapter 3, Section B.6.c, Regulations 20-24. The view study must demonstrate that the proposal will minimize and mitigate impacts to views to the maximum extent feasible.

2. Water-dependent structures associated with a ecological restoration or interpretation, water-dependent uses and public access (i.e. ramps, piers, shoreline stabilization, bridges, viewing platforms, stairs, loading facilities and similar structrues) are not required to meet the minimum setback. However, where such development

can be approved within the minimum setback, the placement of structures shall be limited to the minimum necessary for the successful operation of the use. In no case shall occupied structures not associated with a water-dependent activity be allowed within the minimum setback. Additionally, for development along marine shorelines designated as fish and wildlife habitat conservation areas under OHMC 20.25, the Shoreline Administrator may require a special study to evaluate potential impacts. If supported by such a study, the Shoreline Administrator may increase the Shoreline Setback to protect sensitive environmental resources, though the total setback shall not exceed 100 feet.

3. In the Maritime environment, water-dependent transportation, industrial, commercial and recreational development and uses may be allowed within the defined setback area. However, where such development can be approved within the minimum setback, the placement of structures and hard surfaces shall be limited to the minimum necessary for the successful operation of the use. In no case shall parking, primary buildings or general storage be allowed within the minimum setback.

4. New residential structures in the Urban Mixed Use environment shall adhere to this setback requirement unless existing development within 100 feet of both side property lines has a lesser average setback. In such cases, the minimum setback required shall be the average established by drawing a line between the closest point of the existing structrures to the OHWM on either side of the subject property. However, in no case shall the minimum setback be reduced to less than 40 feet. At least 12 feet of the setback shall be dedicated to public access and recreational use (i.e. the Waterfront Trail).

5. New structures in the Shoreline Residential environment shall adhere to this setback requirement unless existing development within 100 feet of both side property lines has a lesser average setback. In such cases, the minimum setback required shall be the average established by drawing a line between the closest point of the existing structrures to the Ordinary High Water Mark on either side of the subject property. However, in no case shall the minimum setback be reduced to less than 35 feet. This is intended to allow the minimum 30 foot Vegetation Management Zone and a 5 foot area for maintaining the structure, entrances, etc.

6. All new or expanded development in the Shoreline Residential Bluff Conservancy environment proposed within 100 feet of a designated steep slope or bluff shall be required to submit a critical areas report as part of development permit application, pursuant to Ordinance 1440 § 5, 2005, including a geotechnical analysis by a qualified professional. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by the geotechnical analysis. Please see additional geotechnical report requirements in Chapter 5, Section C.1.c and critical area report requirements in OHMC 20.28. In no case shall primary structures be located closer than 25 feet from the top of steep slope areas and bluffs. If application of the 50-foot standard shoreline setback would allow the construction of a structure within 25 feet of a steep slope area or top of bluff or within the setback recommended by geotechnical analysis, the more restrictive standard shall apply.

7. The 40% impervious surface coverage standard shall apply to Windjammer Park. The 80% impervious surface coverage standard shall apply to Flintstone Park.

8. Where impervious surfaces that exceed the limits noted are deemed necessary by the Shoreline Administrator to accommodate public access, a water-dependent use, a public utility or public transportation facility, such development shall be allowed in the setback (Zone 1 and Zone 2) provided it is the minimum necessary to accommodate the proposed use. Wherever feasible, pervious pavements and other low impact development techniques shall be used and mitigation consistent with Section 3.B.5.c shall be required. Vegetation clearing, planting and revegetation shall be governed by the provisions of Section 3.B.8 – Shoreline Vegetation Conservation. Specifically, landscaping and allowed development within setback areas shall conform to the standards in Section 3.B.8.c.4 and 5.

9. Setback areas within all shoreline environment designations are subject to the vegetation conservation requirements of Section 3.B.8.c, specifically regulations 6 and 7, which establish standards for Setback Zone 1 (Vegetation Management Zone) and Setback Zone 2. Within the Conservancy and Shoreline Residential Bluff Conservancy environments, both Setback Zones 1 and 2 are regulated as part of the VMZ.

10. No further subdivision is allowed in the Urban Conservancy environment.

D. Shoreline Use Policies and Regulations

1. General Use Policies and Regulations

a. Applicability

The provisions in this section apply to all uses and development types permitted within the shoreline jurisdiction.

b. Policies

1. When determining allowable uses and resolving use conflicts within the City's shoreline jurisdiction, apply the following preferences and priorities in the order listed below:
   a. Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.
   b. Reserve shoreline areas for water-dependent and associated water-related uses.
   c. Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.
   d. Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.
   e. Limit non-water-oriented uses to those locations where the above described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act, including opportunities for ecological enhancements and public access improvements.
2. All development and redevelopment activities within the City's shoreline jurisdiction should be designed to ensure public safety, enhance public access, protect existing shoreline and water views and achieve no net loss of shoreline ecological functions.
3. Require feasible Low Impact Development (LID) practices and encourage "Green Building" practices, such as those promulgated under the Leadership in Energy and Environmental Design (LEED) and Green Built programs, for new development within the shoreline jurisdiction.
4. Proposed shoreline uses should not infringe upon the rights of others or upon the rights of private ownership.
5. Encourage shoreline uses which enhance their specific areas or employ innovative features for purposes consistent with this program.
6. Encourage restoration of shoreline areas that have been degraded or diminished in ecological value and function as a result of past activities or catastrophic events.
7. Forestry and mining uses and activities are prohibited from the shoreline jurisdiction.

2. Agriculture

a. Applicability

Agriculture includes, but is not limited to, the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, or seed; finfish in upland hatcheries, or livestock, that has long-term commercial significance.

b. Policies

1. Agriculture as a primary use should be prohibited in all shoreline environments.
2. Agriculture should be allowed as an accessory use in a manner that is compatible with the protection of shoreline ecological function.

c. Regulations

1. Agricultural development as a primary use shall be prohibited in all shoreline environments.
2. The raising of livestock and poultry shall occur outside of the established shoreline jurisdiction.
3. Any water discharge from agricultural activities into SMP water bodies shall be prohibited.
4. New agricultural activities shall not occur within the shoreline setback identified in Chapter 4, Section C, Table 2.

3. Aquaculture

a. Applicability

Aquaculture is the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state-managed wildstock geoduck fishery. Aquaculture encompasses a wide variety of activities including hatching, seeding, planting, cultivating, feeding, raising, and harvesting of aquatic plants and animals. For the purposes of this Program, aquaculture does not include the harvest of wild geoduck associated with the state managed wild geoduck fishery. These activities may have widely differing impacts on the aquatic and shoreline environment. Aquaculture can be carried out in subtidal, intertidal, upland, and fresh water areas.

b. Policies

1. Non-commercial aquaculture by a public agency or tribal government for recovery of a native population is preferred and should be allowed in all environments.
2. Limit all other aquaculture uses and development to the Maritime and Aquatic environments as a conditional use.

3. Ensure aquaculture uses and developments are located, designed, and operated in a manner that is compatible with existing uses and compatible with all standards in this SMP, including mitigation sequencing and no net loss.

4. Aquaculture facilities should be designed and located such that they do not spread disease to native aquatic life, establish nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

5. The City should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate Federal, State and local agencies; affected tribes; and the general public regarding potential adverse impacts. Comments from residents and property owners directly affected by a proposal should be considered and evaluated, especially in regard to use compatibility and aesthetics.

c. Regulations

1. Shellfish seeding/culturing shall be a permitted use in all environments when conducted for native population recovery in accordance with a government or Tribal approved plan. All other aquaculture developments and activities, including fish pens and commercial shellfish seeding/culturing, shall require a conditional use permit and are limited to the Maritime and Aquatic environments.

2. Aquaculture facilities shall be located and designed to avoid:

   a. Loss of ecological functions,

   b. Impacts to eelgrass and macroalgae,

   c. Significant conflict with navigation and water-dependent uses,

   d. The spreading of disease,

   e. Introduction of non-native species, and

   f. Impacts to shoreline aesthetic qualities.

3. All unavoidable impacts remaining after application of mitigation sequencing must be mitigated to achieve no net loss.

4. Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible operation of the use.

5. New aquatic species that are not previously cultivated in Washington State shall not be introduced into City waters without prior written approval of the Washington State Department of Fish and Wildlife and the Washington Department of Health.

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 after harvest, shall occur in or

over the water unless specifically approved by permit. All other processing facilities shall be located on land.

7. Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (RCW 90.48). No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.

8. Fish net pens and rafts shall only be allowed in the Maritime environment and Aquatic areas directly offshore from the Maritime environment, subject to the following additional regulations:

   a. All net pens and rafts shall meet all federal and state permitting requirements.

   b. Fish net pens shall occupy no more than 2 surface acres of water area, excluding booming and anchoring requirements. Anchors that minimize disturbance to substrate, such as helical anchors, shall be employed where feasible. Such operations shall not use chemicals or antibiotics.

9. All new commercial geoduck aquaculture requires a conditional use permit. Project applications and permits must comply with WAC 173-26-241(3)(b)(ii).

4. Boating Facilities and Marinas

a. Applicability

Boating facilities, including community piers, marinas, and public or community boat launches, are important features of the City of Oak Harbor's shorelines. All boating facilities shall be subject to the policies and regulations of this Section. These policies and regulations do not apply to private moorage facilities serving four or fewer single family residences, but apply to all other facilities. Please also see Section 5.C.4 – Piers, Docks, Floats, and Mooring Buoys for additional requirements. In the event of a discrepancy between the requirements of this Section and Section 5.C.4 or any state or federal law as applied to Boating Facilities and Marinas, the more restrictive or prescriptive standards shall apply.

Marinas are facilities that provide wet moorage and/or dry storage and services for pleasure craft and some types of commercial craft. Marinas are located over intertidal and subtidal areas and may extend landward from the OHWM, or a marina may be an upland based facility with water access via travel lift, hoist or marine railway. They can be of open construction (floating breakwater, buoys, piers and floats) or solid (rigid breakwater or fill). Marinas are sometimes associated with other uses such as fueling and public launching facilities, boat rental, repair services, equipment sales and parking.

Activity generated by marinas varies with their size and range of services offered. Marinas generate boat and vehicular traffic and related noise. Construction and operation of marinas

affect water quality and fish and shellfish habitats by introducing pollutants (fuel, oil, heavy metals, human wastes, erosion and siltation). Circulation and sand movement may be impeded and affect beaches or alter aquatic habitats. Marinas with several associated uses may require additional land area and larger parking areas. Activities including but not limited to dredging, landfill, bulkheads, utilities, roads and commercial development associated with marina development are subject to the policies and regulations for those categories.

b. Policies

1. Boating facilities should be located and designed to ensure no net loss of ecological functions or other significant adverse impacts, and should, where feasible, enhance degraded and/or scarce shoreline features.
2. Boating facilities should not unduly obstruct navigable waters and should consider adverse effects to recreational opportunities such as fishing, pleasure boating, swimming, beach walking, picnicking and shoreline viewing.
3. Boating facilities that minimize the amount of shoreline modification, in-water structure, and overwater cover are preferred.
4. Marinas should be designed to accommodate public access features, including facilities such as walkways, viewpoints, restrooms, and fishing piers.
5. Accessory uses at boating facilities should be limited to water-oriented uses, uses that provide physical and/or visual shoreline access for substantial numbers of the general public, or uses directly supportive of recreational boating activities. Non-water-dependent accessory uses should be located outside of shoreline jurisdiction or outside of the shoreline setback whenever possible.
6. Boating facilities should be located, designed, constructed and operated so that other appropriate water-dependent uses are not adversely affected and 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.
7. New boating facilities should be located only at sites where suitable environmental conditions, shoreline configuration, access, and neighboring uses are present.
8. Boating facilities should protect public health, safety, and welfare.
9. Live-aboards should be permitted in marinas only when adequate measures are in place to protect water quality.

c. Regulations

1. Location Standards.
    a. New boating facilities shall minimize dredging and make use of the natural site configuration to the greatest extent feasible to avoid impacts to shoreline ecological functions.

b. Boating facilities shall be located and designed with the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft from floods or destructive storms.

c. Boating facilities shall be located only where adequate utility services are available, or where they can be provided concurrent with the development.

d. Boat launches shall be sited so that they do not significantly damage fish, shellfish, water quality, wildlife habitats, or existing hydraulic processes and shall not occur in areas with native emergent vegetation. Removal of native upland vegetation shall be minimized to the greatest extent feasible.

e. Marinas should not be located in embayments with poor water circulation, which can be susceptible to localized water quality degradation.

2. Facility Design.

a. All boating facilities shall be designed to avoid and minimize impacts. All unavoidable impacts must be mitigated such that no net loss of shoreline ecological functions is achieved.

b. The use of wood products treated with creosote, pentachlorophenol, or any other toxic substance in construction of overwater or in-water structures shall be prohibited.

c. Boating facilities should be located and designed to minimize impacts to sensitive shoreline resources by considering the following:

i. Expansion of existing marinas should be preferred over establishment of new marinas;

ii. Marinas and public launch ramps should be preferred over development of individual docks and piers for private, non-commercial vessels; and

iii. Use of boat launch ramps and dry storage should be preferred over sheltered, year-round wet storage of water craft.

d. The maximum number of moorages allowed at a marina shall be determined based on the following factors:

i. Suitability of environmental conditions, including presence of submerged aquatic vegetation, proximity of associated upland wetlands, presence of critical saltwater habitat, water depth and circulation, sediment inputs and accumulation, and wave action.

ii. Compatibility with adjacent upland land uses.

iii. The ability to accommodate necessary support facilities, such as vehicle and trailer parking.

iv. A demand analysis, submitted by the applicant, demonstrating anticipated need for the requested number of moorages and anticipated impacts to parking.

v. An environmental analysis of the potential adverse effects on ecological function resulting from construction of new docks, piers and moorage slips. If covered moorages are proposed, the analysis shall evaluate potential effects of water shading on local aquatic habitat.

e. All boating facilities, including marinas, shall be designed to be consistent with federal and state agency regulations, including design criteria established by the Washington State Department of Fish and Wildlife, the U.S. Army Corps of Engineers, and the Washington State Department of Health. Marinas shall be equipped to contain and clean up oil, gasoline, and other hazardous substance spills.

f. Where landfill waterward of the OHWM is permitted, it shall only be for the necessary water-dependent portions of the facility and shall conform in particular to the policies and regulations of Section 5.C.3 – Fill. Landfill for the creation of new parking areas or accessory uses within the required setback area shall be prohibited.

g. Best management practices shall be applied to prevent pollution from boat construction, repair, and maintenance activities at marinas.

h. All boating facilities shall be the minimum size necessary to accommodate the anticipated demand. Specifically, the amount of overwater cover, the size and number of in-water structures, the waterward length of the facility, and the extent of any necessary associated shoreline stabilization or modification shall be minimized.

i. Applications for construction of a boat launch shall demonstrate that the proposed length of the boat launch is the minimum necessary to safely launch the intended craft.

j. Overwater components of all boating facilities, except marinas, shall allow transmission of light through the deck surface resulting in open area equal to 24% or greater of the total surface area where feasible.

k. Boat launches for non-motorized boats shall be constructed of gravel or other similar natural material.

l. Boat ramp design shall be adequate for the applicable site-specific conditions, but shall minimize and mitigate impacts consistent with this Section. Preferred launch ramp designs for motorized boats, in order of priority, are:

i. Open grid designs with minimum coverage of 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 shoreline profile

iv. Designs other than above.

m. Construction of breakwater, jetties, groins, and bulkheads, as well as dredging activities associated with construction or maintenance of a boating facility, including marinas, shall comply with applicable regulations contained in this Master Program.

n. Marinas shall provide parking facilities adequate to meet projected user demand. Overwater parking structures shall not be permitted at any boating facility, including marinas.

3. Site Design and Operation.

a. Boating facilities shall be designed so that lawfully existing or planned public shoreline access is not blocked, obstructed nor made dangerous.

b. Parking and outdoor storage areas associated with marinas shall be landscaped in a manner which provides a visual buffer between these uses and public access areas and screens these areas when viewed from the water.

c. Accessory uses at marinas or boat launches shall be limited to water-oriented uses or uses that support physical or visual shoreline access for substantial numbers of the general public. Accessory development may include, but is not limited to, parking, non-hazardous waste storage and treatment, stormwater management facilities, and utilities where these are necessary to support the water-oriented use.

d. All new marinas shall be designed to accommodate public access and enjoyment of the shoreline, including walkways, view points, and restrooms. Marinas may include specific areas restricted for security reasons.

e. Compliance with Clean Water Act Section 311 is required. The discharge of sewage and/or toxic materials from moored boats or shore installations shall be prohibited at all boating facilities. Marinas shall be required to include facilities for handling and disposal of boat waste, including sewage, bilge fluids, oil, and diesel.

f. Marinas shall provide adequate restroom facilities and solid waste receptacles to accommodate marina users and shall establish facilities and procedures for proper disposal of solid waste and sewage. Discharge of either solid waste or sewage to the water shall be prohibited.

g. Marinas shall comply with all applicable state and federal regulations for protection of the health and safety of marina users.

5. Commercial

a. Applicability

Commercial development means those uses and facilities that are involved in wholesale or retail trade or other business activities. Examples include, but are not limited to, hotels, motels, grocery stores, restaurants, shops, restaurants, offices and indoor recreation facilities. Not included are port, industrial, residential or boating facilities, such as marinas.

b. Policies

1. Give priority to those commercial developments that are dependent on shoreline locations or that allow a substantial number of people to actively or passively enjoy the shoreline;

preference should first be given to water-dependent uses, then to water-related and water-enjoyment uses.

2. Except for water-dependent uses and related facilities, prohibit new over-water commercial structures.

3. New commercial development over the water should occur only in areas where commercial development already exists, unless a specific identified demand exists for a water-dependent commercial good or service.

4. New and expanded commercial developments should be designed and located to protect and enhance public views of the water from upland properties and from public roads and walkways.

5. New and expanded commercial development should be permitted only where adequate parking area is or can be made available.

c. Regulations

1. New primary non-water-oriented commercial uses shall not be allowed unless:

   a. There is no direct access to navigable waterways, for example those areas landward of SE Bayshore Drive or SE Pioneer Way, or

   b. The use part of a mixed-use project that includes water-dependent uses and the use provides a significant public benefit with respect to SMA objectives, such as providing public access and ecological restoration, or

   c. Navigability is severely limited at the proposed site, such as properties south of SE Bayshore Drive, between Windjammer Park and Flintstone Park, and the commercial use is part of a mixed-use project that includes a residential component and provides a significant public benefit with respect to SMA objectives, such as providing public access and ecological restoration.

2. Shoreline permit applications for commercial and mixed-use development shall include a detailed statement describing the type of commercial use(s) proposed, how they relate to the water or shoreline, and whether they are water-dependent, water-related, water enjoyment, or non-water-oriented uses. Such statements shall include at least the following:

   a. Nature of the commercial activity.

   b. Need for shoreline or over-water location.

   c. Proposed measures to enhance the relationship of the activity to the shoreline (e.g. outdoor view dining area)

   d. Proposed provisions for public physical or visual access to and/or along the shoreline.

3. Over-water construction of commercial uses is prohibited, except as follows:

   a. Commercial docks and boat fueling stations.

b. The development of docks, piers, marinas, boat launch ramps, fueling stations or similar shoreline boating facilities intended for general public use.

c. Minor commercial uses that are accessory and clearly incidental to an allowed use may be provided on publicly owned docks and piers (e.g. boat rental, boater convenience store, boat services, etc).

d. Bulkheads or landfills required by a water-dependent or public recreational use, which are necessary for that use.

4. All commercial developments which are non-water-dependent, other than those that are part of a mixed use project with a residential component, shall be subject to the following requirements:

   a. A minimum of 20% of gross lot area exclusive of any public right-of-way shall be dedicated to outdoor open space. This area shall extend landward from the shoreline and be developed with landscaping and finished surfaces prior to occupancy.

   b. Parking shall not be located seaward of the buildings and adequate street access shall be provided. Shoreline permit applications shall include a parking plan showing the location, dimensions, and capacity of the proposed parking area and the proposed landscaping and screening.

   c. A landscaping plan shall be submitted with shoreline permit applications.

5. All commercial uses must be sited and designed to avoid impacts to existing navigation, recreation and public access.

6. Nonconforming commercial structures that are intentionally modified, replaced, repaired or enlarged are subject to the requirements in Chapter 6, Section J (Nonconforming Development).

7. A new or expanded shoreline commercial development shall provide public access when required by Chapter 3, Section B.6.c and meet all standards identified therein.

8. All commercial development shall comply with mitigation sequencing and no net loss as required in Chapter 3, Section B.5.

6. Industrial and Port Facilities

a. Applicability

Industry applies to those businesses or uses involved in the production, processing, manufacturing or fabrication of goods. Warehousing and storage of materials or products is considered part of the industrial process. Water-dependent industries are those that require a location adjacent to the shoreline by reason of the intrinsic nature of their business. Ports are a specialized subcategory of general industrial use. Port facilities are centers of water-borne traffic and commerce. Industry and ports are both covered in this section.

Some industrial and port developments are often associated with a number of uses and modifications that are identified separately in this Master Program (e.g. parking, dredging). Each use activity and every type of shoreline modification should be carefully identified and reviewed for compliance with all applicable sections.

Some industrial and port facilities are intensive and have the potential to negatively impact the shoreline environment. When impacts cannot be avoided, they must be mitigated to assure no net loss of the ecological functions necessary to sustain shoreline resources. Please refer to Chapter 3, Section B.5, *Environmental Impacts and Mitigation.*

b. Policies

1. Water-dependent and water-related industrial development should only be allowed in areas designated Maritime. All other industrial uses should be prohibited.
2. Prohibit non-water-dependent industrial and port developments over water.
3. Require new industrial and port developments to provide physical and visual access to shorelines wherever possible, consistent with constitutional and statutory limitations, and provided such access does not interfere with industrial operations or endanger public health and safety.
4. Industrial development should not displace existing visual or physical public access.
5. Encourage cooperative use of docks, storage, parking and other accessory facilities among private or public entities in shoreline industrial and port areas.
6. Industrial uses and redevelopment are encouraged to locate where environmental cleanup and restoration can be accomplished.

c. Regulations

1. Only water-dependent industry and water-related industry shall be permitted in shoreline jurisdiction. The Maritime shoreline environment is the only environment where these uses shall be permitted.
2. Over-water construction of non-water-dependent industrial uses is prohibited. This provision is not intended to preclude the development of docks, piers or boating facilities that are necessary for the operation of the water-dependent or water-related use.
3. Industrial and port facilities shall be located, designed, constructed and operated so as to minimize impacts to shoreline resources and unnecessary interference with the rights of adjacent property owners, as well as adjacent shoreline or water uses. To this end, applications for industrial/port facilities must demonstrate conformance with the following criteria. The proposal shall:
    a. Comply with all federal, state, regional and local requirements regarding air and water quality.

b. Industrial development and use shall be consistent with mitigation sequencing and result in no net loss of shoreline ecological function.

c. All new or expanded industrial development shall be set back and buffered from adjacent shoreline properties that are used for or zoned for non-industrial purposes. Such buffering shall include landscaping, shrubs, trees and fencing as found to be appropriate depending on the impact.

d. Industrial and port facilities shall be designed and operated to promote joint use of over-water and accessory facilities such as piers, docks, storage and parking whenever practicable.

e. Protect public views of harbor areas and other recognized vistas. Private views of the shoreline, although considered during the review process, are not expressly protected.

f. Adequate provisions shall be made for fire and safety hazards:

g. The storage and handling of inflammable liquids, liquefied petroleum gases and explosives shall comply with rules and regulations falling under the jurisdiction of the City Fire Chief, the laws of the state and other local ordinances;

h. Bulk storage of inflammable liquids below ground shall be permitted, and the tank shall be located not closer to the property line than the greatest dimension (diameter, length or height of the tank).

i. Adequate firefighting, fire prevention and safety equipment shall be provided as necessary to handle materials stored or used on the site.

j. Flammable/explosive, hazardous materials shall be kept removed from adjacent activities to a distance that is compatible with the potential danger involved.

k. Provisions shall be made to minimize the probability of spills of fuel or other toxic substances and to handle accidental spoils that occur.

l. Emission of dangerous radioactivity shall be prohibited.

4. Provide for necessary shielding or other measures to prevent on-site mechanical or electrical equipment from interfering with the use of electrical apparatus off-site.

5. Exterior lighting shall be shielded to prevent nuisance glare and prevent trespass of light onto adjacent properties or water bodies to the maximum extent practicable.

6. Arc welding, acetylene torch cutting or similar processes shall be performed so as not to be seen from any point beyond the property.

7. Noxious odors shall be eliminated to the extent feasible.

8. A new or expanded shoreline industrial development shall provide public access when required by Chapter 3, Section B.6.c and meet all standards identified therein.

7. Parking

a. Applicability

Parking is the temporary storage of automobiles or other motorized vehicles. The following provisions apply only to parking that is accessory to a permitted shoreline use. Parking as a primary use and parking which serves a use not permitted in shoreline jurisdiction is prohibited.

b. Policies

1. Parking should be permitted in shoreline jurisdiction only if there is no other feasible option, and if the following criteria are met:
    a. Parking facilities in shoreline areas should be located and designed to minimize adverse impacts including those related to stormwater runoff, water quality, visual qualities, public access, and vegetation and habitat maintenance, and shall result in no loss of ecological functions.
    b. Parking in shoreline areas should not restrict access to the site by necessary public safety vehicles, utility vehicles, or other vehicles requiring access to shoreline properties.

c. Regulations

1. Parking as a primary use is prohibited in Shoreline jurisdiction. Parking may be provided as part of a scenic vista.
2. Parking facilities shall provide adequate provisions to control surface water runoff to prevent it from contaminating water bodies, consistent with the City's adopted stormwater design manual.
3. Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened or in cases when an alternate orientation would have less adverse impact on the shoreline.
4. Exterior parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties pursuant to OHMC 19.46.030(5) (Ordinance No. 1615 § 1, 2011). All landscaping must be maintained in a neat and orderly manner. In no event shall such landscape areas be used for the storage of materials or vehicles.
5. Security lighting associated with parking facilities shall be beamed, hooded or directed so as to no cause nuisance glare on adjoining properties. Full cut-off fixtures are recommended.
6. New and reconstructed parking areas shall utilize all feasible Low Impact Development (LID) techniques as described in the most recent edition of the *Low Impact Development Manual: Technical Guidance for Puget Sound* and the City's adopted stormwater design manual. LID requirements apply to all parking spaces and drive aisles within shoreline jurisdiction. If LID is not feasible, parking facilities shall provide adequate controls for surface water runoff

as specified in the adopted stormwater design manual to prevent it from contaminating water bodies.

8. Recreational Development

a. Applicability

Recreational uses include passive activities, such as walking, viewing and fishing, as well as active uses, such as swimming, boating, and other outdoor recreational activities. This section applies to both public and private non-commercial shoreline recreational facilities, including passive areas such as Freund Marsh and Windjammer Park, as well as more intense recreational uses, such as the Oak Harbor Marina.

Uses and activities associated with recreational developments that are identified as separate use activities in this SMP, such as "Boating Facilities," "Private Overwater Structures," and "Residential Development," are subject to the regulations established for those uses in addition to the standards for recreation established in this section.

b. Policies

1. Preference should be given to developments that provide for recreational activities and improvements facilitating public access to the shoreline. A variety of water-oriented recreational activities should be encouraged to satisfy the diverse needs of residents and visitors.
2. Recreational development should be located, designed, and operated to be compatible with adjacent uses and to minimize adverse effects on ecological and aesthetic qualities of the shoreline and water.
3. The coordination of City, County, state and federal recreation planning should be encouraged. Expansions to City recreational facilities, such as the Oak Harbor Marina and Waterfront Trail, should be coordinated with plans for activities on U.S. Navy property and adopted County plans to expand connections between these recreation opportunities.
4. Recreational developments and plans should promote the conservation of the shoreline's natural character, ecological functions, and processes while expanding the public's ability to enjoy the shoreline.
5. Shoreline areas with a potential for providing recreation or public access opportunities should be identified and acquired by lease or purchase, or through partnerships with nonprofit and service organizations, and incorporated into the park and open space system.
6. Recreational development should be designed to preserve or create open space and public use of the water and shorelines.
7. Links between existing and future shoreline parks, recreation areas and public access points should be created via a non-motorized network using existing rights-of-way or through acquisition of easements and/or land, where feasible.

8. Recreational activities should be designed to avoid conflict with private property rights, and to minimize and mitigate negative impacts on adjoining property.

c. *Regulations*

1. Recreational uses and developments shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. The City may request necessary studies by qualified professionals to determine compliance with this standard.
2. Water-dependent recreational activities such as swimming, boating, and fishing, and water-enjoyment activities that benefit from waterfront scenery such as picnicking, hiking and bicycling shall be emphasized in planning public and private (excluding residential) noncommercial recreation sites in the shoreline corridor.
3. All recreational developments shall make adequate provisions for:
   a. Non-motorized and pedestrian access;
   b. The prevention of trespass onto adjacent properties, including but not limited to landscaping and fencing;
   c. Protection and restoration of environmentally sensitive areas and shoreline processes and functions;
   d. Signs indicating the public's right of access to shoreline areas, installed and maintained in conspicuous locations at the point of access and the entrance; and
   e. Buffering of such development from adjacent private property or natural area.
4. In approving shoreline recreational developments, the City may apply conditions to project dimensions, use intensity, parking provisions, or landscaping to ensure that the development will maintain, enhance or restore desirable shoreline functions or scenic qualities.
5. Swimming areas shall be separated from boat launch areas.
6. The construction of piers, moorages, floats and launching facilities waterward of the OHWM shall be governed by the regulations relating to Boating Facilities (Section 4.D.3) and Piers, Docks, Floats, and Mooring Buoys (Section 5.C.4) of this SMP.
7. Fragile and unique shoreline areas with valuable ecological functions, such as wildlife habitats, shall be used only for non-intensive recreation activities that do not involve the construction of structures.
8. All structures associated with a recreational use, except water-dependent structures, such as docks and boardwalks, and appurtenances that provide access to the water for that use, shall maintain a standard setback from the OHWM per Chapter 4, Section C, Table 2. Further setback reduction shall require restoration or enhancement of the shoreline buffer, as required by the Shoreline Administrator.

9. A new or expanded shoreline recreational development shall provide public access when required by Chapter 3, Section B.6.c and meet all requirements identified therein.

10. Applications for new recreational development within the shoreline jurisdiction shall include a parking and landscaping plan. Landscaping plans shall comply with OHMC Chapter 19.46. Safe pedestrian walkways shall be provided between parking areas and recreational facilities.

11. Use of recreational off-road vehicles is prohibited within designated shoreline setbacks and below the Ordinary High Water Mark, except by public agencies for maintenance, operations and emergency services.

9. Residential Development

a. Applicability

Residential development means one or more buildings, structures, lots, parcels, or portions thereof which are designed for and used or intended to be used to provide a place of abode for human beings, including single family residences and other detached dwellings together with accessory uses and structures normally applicable to residential uses located landward of the OHWM, including, but not limited to, swimming pools, garages, sheds, fences and saunas. Single-family residences are identified as a priority use under the Shoreline Management Act. Without proper management, residential uses, including single-family residential uses, can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, stormwater runoff, on-site septic systems, introduction of pollutants and vegetation removal.

Please see other relevant sections that pertain to common residential development activities. Provisions relating to vegetation conservation are included in Chapter 3. Provisions relating to shoreline modifications, such as shoreline stabilization, dredging and fill, trams, and overwater structures, associated with residential development can be found in Chapter 5.

b. Policies

1. Residential development is not a water-dependent use and should not be allowed to locate over water, except in the case of existing liveaboard vessels moored at marinas.

2. Residential structures should be designed and sited in such a manner as to not detract from the scenic and aesthetic qualities of the shoreline.

3. Residential development should be discouraged in portions of the shoreline jurisdiction where bulkheading or other forms of hard shoreline stabilization would be necessary at the time of construction or in the foreseeable future to protect the residence.

4. Residential development should be designed so as to preserve existing shoreline vegetation, control erosion and protect water quality using best management practices and where possible, utilizing low impact development technologies.

5. The City should encourage the use of alternative paving products, such as pervious pavers, for walkways, driveways, and patios, as a mechanism for reducing impervious surfaces and surface water runoff.

6. Development should, at a minimum, achieve no net loss of ecological functions necessary to sustain shoreline natural resources, even for exempt development.

c. Regulations

1. Residential development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. The City may request necessary studies by qualified professionals to determine compliance with this standard.
2. Structures or other development accessory to residential uses are permitted in shoreline jurisdiction, if allowed under all other applicable standards in this SMP and subject to the provisions of the City's zoning code. Accessory uses and appurtenant structures not specifically addressed in the SMP shall be subject to the same regulations as primary residences.
3. New and/or expanded residential development shall be located and designed to avoid the need for shoreline stabilization structures.
4. Overwater residences, including Floating homes, shall be prohibited in all shoreline environment designations. Liveaboard vessels may be approved in Marinas, provided they comply with the development regulations of the Aquatic environment and are located within marinas equipped with adequate sanitation facilities to accommodate them.
5. All additions to residential structures must comply with all standards in this SMP, including required shoreline setbacks established in Table 2.
6. Nonconforming residential structures that are intentionally modified, replaced, repaired or enlarged are subject to the requirements in Chapter 6, Section J (Nonconforming Development).
7. In order to maintain visual access to the waterfront, fences within the required setback from the OHWM shall be:
   a. No more than 4 feet high when separating two residential lots and no more than 6 feet high when separating a residential lot from a park or commercial use, and
   b. May not extend beyond the OHWM.
8. The stormwater runoff for all new or expanded pavements or other impervious surfaces shall be directed to infiltration systems, and other Low Impact Development techniques shall be incorporated into new development as feasible, in accordance with the City's adopted Surface Water Design Manual and the *Low Impact Development Technical Guidance Manual for Puget Sound.*
9. A new or expanded shoreline residential development shall provide public access when required by Chapter 3, Section B.6.c and meet all requirements identified therein.

10. Transportation

a. Applicability

Transportation facilities that serve the City of Oak Harbor shorelines include roads, access drives, pedestrian paths and public and private parking areas. Future transportation facilities could include water taxi or ferry facilities. Excluded are the marina and other moorages regulated by other sections of this master program.

b. Policies

1. Non-water-dependent transportation facilities, other than non-motorized facilities developed in accordance with this SMP, should not be located over water or within the shoreline jurisdiction where a feasible alternate location exists. Before approval of new transportation facilities within the shoreline environment, the City should require an alternatives analysis to evaluate the feasibility of locating the facility elsewhere.
2. When transportation facilities are located over water or on shorelines, they should be designed to minimize their impacts on shoreline resources and avoid net loss of ecological function.
3. Joint use of transportation corridors within the shoreline jurisdiction for roads, utilities and motorized and non-motorized forms of transportation should be encouraged, where feasible.
4. Pedestrian trails and bicycle paths along shorelines should be promoted in conformance with the Oak Harbor Parks, Recreation, and Open Space Plan trails policies.
5. Rights of way and other facilities that provide scenic views or access to the water should be retained in public ownership and kept open whenever possible.

c. Regulations

1. New road construction in the shoreline jurisdiction shall be allowed only when demonstrated through an alternatives analysis that an upland location is neither feasible nor practical. New access drives directly servicing shoreline uses shall not require an alternatives analysis.
2. Transportation facility development shall result in no net loss of shoreline ecological functions and shall be designed to minimize the need for landfill, vegetation removal, bank stabilization, and grading. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial.
3. Graded areas and slopes altered during construction shall be stabilized and, where appropriate, planted with native vegetation.
4. Expansion of existing roadways within the shoreline jurisdiction shall be allowed only when the proponent demonstrates that:
    a. No alternative route is feasible;

b. Site grading, removal of vegetation, bank stabilization, and use of fill has been minimized;

c. The roadway is constructed and maintained to cause the least possible adverse impact on the land and water environment; and

d. The roadway is found to be in the public interest.

5. Transportation and primary utility facilities shall be required to make joint use of rights of-way, and to consolidate crossings of water bodies to minimize adverse impacts to the shoreline.

6. All debris and other waste materials from roadway construction shall be disposed of in such a way as to prevent their entry into any water body.

7. Road designs must provide safe pedestrian and non-motorized vehicular crossings where public access to shorelines is intended.

8. Streets within shoreline jurisdiction shall be designed with the minimum pavement area allowed under City road standards. Pervious materials shall be used where feasible for pathways and road shoulders to minimize the amount of impermeable surfaces and help to maintain a more natural appearance.

11. Utilities (Primary)

a. Applicability

Utilities are services and facilities that produce, transmit, store, process or dispose of electric power, gas, water, wastewater, and communications. Utilities in this SMP are divided into primary and accessory based on type and scale. The provisions of this section apply to primary use and activities such as solid waste handling and disposal, water transmission lines, sewage treatment facilities and mains, power generating or high voltage transmission facilities, gas distribution lines and storage facilities, stormwater mains and regional stormwater treatment facilities.

b. Policies

1. New primary utilities should be located outside of the SMA unless no other feasible option exists. Where allowed they should utilize existing transportation and utility sites, rights-of-way and corridors whenever possible, rather than creating new corridors. Joint use of rights-of- way and corridors should be encouraged.

   a. Solid waste disposal activities and facilities should be prohibited in shoreline areas. "Solid waste facilities" are not to be construed as storage of recyclable materials.

   b. Primary utilities should avoid locating in environmentally sensitive areas unless no feasible alternatives exist.

2. Wherever primary utility facilities and corridors must be placed in a shoreline area, they should be located so as to protect scenic views. Whenever possible, such facilities should be

placed underground or designed to minimize impacts on the aesthetic qualities of the shoreline area.

c. *Regulations*

1. Primary utilities shall be located outside of shoreline jurisdiction unless no other feasible option exists. When allowed under this regulation, primary utilities shall be located landward of the ordinary high water mark unless such location is not feasible or would result in potentially greater environmental impacts. Where utilities must cross the shoreline environment, they shall be located along a route that would involve the least environmental and aesthetic impacts to the shoreline.

2. In the case of a new primary utility facility, the determination as to the feasibility of alternative locations outside the shoreline area and/or the possibility of using existing rights-of-way may include, but is not necessarily limited to, consideration of: (1) construction impacts on the community, including impacts on traffic and adjacent land uses; (2) engineering considerations, including restoration or disruption issues related to the presence of existing public improvements and utility facilities; (3) environmental considerations, including impacts on the ecological function both within and outside of the shoreline; and (4) project considerations, including construction cost, construction schedule and expenditures or contractual commitments made by the proponent of the corridor, prior to the adoption of this SMP, in acquiring rights for the proposed route.

3. Primary utility facilities shall avoid disturbance of unique and fragile areas, as well as wildlife spawning, nesting and rearing areas. Utility facility development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial.

4. Utility development shall, through coordination with local government agencies, provide for compatible, multiple-use of sites and rights-of-way. Such uses include shoreline access points, trail systems and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, endanger public health and safety or create a significant and disproportionate liability for the owner.

5. Utility lines shall utilize existing rights-of-way, corridors and/or bridge crossings whenever possible and shall avoid duplication and construction of new corridors in all shoreline areas. Proposals for new corridors or water crossings must fully substantiate the infeasibility of existing routes.

6. Solid waste disposal sites and facilities are prohibited in the shoreline environment.

7. Where major facilities must be placed in a shoreline area, the location and design shall be chosen to avoid and minimize impacts to scenic views, where feasible.

8. Clearing of vegetation for the installation or maintenance of utilities shall be kept to a minimum and upon project completion any disturbed areas shall be restored to their pre-project condition.

9. The City shall hold public meetings prior to the issuance of a Substantial Development Permit for a major primary utility project in accordance with the administrative procedures outlined in this Master Program to allow for the greatest amount of public input to help guide utility-related decisions.

10. New utility lines installed within the shoreline jurisdiction shall be located underground unless it can be demonstrated that such underground installation would be infeasible or would cause greater adverse impacts to the shoreline environment than an above-ground installation. Underwater cables or utility structures that must cross the shoreline jurisdiction to upland areas shall remain buried above the OHWM to a point that allows unimpeded access to the shoreline.

11. Proposals for new utility corridors (e.g. local power or water distribution) shall fully substantiate the infeasibility of existing routes

12. Utilities (Accessory)

a. Applicability

Utilities have been split into accessory and primary with accessory utilities generally meaning utilities that affect small-scale distribution services (sometimes referred to as side services) connected directly to the uses along the shoreline. For example, power distribution, telephone, cable, water and sewer service lines, and all stormwater collection and conveyance other than those specifically listed as primary utilities, are all considered as utilities accessory to shoreline uses. They are covered in this section because they concern all types of development and have the potential of impacting the ecological condition and visual quality of the shoreline and its waters.

b. Policies

1. Utilities are necessary to serve shoreline uses and should be properly installed to protect the shoreline and water from contamination and degradation.

2. Utility facilities and right-of-ways should be located outside of the shoreline area to the maximum extent possible. When utility lines require a shoreline location, they should be placed underground, where feasible.

3. Utility facilities should be designed and located in a manner which preserves the natural landscape and shoreline ecology, and minimizes conflicts with present and planned land uses.

c. Regulations

1. Utility developments shall, through coordination with local government agencies and utility purveyors, provide for compatible, multiple-use of utility sites and rights-of-way. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, or endanger public health and safety.

2. In shoreline areas, accessory utilities servicing new development that exceeds the thresholds identified in Chapter 6, Section J, Nonconforming Development, shall be placed underground unless demonstrated to be infeasible. Further, such lines shall utilize existing rights-of-way, and existing corridors whenever possible. Existing above ground lines shall be moved underground when properties are redeveloped or in conjunction with major system upgrades or replacements.
3. Utility facilities shall be located and designed to avoid destruction of, or damage to, important wildlife areas, and other unique and fragile areas. Utility facility development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial.
4. Clearing for the installation or maintenance of utilities shall be kept to a minimum, and upon project completion, any disturbed area shall be restored, to the greatest extent feasible, to pre-project conditions, including replanting with native species, or other species as approved by the City. If the previous condition is identified as being undesirable for shoreline function, then landscaping and other improvements shall be undertaken.
5. The location and construction of outfalls shall comply with all appropriate federal, state, county and city regulations.

Chapter 5: **SHORELINE MODIFICATION PROVISIONS**

A. Introduction

Shoreline modification activities are those actions that modify the physical configuration or qualities of the shoreline area. Shoreline modification activities are, by definition, undertaken in support of or in preparation for a permitted shoreline use. A single use may require several different shoreline modification activities.

Shoreline modification activity policies and regulations are intended to assure, at a minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to prevent, reduce and mitigate the negative environmental impacts of proposed shoreline modifications consistent with the goals of the Shoreline Management Act. A proposed development must meet all of the regulations for both applicable uses and activities as well as the general and environment designation regulations.

This chapter has been divided into five sections: Shoreline Stabilization, Dredging, Fill, Overwater Structures, and Restoration.

B. Shoreline Modifications Table

The shoreline modification table below determines whether a specific shoreline modification is allowed within each of the shoreline environments. See standards following the table for a full explanation of activities and required conditions for permitted activities. The shoreline environment is located on the vertical column of the table and the specific modification is located on the horizontal row of the table.

TABLE 3 - Shoreline Modifications

KEY

P = Permitted Use
C = May be permitted as a conditional use
X = Prohibited, not eligible for a variance or CUP
N/A = Not applicable

	Maritime	Urban Mixed Use	Residential	Residential Bluff Conservancy	Urban Public Facility	Conservancy	Aquatic
SHORELINE STABILIZATION							
Beach Restoration and Enhancement	P	P	P	P	P	P	See adjacent upland environment
Soil Bio-engineering, other Non-Structural	P	P	P	P	P	P	
Structural Stabilization	P	P	P	C	P	C	
Breakwaters, jetties, and groins	C	C	X	X	C	X	
CLEARING AND GRADING	P	P	P	C	P	C	
DREDGING	P	C	C	C	P/C[1]	C	
FILL							
Fill upland of OHWM	P	P	P	P	P	C	
Fill waterward of OHWM[2]	C	C	C	C	C	C	

KEY

P = Permitted Use
C = May be permitted as a conditional use
X = Prohibited, not eligible for a variance or CUP
N/A = Not applicable

	Maritime	Urban Mixed Use	Residential	Residential Bluff Conservancy	Urban Public Facility	Conservancy	Aquatic
OVERWATER STRUCTURES							
Recreational Float (Not Associated with a Pier or Dock)	P	X	X	X	X/P[3]	X	
Overwater Boathouse	P	X	X	X	X	X	
Piers and Docks (Including Pier/Float Combinations)[4]	P	C[5]	X	X	X/P[3]	X	
Moorage Ball and Buoy	P	P	C	C	P	C	
Marina	P	X[6]	X	X	C	X	
Boat Ramp	P	X	X	X	P	C	
Launching Rails	P	X	X	X	X	X	
Boat Lifts	P	X	X	X	X	X	
Boat Lift Canopies	P	X	X	X	X	X	
Covered Moorage and Boat Houses	P	X	X	X	X	X	

1. Dredging associated with the maintenance of the swimming lagoon is a permitted use, all other dredging requires a conditional use permit.

2. Fill proposed as part of a soft shoreline stabilizaton design associated with an approved shoreline us or as part of an approved mitigation or restoration project shall be permitted in all shoreline environments. Otherwise, fill waterward of the OHWM shall be approved by conditional use permit only when one of the following conditions are met:

a. Placement of fill is necessary to protect a water-dependent use or is necessary for maintenance and repair of an existing structure;

b. Fill is necessary for the expantion or alteration of an existing transportation or navigation facility located in the shoreline environment, and it has been demonstrated that alternative locations and/or alternatives to fill are not feasible;

c. Fill is intended for disposal of dredged sediments in accordance with DNR rules; or

d. The proposed fill is part of an environmental clean-up plan for contaminated sediments.

3. This modification is permitted in Flintstone Park, but are not permitted in other areas of this designation.

4. All floating docks outside marinas shall comply with the provisions of SMP 5.C.4.c.1.f regarding grounding.

5. Piers, docks, and floats in the Urban Mixed Use environments shall be approved by conditional use permit only when one of the following conditions are met:

a. The proposed dock, pier, or float will be a joint-use structure serving more than an single upland residential unit, or will provide access to more than one upland property.

b. The proposed dock, pier, or float will provide shoreline access to the general public. If a public-access dock or pier is located on private property, an upland pedestrian connection between the dock or pier and an adjacent public street must be provided to fulfil this condition.

6. Expansion of the existing marina is allowed into Aquatic areas waterward of this designation, but all upland facilities must be located in the Maritime or Urban Public Facility designation.

C. Policies and Regulations

1. Shoreline Stabilization (Including Bulkheads)

a. Applicability

Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods. Nonstructural methods include shoreline buffers or setbacks, relocation of the structure to be protected, groundwater management, stormwater management, planting of vegetation, and planning and regulatory measures to avoid the need for structural stabilization.

b. Policies

1. Shoreline stabilization should be located, designed, and maintained to protect and maintain shoreline ecological functions, ongoing shoreline processes, and the integrity of shoreline features. Ongoing shoreline processes and the probable effects of proposed shoreline stabilization on other properties and shoreline features should be considered. Shoreline stabilization should not be developed for the purpose of filling shorelines.
2. Structural shoreline stabilization measures should only be used when more natural, flexible, non-structural methods such as placing the development farther from the OHWM, planting vegetation, or installing on-site drainage improvements, beach enhancement and bioengineering have been determined infeasible. Alternatives for shoreline stabilization should be considered in the following priority order:
    a. No action (allow the shoreline to retreat naturally), increase buffers, and relocate structures.
    b. Flexible defense works constructed of natural materials including soft shore protection, bioengineering, including beach nourishment, protective berms, or vegetative stabilization.
    c. Rigid works constructed of artificial materials such as riprap or concrete.
3. 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 shoreline stabilization for development to occur.
4. New or enlarged structural shoreline stabilization should only be permitted where demonstrated to be necessary to protect a primary structure, including a residence that is in imminent danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.
5. Shoreline stabilization should not be permitted when it interferes with public access to shorelines of the state, nor with other appropriate shoreline uses including, navigation or recreation.

6. In addition to conformance with the regulations in this section, non-regulatory methods to protect, enhance, and restore shoreline ecological functions and other shoreline resources should be encouraged as part of shore stabilization. Non-regulatory methods may include public facility and resource planning, technical assistance, education, voluntary enhancement and restoration projects, or other incentive programs.

7. Materials used for construction of shoreline stabilization should be selected for long-term durability, ease of maintenance, compatibility with local shoreline features including aesthetic values, and flexibility for future uses.

c. *Regulations*

1. General

   a. The standards in this section apply to all developments and uses in shoreline jurisdiction.

   b. New development or redevelopment shall be located and designed to avoid the need for new or future soft or hard structural shoreline stabilization to the extent feasible.

   c. Structural stabilization may be authorized only where the proponent can demonstrate that an existing primary structure or use is in imminent danger from shoreline erosion and that non-structural stabilization methods are not feasible or would not provide adequate protection, as determined by a geotechnical analysis. Please see specific requirements for new or enlarged stabilization, as well as stabilization replacement and repair in this Subsection.

   d. Structural stabilization, such as dikes and levees, that provides flood hazard protection to flood hazard areas as determined by the Shoreline Administrator based on the best available information, shall not be subject to this requirement. Please see Chapter 3, Section B.4 for regulations pertaining to flood hazard areas.

   e. Soft shoreline stabilization may include the use of gravels, cobbles, boulders, and logs, as well as vegetation.

   f. If construction or repair of a shoreline stabilization measure entails vegetation clearing or ground disturbance within the shoreline setback, such disturbance shall be restored as quickly as feasible to pre-disturbance conditions or better to avoid impacts to the ecological function of the shoreline.

   g. The following is a summary of the key requirements found in and 5.C.1.c.2 through 5.C.1.c.7:

Shoreline Stabilization Measures	Requirements
Structural and Nonstructural Methods	• Nonstructural methods are preferred, and the need for structural stabilization measures must be demonstrated before approval.
New or Enlargement of Hard Shoreline	• Allowed when existing primary

Shoreline Stabilization Measures	Requirements
Structural Measures (enlargement includes additions and increases in size, such as height, width, length, or depth, to existing shoreline stabilization measures)	structure is 10 ft. or less from OHWM • When existing primary structure is greater than 10 ft. from OHWM, requires geotechnical report to show need, an evaluation of the feasibility of soft rather than hard structural shoreline stabilization measures and design recommendations for minimizing structural shoreline measures. • Requires mitigation, including plantings.
Major Repair or Replacement of Hard Shoreline Structural Measures	• A major repair is a collapsed or eroded structure or a demonstrated loss of structural integrity, or repair of toe rock or footings of more than 50% in continuous linear length; or • A major repair is repair to more than 75% of the linear length of structure that involves replacement of top or middle course rocks or other similar repair • Allowed when existing primary structure is 10 ft. or less from OHWM • When existing primary structure is more than 10 ft. from the OHWM, requires a written narrative that provides a demonstration of need
Minor Repair of Hard Shoreline Stabilization Measure	• Does not meet threshold of new, enlarged, major repair or replacement measurement. • No geotechnical report or needs assessment required.
New, Enlarged, Repair or Replacement of Soft Shoreline Stabilization Measure	• Allowed when existing primary structure is 10 ft. or less from OHWM (provided that need can be demonstrated through a written narrative prepared by a qualified professional) or for repair or replacement. • For primary structure greater than 10 ft. from the OHWM, new or enlarged requires a written narrative that provides a demonstration of need.

2. New or Enlarged Structural Shoreline Stabilization

a. For the purposes of this section, enlargement of an existing structural stabilization shall include additions to or increases in size (such as height, width, length, or depth). Primary structure includes appurtenances listed under WAC 173-14-040, but not tool sheds, greenhouses, swimming pools, spas and other ancillary residential improvements.

b. The City may only approve a new or enlarged hard or soft structural stabilization measure in the following circumstances:

   i. To protect an existing primary structure, conclusive evidence, documented by a geotechnical analysis that the primary structure is in danger from shoreline erosion caused by waves. The analysis must show that there is a significant possibility that an existing structure will be damaged within three (3) years as a result of shoreline erosion in the absence of hard structural stabilization measures, or where waiting until the need is immediate results in the loss of opportunity to use measures that would avoid impacts on ecological functions. Where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three (3) years, the report may still be used to justify more immediate authorization to protect against erosion using soft structural stabilization measures.

   ii. To protect a new primary structure, including a detached dwelling unit, demonstrate that placement of the structure farther upland of the OHWM is not feasible and that non-structural measures, planting vegetation, or installing on-site drainage improvements are not feasible or would not provide sufficient protection to prevent damage.

   iii. For hard and soft stabilization measures, any on-site drainage issues have been directed away from the shoreline edge prior to considering structural stabilization.

   iv. To protect ecological restoration or enhancement projects or for hazardous substance remediation projects pursuant to RCW 70.105D when nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

   v. To protect new water dependent uses or development, provided that the applicant can demonstrate the following: that shoreline erosion is not being caused by upland conditions, such as loss of vegetation and drainage; that non-structural stabilization measures are not feasible or sufficient; that a geotechnical analysis has determined that structural stabilization will be necessary to protect the primary structure from damage due to erosion; and that the proposed erosion control structure will not result in a net loss of shoreline ecological function.

3. Submittal Requirements for New or Enlarged Structural Stabilization Measures. In addition to the requirements described in 5.C.1.c.2 above, the following shall be submitted to the City for proposed new or enlarged structural stabilization measures:

a. A geotechnical report prepared by a qualified professional. The report shall include the following:

i. An assessment of the necessity for structural stabilization by estimating time frames and rates of erosion and documenting the urgency associated with the specific situation. See Regulation 2.b.i above.

ii. An assessment of the cause of erosion, including on-site drainage issues, looking at processes occurring both waterward and landward of the OHWM.

iii. An assessment of the feasibility of using nonstructural or soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures.

iv. For both hard and soft structural shoreline stabilization measures, design recommendations for minimizing the sizing of shoreline stabilization materials, including gravel and cobble beach substrates necessary to dissipate wave energy, eliminate scour, and provide long-term shoreline stability.

b. See general submittal requirements in Regulation 8, maintenance agreement standards in Regulation 9 and general design standards in Regulation 10 below.

4. Replacement or Major Repair of Hard Structural Shoreline Stabilization

a. For the purposes of this section, major repair or replacement of a hard shoreline stabilization measure shall include the following activities:

i. A repair to a portion of an existing stabilization structure that has collapsed, eroded away or otherwise demonstrated a loss of structural integrity, or in which the repair work involves modification of the toe rock or footings, and the repair is 50 percent or greater than the linear length of the shoreline stabilization measure; or

ii. A repair to more than 75 percent of the linear length of the existing hard structural shoreline stabilization measure in which the repair work involves replacement of top or middle course rocks or other similar repair activities.

b. The City may only approve a major repair or replacement of an existing hard structural stabilization measure with a new hard structural shoreline stabilization measure to protect existing primary structures or principal uses, including detached dwelling units, in either of the following circumstances:

i. The primary structure is located 10 feet or less from the OHWM, provided that a need for replacement can be demonstrated through a written narrative prepared by a qualified professional (shoreline designer or other consultant familiar with shoreline processes and shoreline stabilization), but not necessarily a licensed geotechnical engineer. The narrative shall consist of the elements described in 5.C.1.c.5.a below. For the purposes of this provision, the distance shall be measured to the most waterward location of the primary structure; or

ii. For a primary structure located more than 10 feet from the OHWM or a use, conclusive evidence is provided to the City that the primary structure or use is in danger from shoreline erosion caused by waves as required in 5.C.1.c.5 below.

5. Submittal Requirements for Major Repairs or Replacements of Hard Stabilization Measures. The following shall be submitted to the City when the primary structure is located more than 10 feet landward of the OHWM or for a use with no primary structure:

   a. Written narrative that provides a demonstration of need shall be submitted. A qualified professional (e.g., shoreline designer or other consultant familiar with shoreline processes and shore stabilization), but not necessarily a licensed geotechnical engineer, shall prepare a written narrative. The written narrative shall consist of the following:

      i. An assessment of the necessity for hard structural stabilization, considering site-specific conditions such as water depth, orientation of the shoreline, wave fetch, and location of the nearest structure.

      ii. An assessment of erosion potential resulting from the action of waves or other natural processes operating at or waterward of the OHWM in the absence of the hard structural shoreline stabilization.

      iii. An assessment of the feasibility of using soft structural stabilization measures in lieu of hard structural shoreline stabilization measures. Soft stabilization may include the use of gravels, cobbles, boulders, and logs, as well as vegetation.

      iv. Design recommendations for minimizing impacts and ensuring that the replacement or repaired stabilization measure is designed, located, sized, and constructed to assure no net loss of ecological functions.

   b. See additional requirements below in Regulations 8, 9 and 10 for general submittal requirements, maintenance agreement and general design standards.

6. Minor Repairs of Hard Shoreline Stabilization. Minor repairs of hard shoreline stabilization include those maintenance and repair activities not otherwise addressed in the subsection above. The City shall allow minor repair activities to existing hard structural shoreline stabilization measures.

7. Repair or Replacement of Soft Shoreline Stabilization and Submittal Requirements

   a. The City shall allow repair or replacement of soft shoreline stabilization.

   b. The applicant shall submit to the City design recommendations for minimizing impacts and ensuring that the replacement or repaired stabilization measure is designed, located, sized, and constructed to assure no net loss of ecological functions.

   c. See additional requirements below in Regulations 8, 9 and 10 for general submittal requirements, maintenance agreement and general design standards.

8. General Submittal Requirements for New, Enlarged, Replacement and Major Repair Measures. Detailed construction plans shall be submitted to the City, including the following:

a. Plan and cross-section views of the existing and proposed shoreline configuration, showing accurate existing and proposed topography, including extreme low tide, mean lower tide, mean tide, mean higher high tide, and extreme high tide elevations.

b. Detailed construction sequence and specifications for all materials, including gravels, cobbles, boulders, logs, and vegetation. The sizing and placement of all materials shall be selected to accomplish the following objectives:

   i. Protect the property and structures from erosion and other damage over the long term, and accommodate the normal amount of alteration from wind- and boat-driven waves;

   ii. Allow safe passage and migration of fish and wildlife; and

   iii. Minimize or eliminate juvenile salmon predator habitat.

c. For hard structural stabilization measures, when shoreline vegetation is required as part of mitigation, a detailed 5-year vegetation maintenance and monitoring program to include the following:

   i. Goals and objectives of the shoreline stabilization plan;

   ii. Success criteria by which the implemented plan will be assessed;

   iii. A 5-year maintenance and monitoring plan, consisting of one (1) site visit per year by a qualified professional, with annual progress reports submitted to the Planning Official and all other agencies with jurisdiction;

   iv. A contingency plan in case of failure; and

   v. Proof of a written contract with a qualified professional who will perform the monitoring.

d. The Shoreline Administrator may require a fee for a consultant to review the geotechnical report and recommendations, shoreline stabilization plan, monitoring and maintenance program or other aspects of the permit submittal.

9. Maintenance Agreement for Hard and Soft Structural Stabilization. The applicant shall complete and submit a 5-year period maintenance agreement, using the City's standard form, for recording to ensure maintenance of all required mitigation associated with a structural shoreline stabilization measure.

10. General Design Standards – So as to limit avoid or minimize the impacts of sediment transport, the following design standards shall be incorporated into the stabilization design:

    a. Soft structural shoreline stabilization measures shall be used to the maximum extent feasible, limiting hard structural shoreline stabilization measures to those portions of the site where necessary to connect with existing hard shoreline stabilization measures on adjacent properties. The length of hard structural shoreline stabilization connections to adjacent properties shall be minimized to the maximum extent feasible and shall

extend into the subject property from adjacent properties no more than the minimum amount necessary.

b. For enlargement, major repair, or replacement of hard structural shoreline stabilization measures, excavation and fill activities associated with the structural stabilization shall be landward of the existing OHWM, except when not feasible due to existing site constraints or when conducted to mitigate impacts of hard structural stabilization by increasing shallow water habitat with gravel, rocks and logs.

c. For short-term construction activities, hard and soft structural stabilization measures must minimize and mitigate any adverse impacts to ecological functions by compliance with appropriate timing restrictions, use of best management practices to prevent water quality impacts related to upland or in-water work, and stabilization of exposed soils following construction.

d. For long-term impacts, new and enlarged hard structural shoreline stabilization, as well as major repair or replacement of hard structural stabilization, shall incorporate the following measures into the design wherever feasible.

   i. Limiting the size of hard structural shoreline stabilization measures to the minimum necessary, including height, depth, and mass.

   ii. Shifting hard stabilization structures landward and/or sloping the structure landward to provide some dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.

e. For new and enlarged hard shoreline stabilization, the following additional measures shall be incorporated into the design:

   i. To increase shallow-water habitat, install gravel/cobble beach fill waterward of the OHWM, grading slope to a maximum of 1 vertical (v): 4 horizontal (h). The material shall be sized and placed to remain stable and accommodate alteration from wind- and boat-driven waves.

   ii. Plant native riparian vegetation as follows:

      1. At least 75 percent of the nearshore riparian area located along the edge of the OHWM shall be planted an average of ten (10) feet in depth from the OHWM, but may be a minimum of 5 feet wide to allow for variation in landscape bed shape and plant placement provided that the total square footage of the area planted equals ten (10) feet along the water's edge.

      2. Restoration of native vegetation shall consist of a mixture of trees, shrubs and groundcover, or a mixture of vegetation that is appropriate for site conditions and would be found on a similar undisturbed site, and shall be designed to improve habitat functions. At least 3 trees per 100 linear feet of shoreline and 60% shrubs must be included in the plan, unless the Shoreline Administrator determines that trees are not appropriate for the specific site conditions.

3. Plant materials must be native.

ii. These standards may be modified for water-dependent development in the Maritime shoreline environment where the Shoreline Administrator determines they are not feasible for a specific development or use.

f. An alternative planting plan or mitigation measure in lieu of meeting this section shall be allowed if the applicant demonstrates to the satisfaction of the Shoreline Administrator that it would result in equal or better ecological function when compared to the standard requirement. An alternative planting plan or mitigation measure may also be allowed if it is approved by other state and federal agencies. In addition, the City shall accept existing native trees, shrubs and groundcover as meeting the requirements of this section, including vegetation previously installed as part of a prior development activity, provided that the existing vegetation provides a landscape strip at least as effective in protecting shoreline ecological functions as the required vegetation.

g. Hard and soft shoreline stabilization measures shall be designed to not significantly interfere with normal surface and/or subsurface drainage into any water body, constitute a hazard to navigation or extend waterward more than the minimum amount necessary to achieve effective stabilization.

h. Hard and soft stabilization measures are allowed to have gravel, logs and rocks waterward of the OHWM, as approved by the City and federal and state agencies, to provide enhancement of shoreline ecological functions through creation of nearshore shallow-water habitat.

i. Stairs or other water access measures may be incorporated into the shoreline stabilization, but shall not extend waterward of the shoreline stabilization measure.

j. The shoreline stabilization measures shall be designed to ensure that the measures do not restrict public access or make access unsafe to the shoreline, except where such access is modified under the provisions of 3.B.5 for public access. Access measures shall not extend farther waterward than the face of the shoreline stabilization structure.

k. All new and replacement shoreline stabilization measures shall be designed to minimize negative impacts to nearshore sediment transport. Construction of erosion control structures on feeder bluffs or other sediment producing areas shall be required to minimize, avoid, and mitigate adverse effects on sediment transport.

l. See 5.C.1.c.11 below concerning additional design standards for hard structural stabilization and 5.C.1.c.13 for soft structural stabilization.

11. Specific Design Standards for New or Enlarged Hard Structural Stabilization. In addition to the general design standards in and 5.C.1.c.10 above, the following design standards shall be incorporated:

a. Where hard stabilization measures are not located on adjacent properties, the construction of a hard stabilization measure on the site shall tie in with the existing

contours of the adjoining properties, as feasible, such that the proposed stabilization will not cause erosion of the adjoining properties.

b. Where hard stabilization measures are located on adjacent properties, the proposed hard stabilization measure may tie in flush with existing hard stabilization measures on adjoining properties, but by no more than reasonably required. The new hard stabilization measure shall not extend waterward of OHWM, except as necessary to make the connection to the adjoining hard stabilization measures. No net intrusion into the water body and no net creation of upland shall occur with the connection to adjacent stabilization measures. In order to comply with this no net intrusion standard, where a project includes connection to an adjoining stabilization that is waterward of the OHWM, it may be necessary to compensate by siting another portion of the new stabilization landward of the existing OHWM.

c. Fill behind hard shoreline stabilization measures shall be limited to an average of one (1) cubic yard per linear foot of bulkhead. Any filling in excess of this amount shall be considered a regulated activity subject to the regulations in this Chapter pertaining to fill activities and the requirement for obtaining a shoreline substantial development permit.

12. Specific Design Standards for Replacement of Hard Structural Stabilization. Replacement of hard structural stabilization measures shall not encroach waterward of the OHWM or waterward of the existing shoreline stabilization measure unless the primary structure was constructed prior to January 1, 1992 (RCW 90.58.100.6 and WAC 173.26.241 and WAC 173.26.231.3.j), and there is overriding safety or environmental concerns if the stabilization measure is moved landward of the OHWM. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. All other replacement structures shall be located at or landward of the existing shoreline stabilization structure.

13. Specific Design Standards for Soft Structural Stabilization. In addition to the general design standards in 5.C.1.c.10, the following design standards shall be incorporated:

    a. Provide sufficient protection of adjacent properties by tying in with the existing contours of the adjoining properties to prevent erosion at the property line. Proposals that include the minimum necessary use of hard structural stabilization measures to tie in with adjacent properties shall be permitted as soft structural shoreline stabilization measures. The length of hard structural stabilization connections to adjacent properties shall be the minimum needed and shall extend into the subject property from adjacent properties as reasonably required.

    b. Size and arrange any gravels, cobbles, logs, and boulders so that the improvement remains stable in the long-term and dissipates wave energy, without presenting extended linear faces to oncoming waves.

14. Expansion of SMA Jurisdiction from Shift in OHWM. If a shoreline stabilization measure constructed as part of any action required by this Chapter or intended to improve ecological functions results in a shift of the OHWM landward of the pre-modification location, thus

expanding the shoreline jurisdiction onto any property other than the subject property, then as part of the shoreline permit process found in Chapter 6:

a. The City shall notify the affected property owner in writing, and

b. The City may propose to grant relief for the affected property owners from applicable shoreline regulations resulting in expansion of shoreline jurisdiction. The proposal to grant relief must be submitted to the Department of Ecology with the shoreline permit under the procedures established in Chapter 6. If approved, notice of the relief, in a form approved by the City Attorney, shall be recorded on the title of the affected property with the Island County Auditor's Office.

2. Dredging and Disposal

a. Applicability

Dredging is the removal or displacement of earth or sediments such as gravel, sand, mud or silt and/or other materials or debris from any water body. In a marine shoreline setting, dredging is normally done for specific purposes or uses such as deepening a navigational channel or maintaining moorage.

Dredge material is disposed of on land or into water bodies and may be intended for the purpose of creating new or additional lands for other uses. Dredge spoil varies from clean river sand to organic sludge. While some of this material is deposited on land, a significant portion is dumped, intentionally or unintentionally, back into the water or immediately adjacent to the water.

In most cases, dredging occurs in shallow areas and may disturb the aquatic environment in the following ways: (1) temporary reduction of water clarity from suspended sediments, (2) loss of aquatic plants and animals by direct removal or from the sedimentation of suspended materials, (3) alteration of the nutrient and oxygen levels of the water column, and (4) suspension of toxic materials from the sediments into the water column.

b. Policies

1. In all cases, dredging operations should be planned and conducted to protect and maintain existing aquatic habitat and other shoreline uses, properties, and values. Proposals that include dredging should provide mitigation to achieve no net loss of shoreline ecological functions.
2. When allowed, dredging and dredge material disposal should be limited to the minimum amount necessary.
3. Dredging waterward of the ordinary high water mark for the primary purpose of obtaining fill should not be allowed, except as part of a restoration or environmental cleanup project.
4. The City may impose limitations on dredging activities, such as limited operating hours, time periods, and requirements for buffer strips at the site.

c. *Regulations*

1. Dredging and disposal of dredge material shall avoid, and minimize significant ecological impact; impacts that cannot be avoided shall be mitigated to achieve no net loss of ecological processes and functions.
2. New development siting and design shall avoid, where feasible, and minimize the need for dredging.
3. Dredging may be permitted as follows:
    a. When necessary to support a water-dependent use;
    b. For expansion or alteration of public utility facilities;
    c. As part of mitigation actions, environmental restoration and habitat enhancement projects;
    d. When technical information demonstrates water circulation, littoral drift, aquatic life and water quality will not be substantially impaired;
    e. When other solutions would result in greater environmental impact;
    f. As part of an approved habitat improvement project;
    g. If it improves water quality; and
    h. When applicable permits of other local, state and federal agencies have been obtained.
4. Maintenance dredging associated with a water-dependent use, including existing navigation channels, shall be restricted to maintaining the previously dredged and/or existing authorized location, depth and width.
5. Dredging for the primary purpose of obtaining fill or construction material is prohibited, except for projects associated with a significant MTCA or CERCLA restoration effort approved by a shoreline CUP. When dredging is allowed for fill materials for a restoration project, placement of fill must be waterward of the OHWM.
6. Proposals for dredging and dredge disposal shall include details on all feasible mitigation measures to protect aquatic habitats. All dredging related to improvements for the Marina shall occur in compliance with Department of the Army Permit NWS-2007-951-NO. Dredging and dredge disposal shall not create a net loss of shoreline ecological functions.
7. Dredging material which will not subsequently cause violation of State Water Quality Standards may be used in permitted landfill projects.
8. Excavation on beaches below the OHWM in lands covered by water constitutes dredging and shall include precautions to prevent the migration of fine grain sediments, disturbed by the excavation, onto adjacent beach areas. Excavations on beaches shall be backfilled promptly using material of similar composition and similar or coarser grain size.
9. Dredging operations shall be designed and scheduled to avoid impacts to fish, including impacts to fish rearing, feeding and spawning.

10. Depositing dredge materials in water areas within the jurisdiction of this SMP shall be prohibited, except where it is being used as part of a comprehensive ecological restoration project.
11. Where feasible, dredging shall utilize techniques (such as hydraulic dredging instead of agitation dredging) that cause minimal dispersal and broadcast of bottom material.
12. Limitations may be imposed on dredging activities, such as limited operating hours, time periods, and requirements for buffer strips at the site.

3. Fill

a. Applicability

Fill is the placement of soil, sand, rock, gravel, sediment, earth retaining structures or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

Fill is usually considered in locations where the water is shallow and where rooted vegetation often occurs. In their natural condition, these same areas provide valuable habitat for fish and wildlife feeding, breeding, and shelter. Biologically, the shallow vegetated areas tend to be highly productive portions of the shoreline. For these reasons, governmental agencies and scientific experts have generally sought to prohibit or restrict fill.

The policies contained herein are intended to focus on the aspects of natural systems affected by man-made fill, cuts, excavations and site grading actions, while at the same time recognizing the community's needs.

Fill occurring on dry land landward of the OHWM which does not exceed a cost of five thousand seven hundred eighteen (5,718) dollars or 250 cubic yards of material (per WAC 173-27-040), does not require a shoreline substantial development permit, as noted elsewhere in this Master Program. This development, however, must comply with all other applicable policies and regulations as defined in this Master Program.

b. Policies

1. Fills should be permitted in all shoreline environments only when tied to a specific development proposal that is permitted by the master program, and when they are located, designed and constructed to protect shoreline ecological functions and ecosystem-wide processes.
2. Where permitted, fill coverage should be the minimum necessary to provide for the proposed use.
3. In evaluating fill projects, factors such as current and potential public use of the shoreline and water surface area, water flow and drainage, water quality and habitat should be considered and protected to the maximum extent feasible.

4. Fills waterward of the OHWM should be restricted to the minimum necessary to support water-dependent uses, public access, cleanup and disposal of contaminated sediments as part of an interagency clean-up plan, disposal of dredged sediments in accordance with DNR rules, expansion or alteration of transportation facilities of statewide significance when no other alternatives are feasible, and for mitigation actions, environmental restoration and enhancement projects, and only when other solutions would result in greater environmental impact.

5. Shoreline fills should be designed and located so that there will be no significant damage to existing ecological systems or result in hazard to adjacent life, property, or natural resource systems.

c. Regulations

1. Fill proposals must demonstrate, at a minimum, that they will result in no net loss of shoreline ecological functions.

2. Fill waterward of the OHWM proposed as part of a soft shoreline stabilization design associated with an approved shoreline use or as part of an approved mitigation or restoration project shall be permitted in all shoreline environments. All other proposed fill waterward of the OHWM shall require a conditional use permit and shall be restricted to the minimum necessary to:

   a. Support water-dependent uses,

   b. Provide public access,

   c. Allow for the remediation and disposal of contaminated sediments as part of an interagency clean-up plan,

   d. Allow the disposal of dredged sediments in accordance with DNR rules, or

   e. Provide for the expansion or alteration of transportation facilities of statewide significance when no other alternatives are feasible.

3. Fills shall be designed, constructed, and maintained to prevent, minimize, and control material movement, erosion, and sedimentation from the affected area.

4. All perimeters of fills shall be provided with vegetation, retaining walls, or other satisfactory mechanisms for erosion prevention and sediment capture that are consistent with shoreline stabilization standards and all other standards of this SMP.

5. Fill shall be permitted only where it is demonstrated that the proposed action will not:

   a. Result in significant damage to water quality, fish, aquatic habitat, and/or wildlife habitat; or

   b. Adversely alter natural drainage and circulation patterns, or significantly reduce flood water holding capabilities.

6. Refuse disposal sites, solid waste disposal sites, or sanitary fills shall be prohibited within the shoreline jurisdiction.

7. Any placement or removal of materials landward of the OHWM shall comply with the provisions of Vegetation Conservation of this SMP.

4. Piers, Docks, Floats, Mooring Balls and Mooring Buoys

a. Applicability

The purpose of this section is to provide policies and regulations for the location and design of private docks and piers, floats, and moorage buoys. Overwater structures is a general term for a structure or group of structures that provides boat moorage or other uses. An overwater structure, commonly known as a dock, may be made up of piers (which are structures on fixed piles) and floats (which float on the water's surface and are typically attached to piles so that they may rise and fall with changes in the water's elevation). Design standards for overwater structures, mooring balls, and mooring buoys apply to private docks, as well as moorage structures within a marina, except as noted in the specific policies and regulations below. Please also see Section 5.D.5, Boating Facilities for use policies and regulations that apply to public and community facilities.

b. Policies

1. Construction of overwater structures should be limited to joint-use and public access facilities in the Maritime, Urban Mixed Use, and Urban Public Facility environments and marina facilities in the Maritime environment.

2. Mooring balls and mooring buoys are preferred over piers or docks because they generally have less ecological impact. Locate and design ball and buoy installation to avoid or minimize adverse impacts on ecological functions.

3. Piers should be preferred over floating docks where significant littoral drift does not occur and where scenic values will not be impaired.

4. Because opportunities for private overwater structures are limited and confined to less suitable and more environmentally sensitive areas of the shoreline, these features should be carefully regulated through specific standards, outlined in Regulations 1-10 in Subsection c below.

5. Public overwater structures and marina development on public lands requires greater flexibility to account for more diverse opportunities, evolving public needs, and compatibility with the evolving requirements of federal and state agencies for these facilities, including the Department of Natural Resources, which is the leasor for the marina.

6. Regardless of the level of specificity and flexibility for different types of overwater structures (e.g. private, joint use, public and marina) provided in the standards in this SMP, construction and operation of all overwater structures should demonstrate adherence to mitigation sequencing and no net loss.

7. Piers, docks, floats, mooring balls, and mooring buoys outside of marinas should not allow moorage of houseboats or live aboard vessels.

8. To reduce the amount of over-water and in-water structures and reduce potential long-term impacts associated with those structures, mooring balls and mooring buoys are preferred over docks in residential areas, and shared moorage facilities (either joint-use docks or community docks) are preferred over single-user moorage.

9. Moorage should be sited and designed to avoid adversely impacting shoreline ecological functions or processes, particularly fish habitat. Any unavoidable impacts to ecological functions should be mitigated.

10. 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.

11. Moorage should be restricted to the minimum size necessary to meet the needs of the proposed use. The length, width and height of over-water structures and other developments regulated by this section should be no greater than that required for safety and practicality for the primary use.

12. Moorage should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long term, and have been approved by applicable state agencies.

c. Regulations

1. General

   a. Piers, docks, moorage balls, mooring buoys and mooring piles, boatlifts and canopies are hereby referred to as overwater structures and may only be developed in those shoreline environments where they are allowed pursuant to Table 3.

   b. Commercial, public and community moorage facilities, other than those serving four or fewer single-family residences, shall be subject to all requirements contained in Section 4.D.3, Boating Facilities, as well as those contained in this Section, except as specifically noted. Boating facilities with more than ten moorage spaces shall constitute a marina for the purposes of the policies and regulations contained in this SMP.

   c. Overwater structures, including mooring balls and mooring buoys, outside of marinas shall not be used for residential purposes (i.e. liveaboards).

   d. Overwater structures may only be developed and used when they are accessory to existing dwelling units on waterfront lots and are used for water-dependent uses (e.g. access to watercraft), or they are part of an approved public access or marina development.

   e. Only one overwater structure (which may include pier and float combinations) shall be allowed on a lot, other than a marina or water-dependent commercial, industrial or port use.

f. Overwater structures outside of marinas shall be limited to piers, floats and pier/float combinations. Docks which float entirely on the surface of the water shall not be permitted unless they are necessary and appurtenant to a boat launch or a water-dependent industrial or commercial use.

g. Use of privately owned overwater structures, mooring balls and mooring buoys is limited to the residents and guests of the waterfront lots to which the moorage is accessory. Outside of marinas, moorage space, including moorage balls and mooring buoys, shall not be leased, rented, or sold.

h. In the following circumstances, a joint-use pier shall be required:

   i. On lots subdivided to create additional lots with waterfront access rights.

   ii. New residential development of two or more dwelling units with waterfront access rights.

i. Piers, docks, boatlifts, mooring balls, mooring buoys and moorage piles shall be designed and located using mitigation sequencing principles and shall not result in net loss of ecological functions.

2. Setbacks

   a. Piers and docks, and moorage buoys located outside a marina and serving only a single property shall maintain a 12-foot setback from the side property lines.

   b. Joint-use structures may abut property lines provided the property owners sharing the moorage facility have mutually agreed to the structure location. To insure that a pier is shared, each property owner must sign a statement in a form acceptable to the City Attorney, stating that the pier or dock is used by the other property. The applicant must file this statement with the Island County Auditor's Office to run with the properties.

3. General Standards

   a. Proposed piers and docks that do not comply with the dimensional standards contained in this section may only be approved if they obtain a Shoreline Variance under the provisions of 6.G.

   b. All piers and docks and other developments regulated by this section shall be constructed and maintained in a safe and sound condition. Abandoned or unsafe structures shall be removed or repaired promptly by the owner.

   c. All floating docks shall incorporate stops to prevent grounding of the dock on tidelands during low tide.

   d. Temporary moorages shall be permitted for vessels used in the construction of shoreline facilities. The design and construction of temporary moorages shall be such that upon termination of the project, the aquatic habitat in the affected area can be returned to its original (pre-construction) condition.

e. The following new structures and improvements are not permitted outside of public marinas, but may be maintained where existing and provided their removal is not a condition of a permit:

   i. Boathouses, or other walled moorage.

   ii. Skirting on any structure.

f. Piers and docks shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish of all structures and windows shall be generally non-reflective.

g. All utility and service lines located waterward of the OHWM should be sited and designed to reduce their visibility, while maintaining safety. All utility and service lines located upland of the OHWM shall be underground, where feasible.

4. New Pier or Dock Dimensional Standards. New piers or docks may be permitted as indicated in Table 2, subject to the following dimensional regulations:

   a. Docks, piers and floats shall not extend far enough from shore to become an impediment to navigation.

   b. The maximum width of any new dock or pier, including ells, shall not exceed 6 feet, unless the dock or pier provides public access or a water-dependent commercial, marina, industrial or port use requires a wider structure.

   c. Docks and piers shall be the shortest length necessary to provide moorage for the intended boating use. In no case shall a dock or pier extend farther from shore than necessary to achieve a water depth of 10 feet.

5. Floats. All floats located outside of marinas, either associated with a pier or otherwise, must meet the following requirements.

   a. Float width shall not exceed 8 feet and float length shall not exceed 60 feet, unless the float provides public access, or a water-dependent commercial, industrial or port use requires a wider structure.

   b. Floats shall be suspended a minimum of 1 foot above the tidal substrate at all tide levels. Where feasible, float stops that fully support the entire float shall be used.

   c. If the float is removed seasonally, the applicant shall indicate an upland storage location that is outside of any required vegetation area.

   d. Floats shall be held in place with lines anchored with a helical screw or "duckbill" anchor, piling with stoppers and/or float support/stub pilings.

   e. Floatation shall be fully enclosed and contained in a shell that prevents breakup or loss of material into the water.

6. New Pier or Dock Decking Materials Standards. New piers or docks outside of marinas shall be subject to the following regulations regarding approved decking materials.

a. To allow transmission of light to the water, dock and pier decking shall incorporate open grating to result in open area equal to 24% or greater of the total surface area of the dock or pier. This can be achieved by installing grating with 60% open area on at least 40% of the pier or by grating a larger percentage of the pier with grating with openings of less than 60%.

b. For all sections of the pier than span upper intertidal obligate vegetation, including salt marsh vegetation, that section must be fully grated with grating having 60% open area.

c. Grated portions of piers and docks shall not be used for storage of any items that may block light transmission, and grating shall be kept clean of mud, algae, or debris.

d. These standards may be modified if the Shoreline Administrator determines that they are not feasible for a water-dependent commercial, industrial or port use.

7. Mitigation. All proposals involving new piers or docks outside of marinas are subject to the following mitigation requirements:

a. Any existing in-water and overwater structures shall be removed if they are associated with either a moorage structure or other recreational use that is located within 30 feet of the OHWM.

b. Emergent vegetation shall be planted waterward of the OHWM, unless the City determines that it is not appropriate or feasible.

c. Native riparian vegetation shall be planted in at least 75 percent of the nearshore riparian area located along the water's edge. The vegetated portion of the nearshore riparian area shall average ten (10) feet in depth from the OHWM, but may be a minimum of five (5) feet wide to allow for variation in landscape bed shape and plant placement. Joint-use piers required under the provisions of this Chapter shall require a vegetative riparian zone along all properties sharing the pier. Other joint-use piers shall be required to provide the same mitigation as required for one property, which can be split evenly between the subject properties.

d. Restoration of native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. At least three (3) trees per 100 linear feet of shoreline and 60% shrubs must be included in the plan, unless the Shoreline Administrator determines that site specific conditions warrant a different mix of vegetation. Plant materials must be native. Plant density and spacing shall be appropriate for the site and commensurate with spacing recommended for each individual species proposed.

e. An alternative planting plan or mitigation measure in lieu of meeting these requirements shall be allowed if approved by other state and federal agencies, or the applicant demonstrates that an alternative measure provides equivalent or greater ecological function.

f. In addition, the City shall accept existing native trees, shrubs and groundcover as meeting the requirements of this section, including vegetation previously installed as part of a prior development activity, provided that the existing vegetation provides a landscape strip at least as effective in protecting shoreline ecological functions as the required vegetation.

g. In addition to a native planting plan, a 5-year vegetation maintenance and monitoring plan shall be submitted to the City for approval. Copies of reports that are submitted to state or federal agencies in compliance with permit approvals may be submitted in lieu of a separate report to the City, provided that the reports address a 5-year maintenance and monitoring plan. The monitoring plan shall include the following performance standards:

   i. Preparation of as-built drawings after installation of the mitigation plantings;

   ii. Annual monitoring reports for 5 years that include written and photographic documentation on tree and shrub mortality, subject to the following success criteria:

      1. One-hundred (100) percent survival of all planted native trees and shrubs during the first two (2) years after planting; and

      2. One hundred (100) percent survival of trees and eighty (80) percent survival of remaining native plants in years three (3) through five (5).

   iii. Woody debris existing on-site or contributed to the site as part of the mitigation efforts shall not be removed.

8. The following requirements apply to all overwater structures, including those located within a marina.

   a. Wood treated with toxic compounds shall not be used for decking, pilings or other in-water components.

   b. Tires shall not be used on moorage facilities, even for fenders.

   c. Foam material should be encapsulated so it cannot break up and be released into water.

   d. New or reconfigured structures shall be sited to avoid impacts to forage fish habitat.

   e. Where feasible, overwater structures should be located at least 8 meters (27 feet) from native aquatic vegetation or the distance that the structure will cast shade, whichever is greater. Otherwise, standard mitigation sequencing and no net loss applies.

   f. Where feasible, new activities and structures shall avoid existing native vegetation attached to or rooted in the substrate.

   g. Floating or suspended watercraft lifts should be more than 9 feet waterward of the OHWM.

   h. Where liveaboards are allowed, pump out facilities shall be available.

9. Repair and Replacement of Existing Pier or Dock

    a. Repair of an existing dock or pier that replaces only decking or decking substructure and less than 50% of existing pilings shall be considered minor repair and permitted consistent with all other applicable codes and regulations, including best management practices and mitigation sequencing under this SMP. If cumulative minor repairs of an existing pier or dock over three year exceed the threshold described above, the repair proposal shall be reviewed as a replacement.

    b. Repair of an existing dock that exceeds the threshold established in 5.C.4.c.6.a above shall be considered a replacement. Replacement docks and piers shall be required to meet all dimensional, design, and mitigation standards associated with a new pier or dock.

10. Boat Lifts, Covered Moorage and Boat Canopies.

    a. Covered moorage with a solid roof and structural elements is not permitted outside of marinas and water-dependent commercial, industrial or port facilities in the Maritime shoreline environment.

    b. Boat lifts and boat lift canopies are permitted where allowed in Section 5.B, Table III.

    c. Boat lift canopies shall be made of translucent material.

11. Mooring Balls and Buoys. Mooring balls and buoys shall be permitted subject to the following standards.

    a. Land based retrieval lines from mooring balls and buoys shall be prohibited.

    b. Mooring balls and buoys shall be located no closer than 100 feet from navigation channels, another mooring ball or buoy, overwater structure or other fixed navigational obstruction, unless there is a written agreement allowing for the encroachment with the parties affected, including the subtidal property owner.

    c. Balls and buoys shall be marked with the responsible party or agency's name, address and telephone number.

    d. Balls and buoys shall comply with the requirements of all applicable regulatory agencies (e.g. WAC 332-30-148).

    e. Helical anchors or other designs that minimize the footprint on the seabed are to be used to the greatest extent practicable.

    f. Mooring balls and buoys shall be located, designed, constructed and operated so as to minimize impacts to shoreline resources and unnecessary interference with the right of adjacent property owners and adjacent shoreline and water uses. To this end, applications for buoys shall demonstrate conformance with the following criteria. The proposal:

        i. Is located with regard to favorable conditions related to wind, current and bathymetrics.

ii. Complies with all federal, state, regional and local requirements regarding water quality including, but not limited to, Department of Health Standards and environmental policies and regulations contained in this SMP.

iii. Does not significantly interfere with navigation.

iv. Demonstrates that the ball or buoy system proposed is adequate to withstand the maximum expected physical stress that the environment and moored craft will place on the buoy.

v. Demonstrates compliance with mitigation sequencing techniques. When impacts cannot be avoided, impacts must be mitigated to assure no net loss of economical function necessary to sustain shoreline resources.

5. Boat Launches (Including Boat Ramps and Rails)

a. Applicability

Boat launches are slabs, pads, planks, rails, cranes or graded slopes used for launching boats by means of a trailer, hand or mechanical device.

b. Policies

1. Maintain, improve, and where appropriate, expand, boat launch capacity for future Port, commercial and recreational uses.
2. Install, maintain and rebuild boat launches in such a manner as to minimize adverse impacts on natural and physical shoreline resources.

c. Regulations

1. Boat launches shall be limited to public or water-dependent commercial, industrial and port facilities in those locations where they are allowed pursuant to Section 5.B, Table III.
2. Boat launches shall be subject to the requirements contained in Section 4.D.3, Boating Facilities.

6. Shoreline Restoration and Ecological Enhancement

a. Applicability

Shoreline habitat and natural systems enhancement and restoration projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.

b. *Policies*

1. Restoration and enhancement of shorelines should be designed using principles of landscape and conservation ecology and should restore or enhance chemical, physical, and biological watershed processes that create and sustain shoreline habitat structures and functions.
2. Restoration and enhancement actions should improve shoreline ecological functions and processes and should target meeting the needs of sensitive plant, fish and wildlife species as identified by Washington Department of Fish and Wildlife, Washington Department of Natural Resources, National Marine Fisheries Service and/or U.S. Fish and Wildlife Service.
3. The City should, and private entities are encouraged to, seek funding from State, Federal, private and other sources to implement restoration, enhancement, and acquisition projects, particularly those that are identified in the Restoration Plan of this SMP.
4. The City should develop processing guidelines that will streamline the review of restoration-only projects.
5. Allow for the use of tax incentive programs, mitigation banking, grants, land swaps, or other programs, as they are developed, to encourage restoration and enhancement of shoreline ecological functions and to protect habitat for fish, wildlife and plants.

c. *Regulations*

1. Purpose - Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.
2. Covered Activities – The following actions are allowed under this section, provided they first meet the purpose stated in 5.C.5.c.1 above:
    a. Establishment or enhancement of native vegetation.
    b. Removal of non-native or invasive plants upland of the OHWM, including only those identified as noxious weeds on Island County's published Noxious Weed List, unless otherwise authorized by the City.
    c. Conversion of hard structural shoreline stabilization to soft shoreline stabilization, including associated clearing, dredging and filling necessary to implement the conversion, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.
    d. Implementation of any project or activity identified in the City's Restoration Plan.

7. Breakwaters, Jetties, and Groins

a. *Applicability*

Breakwaters, jetties, and groins are generally intended 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.

b. Policies

1. Breakwaters, jetties and groins should only be permitted where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose and where protection from strong wave action is essential. Breakwaters, jetties, and groins should not be permitted unless the applicant can demonstrate that construction would result in a long-term public benefit that outweighs adverse impacts on natural shoreline processes.
2. Breakwaters, jetties and groins should be located and designed to achieve no net loss of ecological functions.
3. Floating breakwaters should be preferred over rigid breakwaters.

c. Regulations

1. Breakwaters, jetties, and groins may only be permitted where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose. Except for those structures installed to protect or restore ecological functions, breakwaters, jetties, and groins must obtain a Shoreline Conditional Use Permit in those environments where they are allowed.
2. Design and construction of breakwater, jetties, and groins shall address impacts to ecological functions and critical areas. Mitigation sequencing and appropriate mitigation measures shall be required.
3. Design Standards.
    a. All breakwaters, jetties or groins must be designed and constructed under the supervision of a civil engineer or a similarly qualified professional. As part of the application, the engineer or the other professional designing the breakwater, jetty or groin must certify that it is the smallest feasible structure to meet the requirements of this Chapter and accomplish its purpose and that the design will result in the minimum feasible adverse impacts upon the environment, nearby waterfront properties and navigation.
    b. Breakwaters shall be designed and constructed to minimize alterations to the movement of sand, circulation of water, and biological resources
    c. Applications for construction of rigid breakwaters must demonstrate that installation of a floating breakwater or open-pile design would either not be feasible at the proposed location or would not provide adequate protection from wave action.
    d. Breakwater designs shall minimize alterations to sand and gravel transport along the shoreline, unless such impediment can be demonstrated to be beneficial.

Chapter 6: **ADMINISTRATION**

A. Purpose and Applicability

This Chapter establishes an administrative system assigning responsibilities for implementation of the Master Program and shoreline permit review, prescribing an orderly process by which to review proposals and permit applications, and ensuring that all persons affected by this Master Program are treated in a fair and equitable manner. All proposed shoreline uses and development, including those that do not require a shoreline permit, must conform to the Shoreline Management Act and to the policies and regulations of this SMP. Where inconsistencies or conflicts with other sections of the Oak Harbor Municipal Code occur, this section shall prevail.

B. Shoreline Administrator

1. The City's Development Services Director, or designee, is hereby vested with:
    a. Overall responsibility for administering the Shoreline Management Act and this Master Program;
    b. Authority to approve, approve with conditions, or deny shoreline permit decisions in accordance with the policies and provisions of this Master Program; and
    c. Authority to grant statements of exemption from shoreline substantial development permits in accordance with the policies and provisions of this Master Program.
2. The duties and responsibilities of the Shoreline Administrator shall include:
    a. Preparing and using application forms deemed essential for the administration of this Master Program.
    b. Advising interested citizens and applicants of the goals, policies, regulations, and procedures of this Master Program.
    c. Making administrative decisions and interpretations of the policies and regulations of this Master Program and the Shoreline Management Act.
    d. Collecting applicable fees, as established by the City in OHMC 3.63 and 3.64.
    e. Determining that all applications and necessary information and materials are provided.
    f. Conducting field inspections, as necessary.
    g. Reviewing, insofar as possible, all provided and related information deemed necessary for review of shoreline master program decisions.
    h. Determining if a shoreline substantial development permit, conditional use permit or variance permit is required.
    i. Providing copies of permit applications to relevant staff and agencies for review and comment.
    j. Conducting a thorough review and analysis of shoreline exemption, substantial development and conditional use permit applications; reviewing other staff and agency comments; making

written findings and conclusions; and approving, approving with conditions, or denying such exemptions and permits.

k. Submitting shoreline variance permit applications, and when determined to be appropriate, substantial development and conditional use permit applications, and written recommendations and findings on such permits to the City's Hearing Examiner for consideration and action.

l. Investigating, developing, and proposing amendments to this Master Program as deemed necessary to more effectively and equitably achieve its goals and policies.

m. Submitting shoreline master program amendment applications and written recommendations and findings on such permits to the Hearing Examiner for recommendation to the City Council.

n. Assuring that proper notice is given to appropriate persons and the public for all permit comment periods and hearings, consistent with WAC 173-27-110.

o. Providing technical and administrative assistance to the City's Hearing Examiner and City Council as required for effective and equitable implementation of this program and the Act.

p. Enforcing and seeking remedies for alleged violations of this program, the provisions of the Act and this Master Program or of conditions of any approved shoreline permit issued by the City of Oak Harbor. The Shoreline Administrator may delegate these enforcement duties to a designated representative.

q. Acting as the primary liaison between local and state agencies in the administration of the Shoreline Management Act and this Master Program.

r. Forwarding shoreline permits to the Department of Ecology for filing or action.

C. Review Criteria for All Development

1. No authorization to undertake use of or development on shorelines of the state shall be granted by the local government unless, upon review, the use or development is determined to be consistent with the policies and provisions of the Shoreline Management Act and this Master Program.
2. No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same, and then only when overriding considerations of the public interest will be served.

D. Permit Application Requirements

A complete application for a substantial development, conditional use, or variance permit shall contain, as a minimum, the following information:

1. The name, address and phone number of the applicant. The applicant should be the owner of the property or the primary proponent of the project, and not the representative of the owner or representative of the primary proponent.

2. The name, address and phone number of the applicant's representative if other than the applicant.
3. The name, address and phone number of the property owner, if other than the applicant.
4. Location of the property. This shall, at a minimum, include the property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
5. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
6. A general description of the property as it now exists including its physical characteristics and improvements and structures.
7. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.
8. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:
    a. The boundary of the parcel(s) of land upon which the development is proposed.
    b. The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location, provided that, for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark, the mark shall be located precisely, and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.
    c. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
    d. A delineation of all wetland areas that will be altered or used as a part of the development.
    e. A general indication of the character of vegetation found on the site.
    f. The dimensions and locations of all existing and proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
    g. Where applicable, a landscaping plan for the project consistent with the requirements of OHMC 19.46.100 and this SMP.
    h. Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.

i. Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent.

j. Quantity, composition and destination of any excavated or dredged material.

k. A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.

l. Where applicable under Chapter 3, Section B.6.c.21, a depiction of the impacts to views from existing residential uses and public areas.

m. On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

E. Permit Process

1. Applicants shall apply for shoreline substantial development, variance, and conditional use permits on forms provided by the City.

2. Shoreline substantial development and conditional use permits are a Review Process II application and shall be processed and subject to the applicable regulations of Chapter 18.20.240 OHMC. Shoreline variances are classified as Review Process III applications and shall be subject to the requirements of Chapter 18.20.250 OHMC. The Shoreline Administrator may refer a substantial development permit or conditional use application to the Hearing Examiner for a public hearing and decision, when requested by the Applicant or when the Shoreline Administrator determines that such action is prudent based on the significance of public comments received, or based on the scale and/or scope of the proposal.

3. Public notice. A notice of application shall be issued for all shoreline permit applications as provided for in Chapter 18.20.370 OHMC, which is consistent with WAC 173-27-110. The public comment period for the notice of application for a shoreline permit shall be not less than thirty (30) days, per WAC 173-27-1 10(2)(e).

4. Application review. The Administrator shall make decisions on applications for substantial development permits, and recommendations on applications for conditional use and variance permits based upon: (1) the policies and procedures of the Shoreline Management Act and related sections of the Washington Administrative Code; and (2) this SMP.

5. Hearing Examiner action. The Hearing Examiner shall review an application for a shoreline variance and shoreline conditional use permit and make decisions based upon: (1) this SMP; (2) the policies and procedures of the Shoreline Management Act and related sections of the Washington Administrative Code; (3) written and oral comments from interested persons, and (4) reports from the Administrator.

6. Filing with Department of Ecology. All applications for a permit or permit revision shall be submitted to the Department of Ecology, as required by WAC 173-27-130 or as subsequently amended.

7. After City approval of a Conditional Use or Shoreline Variance permit, the City shall submit the permit to the Department of Ecology for the Department's approval, approval with conditions, or denial, as provided in WAC 173-27-200. The Department shall transmit its final decision to the City and the applicant within thirty (30) calendar days of the date of submittal by the City.

8. Hold on Construction. Each permit issued by the City shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one (21) days from the date of filing with the Department of Ecology, per WAC 173-27-190 or as subsequently amended. "Date of filing" of the City's final decision on substantial development permits differs from date of filing for a Conditional Use permit or variance. In the case of a substantial development permit, the date of filing is the date the City transmits its decision on the permit to the Department of Ecology. In the case of a variance or Conditional Use permit, the "date of filing" means the date the Department of Ecology's final order on the permit is transmitted to the City.

9. Duration of permits. Construction, or the use or activity, shall commence within two (2) years after approval of the permits. Authorization to conduct development activities shall terminate within five (5) years after the effective date of a shoreline permit. The Administrator may authorize a single extension before the end of either of these time periods, with prior notice to parties of record and the Department of Ecology, for up to one (1) year based on reasonable factors.

10. Compliance with permit conditions. When permit approval includes conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity.

11. The application of this Program should be consistent with constitutional and other legal limitations on the regulation of private property. The Administrator should give adequate consideration to setback averaging, mitigation measures, variances, and other flexibility allowed within the program to prevent undue or unreasonable hardships upon property owners.

F. Substantial Development Permits and Exemptions

1. Permits Required.

   a. A development, use, or activity shall not be undertaken within the jurisdiction of the SMA, Chapter 90.58 RCW, and this shoreline Master Program unless it is consistent with the policy and procedures of the SMA, applicable state regulations and this shoreline Master Program.

   b. A substantial development shall not be undertaken within the jurisdiction of the SMA, Chapter 90.58 RCW, and this Shoreline Master Program unless a shoreline substantial development permit has been obtained and the appeal period has been completed and any appeals have been resolved and/or the applicant has been given permission to proceed by the proper authority.

   c. Any person wishing to undertake substantial development or exempt development on shorelines shall apply to the Shoreline Administrator for an appropriate shoreline permit or statement of exemption.

   d. If a development, use or activity is listed as a conditional use by the shoreline master program, it shall not be undertaken within shoreline jurisdiction unless a shoreline conditional use permit has

been obtained, the appeal period has been completed, any appeals have been resolved, and/or the applicant has been given permission to proceed by the proper authority.

e. If a development, use or activity cannot comply with the regulations of the master program, a shoreline variance must be obtained before commencement of development or construction, the beginning the use or activity.

2. Determination of Exemption. The following guidelines shall supplement Regulation 3 below when determining whether or not a development proposal is exempt from the substantial shoreline development permit.

   a. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

   b. An exemption from the substantial development permit process is not an exemption from compliance with the Shoreline Management Act or this Shoreline Master Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Shoreline Master Program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to this Shoreline Master Program or is an unlisted use, must obtain a conditional use permit (see Section G below) even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of this Shoreline Master Program, such development or use can only be authorized by approval of a variance (see Section F below).

   c. The burden of proof that a development or use is exempt from the permit process is on the applicant.

   d. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

   e. The City's Shoreline Administrator may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the Shoreline Management Act and this Shoreline Master Program.

3. List of Exemptions. The following list outlines common exemptions that shall not be considered substantial developments for the purpose of this Master Program. This list of exceptions is further articulated and supplemented by provisions of WAC 173-27-040, as amended.

   a. Any development of which the total cost or fair market value, whichever is higher, is below the threshold established by the Shoreline Management Act and any amendments to the Act, if such development does not materially interfere with the normal public use of the water or shoreline. The Substantial Development dollar threshold on the adoption date of this Shoreline Master Program is $6,416. Under current law, the dollar threshold will be recalculated every five (5) years by the Office of Financial Management (OFM). OFM will post updated dollar thresholds in the Washington State Register. See RCW 90.58.030(3)(e). The Legislature may change the dollar threshold at any time.

b. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements. "Normal maintenance" shall be defined by the Act.

c. Construction of a normal protective bulkhead common to single family residences; provided that such bulkheads are located 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.

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 which requires immediate action within a time too short to allow full compliance with the Act or this Master Program. Emergency construction does not include development of new permanent protective structures where none previously existed.

e. Construction or modification of navigational aids such as channel markers and anchor buoys.

f. Construction 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 thirty-five (35) feet above average grade level and meets all requirements of the City of Oak Harbor and State agency(s) with jurisdiction. "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. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill waterward of the ordinary high water mark or in any wetland. Construction authorized under this exemption shall be located landward of the ordinary high water mark and shall be subject to required setbacks.

g. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exemption applies if the fair market value of the dock does not exceed the threshold established by the Shoreline Management Act, as amended.

h. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with the normal public use of the surface waters;

i. Any project with certification from the Governor pursuant to Chapter 80.50 RCW.

j. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under WAC 173-27-040(2)(m).

k. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020.

l. Watershed restoration projects as defined in WAC 173-27-040(2)(o).

m. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the conditions identified in WAC 173-27-040(2)(p) apply.

4. Whenever a development falls within the exemption criteria outlined above and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the City's Shoreline Administrator shall prepare a Statement of Exemption per the requirements of WAC 173-27-050 and transmit a copy to both the applicant and the Washington State Department of Ecology. Exempt development as defined herein shall not require a substantial development permit, but may require a conditional use permit, variance and/or a Statement of Exemption.

5. Before determining that a proposal is exempt, the City's Shoreline Administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria. The exemption granted may be conditioned to ensure that the activity is consistent with the Master Program and the Shoreline Management Act.

G. Variances

1. Purpose

The purpose of a variance is strictly limited to granting relief to specific bulk dimensional, or performance standards set forth in the Master Program, and where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant or thwart the SMA policies as stated in RCW 90.58.020.

Construction pursuant to this permit shall not begin nor can construction be authorized except as provided in RCW 90.58.020. In all instances, extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

2. Shoreline Variance Application

An application for a Shoreline variance shall be submitted on a form provided by the City accompanied by maps, completed environmental checklist, applicable fees, and any other information specified in this Master Program or requested by the Administrator. An applicant for a substantial development permit who wishes to request a variance shall submit the variance application and the substantial development permit application simultaneously.

3. Shoreline Variance Criteria

a. Variances for development that will be located landward of the ordinary high water mark and landward of any wetland may be authorized provided the applicant can demonstrate consistency with the following variance criteria as listed in WAC 173-27-170:

   i. That the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes, or significantly interferes with, reasonable use of the property.

ii. That the hardship described above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the Master Program and not, for example, from deed restrictions or the applicant's own actions.

iii. That the design of the project is compatible with other permitted activities within the area and with uses planned for the area under the Comprehensive Plan and Master Program and will not cause adverse impacts to the shoreline environment.

iv. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

v. That the variance requested is the minimum necessary to afford relief.

vi. That the public interest will suffer no substantial detrimental effect.

b. Variances for a development and/or uses that will be located waterward of the ordinary high water mark or within any wetland may be authorized provided the applicant can demonstrate all of the following:

i. That the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes all reasonable use of the property.

ii. That the proposal is consistent with the criteria established under subsection Chapter 6, subsection G.3.a.i through G.3.a.vi above.

iii. That the public rights of navigation and use of the shorelines will not be adversely affected.

c. In the granting of all variances, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

d. Variances from the use regulations of the Master Program are prohibited.

H. Conditional Use Permit

1. Purpose. The purpose of a conditional use permit is to provide a system within the Master Program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by the City of Oak Harbor or the Department of Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Act and the Master Program. Uses that are specifically prohibited by this Master Program may not be authorized with the approval of a conditional use permit.

2. Conditional Use Permit Criteria. Uses which are classified or set forth as conditional uses in the Master Program may be authorized, provided the applicant demonstrate all of the following conditional use criteria as listed in WAC 173-27-160:

a. That the proposed use is consistent with the policies of RCW 90.58.020 and the Master Program;

b. That the proposed use will not interfere with the normal public use of public shorelines;

c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this Master Program;

d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

e. That the public interest suffers no substantial detrimental effect.

3. In the granting of all conditional use permits, consideration shall be given to the cumulative 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 total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

4. Other uses which are not classified or set forth in this Master Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the Master Program.

5. Uses which are specifically prohibited by the Master Program may not be authorized.

I. Time Requirements of Permit

1. The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized by this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

2. Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

3. Authorization to conduct development activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

4. The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in RCW 90.58.140 subsections (B) and (C) do not include the

time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

5. Revisions to permits may be authorized after original permit authorization has expired, provided that the requested revisions meet all the criteria set forth in WAC 173-27-100. This procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

6. Local government shall notify the department in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended and as described above shall require a new permit application,

J. Nonconforming Development

"Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Act or this Master Program, or amendments thereto, but which does not conform to present regulations or standards of this Master Program. In such cases, the following standards shall apply:

1. Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers, area, bulk, height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses;

2. Uses that were legally established and are nonconforming with regard to the use regulations of the Master Program may continue as legal nonconforming uses. Such uses shall be allowed to expand once to occupy up to an additional fifty (50) percent of the existing floor area occupied by the nonconforming use. Beyond this one-time expansion, minor expansions of up to five (5) percent of the existing floor area may be permitted once per calendar year. In no case shall a non-conforming use be allowed to expand to occupy additional parcels or additional lot area created by boundary line adjustment or lot combination, nor shall a non-conforming use be allowed to expand into an adopted shoreline setback area. In the event that the non-conforming use is located completely or partially within an adopted shoreline setback area, future expansion may not occur waterward of the existing primary structure.

3. A use which is listed as a conditional use, but which existed prior to adoption of the Master Program or any relevant amendment and for which a conditional use permit has not been obtained, shall be considered a nonconforming use. A use which is listed as a conditional use, but which existed prior to the applicability of the Master Program to the site and for which a conditional use permit has not been obtained, shall be considered a nonconforming use.

4. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

5. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:
   a. No reasonable alternative conforming use is practical; and
   b. The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.
   c. In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.
6. A nonconforming structure which is moved horizontally must be brought into conformance with the Master Program and the Act to the maximum extent feasible.
7. Modification or addition to a nonconforming structure shall not increase the building footprint lying within the above described setback area.
8. If a nonconforming structure is intentionally modified and the cost of the proposed development exceeds sixty (60) percent of the fair market value of the replacement cost of the original structure, it shall be required to meet all applicable standards in the SMP.
9. If a nonconforming structure other than a single family home is unintentionally damaged to an extent not exceeding seventy five (75) percent of its real valuation exclusive of foundations, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within one year of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance.
10. Single family homes that are unintentionally damaged may be reconstructed to those configurations, including height, setback, and footprint, existing immediately prior to the time the structure was damaged, regardless of the extent of damage, provided that application is made for the permits necessary to restore the structure within one year of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance.
11. A nonconforming use that is discontinued for a period of twenty-four (24) continuous months shall not be allowed to be re-established as a nonconforming use.
12. An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established prior to the effective date of the Act or the Master Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the Master Program and the Act.

K. Appeals

Any person aggrieved by the granting or denying of a substantial development permit, variance, or conditional use permit, the upholding of an exemption appeal, or by the rescinding of a permit pursuant to

the provisions of this Master Program, may seek review from the State of Washington Shorelines Hearing Board by filing a request for the same within twenty-one (21) days of receipt of the final order and by concurrently filing copies of such request with the Department of Ecology and the Attorney General's office. State Hearings Board regulations are provided in RCW 90.58.180 and Chapter 461-08 WAC. A copy of such appeal notice shall also be filed with the City of Oak Harbor City Clerk.

L. Enforcement and Penalties

All provisions of this Master Program shall be enforced by the Shoreline Administrator and/or a designated representative. The enforcement procedures and penalties contained in WAC Chapter 173-27 and RCW Chapter 90.58 are hereby incorporated by reference.

M. Master Program Review

1. This Master Program shall be periodically reviewed and amendments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations.
2. The City's established permit tracking system, aerial photographs, review of other available data, and field observations as feasible shall be used to periodically evaluate the effectiveness of the Shoreline Master Program in achieving no net loss of shoreline ecological functions with respect to both permitting and exemptions.
3. As part of the required SMP update, an evaluation report assessing the effectiveness of the SMP in achieving no net loss shall be prepared and considered in determining whether policies and regulations are adequate in achieving this requirement.
4. The SMP review and update process shall be consistent with the requirements of WAC 173-26 or its successor and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

N. Amendments to the Master Program

1. Any of the provisions of this Master Program may be amended as provided for in RCW 90.58.120 and .200 and Chapter 173-26 WAC. Any amendments shall also be subject to the procedures in OHMC 19.85.
2. Amendments or revisions to the Master Program, as provided by law, do not become effective until approved by the Department of Ecology.

O. Severability

If any provisions of this Master Program, or its application to any person or legal entity or parcel of land or circumstance, are held invalid, the remainder of the Master Program, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

P. Conflict of Provisions

Should a conflict occur between the provisions of this SMP or between this SMP and the laws, regulations, codes or rules promulgated by any other authority having jurisdiction within the City, the requirement that most supports the purposes and provisions of the Shoreline Management Act, as detailed in RCW 90.58.020 shall apply, as determined by the City, except when constrained by federal or state law.

Chapter 7: **DEFINITIONS**

Accepted arboricultural standards -Those pruning standards approved in the publication "Pruning Standards" published by the International Society of Arboriculture, as the same now exists and may be revised from time to time.

Accessory use or accessory structure - A use incidental and subordinate to the principal use and located on the same lot or in the same building as the principal use.

Act - The Shoreline Management Act (Chapter 90.58 RCW and WAC Chapter 173-27).

Administrator - The City Planning and Community Development Director or his/her designee, charged with the responsibility of administering the shoreline master program.

Agriculture - The cultivation of the soil, production of crops, and/or raising of livestock, including incidental preparation of these products for human use. Agriculture means agricultural uses, practices and activities. In all cases, the use of agriculture related terms shall be consistent with the specific meanings provided in WAC 173-26-020.

Agriculture, Accessory – The cultivation of soil or production of crops in a manner incidental and subordinate to the principal use of the property. Examples include private residential gardens, community gardens, and or pea patches associated with a public park.

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

Anadromous fish - Fish that spawn and rear in freshwater and mature in the marine environment.

Applicant - A person who files an application for a permit and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, or the authorized agent of such a person.

Appurtenance - A structure or development which is necessarily connected to the use and enjoyment of a single family residence and is located landward of the ordinary high water mark and also of the perimeter of any wetland. (On a statewide basis, normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed two hundred fifty cubic yards (250) [except to construct a conventional drainfield] and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark) (see WAC 173-27-040(2)(g)).

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

Aquifer - A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Aquifer recharge areas - Areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.

Archaeological - Having to do with the scientific study of material remains of past human life and activities.

Associated Wetlands - Those wetlands that are in proximity to and either influence, or are influenced by tidal waters or a lake or stream subject to the Shoreline Management Act. Refer to RCW 90.58.030.

Average grade level - The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure; provided that in case of structures to be built over water, average grade level shall be the elevation of ordinary high water. Calculation of the average grade level shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure (WAC 173-27-030(3)).

Baseline - The existing shoreline condition, in terms of both ecological function and shoreline use, established at the time this Shoreline Master Program is approved.

BMPs - see Best Management Practices.

Beach - The zone of unconsolidated material that is moved by waves, wind and tidal currents, extending landward to the coastline.

Beach enhancement/restoration - Process of restoring a beach to a state more closely resembling a natural beach, using beach feeding, vegetation, drift sills and other nonintrusive means as applicable.

Beach feeding - "Beach feeding" means landfill deposited on land or in the water to be distributed by natural water processes for the purpose of supplementing beach material.

Benthic organism - Organisms that live in or on the bottom of a body of water.

Berm - An earthen mound designed to provide visual interest, screen undesirable views, and/or decrease noise.

Best Available Science - "Best available science" means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. Examples of best available science are included in "Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas," published by the Washington State Department of Community, Trade and Economic Development.

Best Management Practices (BMPs) - "Best management practices (BMPs)" means conservation practices or systems of practices and management measures that:

a. Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;

b. Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;

c. Protect trees, vegetation and soils designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and

Provide standards for proper use of chemical herbicides within critical areas. **Bioengineering** - see Soil bioengineering

Biofiltration system - A stormwater or other drainage treatment system that utilizes as a primary feature the ability of plant life to screen out and metabolize sediment and pollutants. Typically, biofiltration systems are designed to include grassy swales, retention ponds and other vegetative features.

Biota - The animals and plants that live in a particular location or region.

Boat launch or ramp - Graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

Boat lift - A mechanical device that can hoist vessels out of the water for storage. These devices are usually located along a pier.

Boat lift canopy - A translucent canopy or awning that is attached to the boat lift and shield the boat from sun and precipitation.

Boat rail or railway - A set of steel rails running from the upland area into the water upon which a cart or dolly can carry a boat to be launched.

Boathouse - A structure designed for storage of vessels located over water or on shorelands. Boathouses should not be confused with "houseboats".

Boating Facility - A public moorage structure (including marinas) or a private moorage structure serving more than four residences.

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

Breakwater - An off-shore structure generally built parallel to the shore that may or may not be connected to land. Its primary purpose is to protect a harbor, moorage, or navigational activity from wave and wind action by creating a still-water area along the shore. A secondary purpose is to protect the shoreline from wave-caused erosion.

Buffer - An area that is contiguous to and protects a critical area, which is required for the continued maintenance, functioning, and/or structural stability of a critical area.

Bulkhead - means a vertical or nearly vertical erosion protection structure placed parallel to the shoreline at or near the Ordinary High Water Mark, consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act ("Superfund"); 1986 amendments are known as Superfund Amendments and Reauthorization Act or SARA.

CFR - Code of Federal Regulations.

Clearing - The destruction or removal of vegetation ground cover, shrubs and trees including, but not limited to, root material removal and/or topsoil removal.

Commercial use - An activity with goods, merchandise or services for sale or involving a rental fee.

Comprehensive Plan - Comprehensive plan means the document, including maps adopted by the city council that outlines the City's goals and policies relating to management of growth, and prepared in accordance with RCW 36.70A. The term also includes adopted subarea plans prepared in accordance with RCW 36.70A.

Conditional Use - A use which, because of special requirements, unusual character, size or shape, infrequent occurrence or possible detrimental effect on surrounding property and for other similar reasons, may be allowed in certain zones only after review by the hearing examiner and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity or zone. "Conditional use" shall also mean any use, development, or substantial development classified as a conditional use or is not classified within the applicable master program. Refer to WAC 173-27-030(4).

Conservation Easement - A legal agreement that the property owner enters into to restrict uses of the land. Such restrictions can include, but are not limited to, passive recreation uses such as trails or scientific uses and fences or other barriers to protect habitat. 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, therefore, providing permanent or long-term protection.

Covered moorage - Boat moorage, with or without solid walls, that has a solid roof to protect the vessel and is attached to the dock itself or the substrate of the water body.

Critical areas - Any of the following areas or ecosystems: critical aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, and wetlands, as defined in Chapter 36.70A RCW and this title.

Cumulative Impact - The combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

Degrade - To scale down in desirability or salability, to impair in respect to some physical property or to reduce in structure or function.

Developable area - A site or portion of a site that may be utilized as the location of development, in accordance with the rules of this title.

Development - 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 which interferes with the normal public use of the surface of the waters of the state subject to Chapter 90.58 RCW at any state of water level (RCW 90.58.030(3d3a)).

Director - The director of the City of Oak Harbor department of development services, or other city staff granted the authority to act on behalf of the director.

Dock - A basin for moorage of boats, including a basin formed between the extension of two piers or the area between a bank or quay and a pier. Docking facilities may include wharves, moorage or docks or any place or structure connected with the shore or upon shore lands providing for the securing of a boat or vessel.

Dredge spoil - The material removed by dredging. Same as Dredge Material.

Dredging - Excavation or displacement of the bottom or shoreline of a water body. Dredging can be accomplished with mechanical or hydraulic machines. Most dredging is done to maintain channel depths or berths for navigational purposes; other dredging is for cleanup of polluted sediments.

Drift cell – "Drift sector" or "littoral cell" means a particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift and also accretion shore forms created by such drift. Refer to WAC 173-26-020.

Drip line - A line projected to the ground delineating the outermost extent of a tree's foliage in all directions.

Dwelling unit – A building or portion thereof providing complete housekeeping facilities for one family. The term "dwelling" does not include motel, tourist court, rooming house, or tourist home.

Ecological Functions - The work performed or the role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

Ecosystem-wide Processes - The suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

Ell – Terminal section of a pier which typically extends perpendicular to the pier walkway. These sections can be either on fixed-piles or floating docks and are typically wider than the pier walkway.

Emergency - An unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the master program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements (RCW 90.58.030(3eiii) and WAC 173-27-040(2d)).

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

Enhancement - Alteration of an existing resource to improve or increase its characteristics and processes without degrading other existing functions. Enhancements are to be distinguished from resource creation or restoration projects.

Erosion - The wearing away of land by the action of natural forces.

Excavation - Excavation is the artificial movement of earth materials.

Exemption - Certain specific developments are exempt from the definition of substantial developments and are therefore exempt from the substantial development permit process of the SMA. An activity that is exempt from the substantial development provisions of the SMA must still be carried out in compliance with policies and standards of the Act and the local master program. Conditional use and/or variance permits may also still be required even though the activity does not need a substantial development permit. Exemptions shall be construed narrowly. (WAC 172-27-040)

Fair market value - "Fair market value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials (WAC 173-27-030(8)).

Feasible - "Feasible" means, for the purpose of this SMP, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

(a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

(b) The action provides a reasonable likelihood of achieving its intended purpose; and

(c) The action does not physically preclude achieving the project's primary intended legal use.
In cases where certain actions are required unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the City and State may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

Fill - the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetland, or on shorelands in a mannger that raises the elevation or creates dry land.

Finger Pier - 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.

Float - A floating structure that is moored, anchored, or otherwise secured in the water offshore and that may be associated with a fixed-pile pier, or may be a standalone structure, such as platforms used for swimming and diving.

Floating Dock - A fixed structure floating upon a water body for the majority of its length and connected to shore.

Floating home - A structure designed and operated substantially as a permanently based over water residence. Floating homes are not vessels and lack adequate self-propulsion and steering equipment to operate as a vessel. They are typically served by permanent utilities and semi-permanent anchorage/moorage facilities.

Floodplain - Synonymous with 100-year floodplain. The land area susceptible to being inundated by stream derived waters with a 1 percent chance of being equaled or exceeded in any given year. The limits of this area are based on flood regulation ordinance maps or a reasonable method that meets the objectives of the SMA (WAC 173-26-020).

Floodway - The area, as identified in a master program, that either: (i) has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

Forage fish - Small fish that consume plankton, which are consumed by other fish higher in the food chain, such as salmon.

Functions and values - The beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; ground water recharge and discharge; erosion control; wave attenuation; protection from hazards; historical, archaeological, and aesthetic value protection; educational opportunities; and recreation.

Geotechnical Report or Geotechnical Analysis - A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form

and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

Grading – The movement or distribution of the soil, sand, rock, gravel, sediment or other material on a site in a manner that alters the natural contour of the land.

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

Ground water - Water in a saturated zone or stratum beneath the surface of land or a surface water body.

Growth Management Act - Chapters 36.70A and 36.70B RCW, as amended.

Habitat - The place or type of site where a plant or animal naturally or normally lives and grows.

Habitat conservation areas - Areas designated as fish and wildlife habitat conservation areas.

Hazardous substances - Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

Hearing Examiner - "Hearing examiner" means a quasi-judicial hearing officer empowered to hear appeals from orders or determinations made by an administrative official charged with the enforcement of this title and to vary or modify certain provisions of this title relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of this title is observed, public safety and welfare secured and substantial justice done.

Height - The distance measured from the average grade level to the highest point of a structure: provided, that television antennas, chimneys and similar appurtenances shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such shorelines: provided further, that temporary construction equipment is excluded in this calculation (WAC 173-27-030(9)).

Helical anchor - An anchoring mechanism consisting of bearing plates arranged in a spiral pattern and welded to a central shaft and driven into the substrate to anchor a floating structure, such as a dock or mooring buoy.

Historic condition - A condition of the land, including flora, fauna, soil, topography, and hydrology, that existed before the area and vicinity were developed or altered by human activity.

Houseboat - A vessel, principally used as an over water residence. Houseboats are licensed and designed for use as a mobile structure with detachable utilities or facilities, anchoring and the presence of adequate self-propulsion and steering equipment to operate as a vessel. Principal use as an overwater residence means occupancy in a single location, for a period exceeding two months in any one calendar year. This definition includes live aboard vessels.

HPA - Hydraulic Project Approval - The permit issued by the Washington State Departments of Fisheries or Wildlife pursuant to the State Hydraulic Code Chapter 75.20.100-140 RCW.

Impervious surface - A hard surface area that either prevents or retards the entry of water into the soil mantle, as under natural conditions prior to development, or that 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, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater.

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

In-kind compensation - Replacement of critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

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

Landfill - the creation of, or addition to, a dry upland area (landward of the OHWM) by the addition of rock, soil, gravels and earth or other material. Does not include solid or hazardous waste.

Landscaping - Any combination of living plants, such as trees, shrubs, vines, ground covers, flowers or grass; natural features such as rock, stone, bark chips or shavings; and structural features, including but not limited to fountains, reflecting pools, outdoor art work, screen walls, fences, or benches.

Landslide hazard areas - Areas that are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors, including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.

Launching rail - See also Boat launch or ramp and Boat railway.

Launching ramp - See also Boat launch or ramp and Boat railway.

Marina - A private or public facility providing the purchase or lease of a slip for storing, berthing and securing more than ten motorized boats or watercraft, including both long-term and transient moorage.

Marinas may include accessory facilities for providing incidental services to users of the marina, such as waste collection, boat sales or rental activities, and retail establishments providing fuel service, repair or service of boat.

Marine - means pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries, and inlets associated therewith.

Mature forested wetland - A wetland with at least 30 percent of the surface area covered by woody vegetation greater than 20 feet in height, which is at least partially rooted within the wetland, where the largest trees are at least 80 years old or are greater than 21 inches in diameter at breast height.

May - "May" means the action is acceptable, provided it conforms to the provisions of this SMP.

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

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

b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

d) Minimizing or eliminating a hazard by restoring or stabilizing the hazard area through engineered or other methods.

e) Reducing or eliminating the impact over time by preservation and maintenance operations;

f) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

g) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

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

Moorage - A place to tie up or anchor a boat or vessel.

Mooring buoy - A floating object anchored to the bottom of a water body that provides tie up capabilities for vessels.

Moorage Cover – See covered moorage.

Multifamily dwelling (or residence) - A building designed to house two or more families living independently of each other and having one yard in common.

Must - "Must" means a mandate; the action is required.

Native growth protection area (NGPA) - An area where native vegetation is preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants and animal habitat.

Native vegetation – Plant species that are indigenous to the area in question.

Nonconforming use or development - A use which lawfully occupied a building or land at the time the ordinance codified in this title became effective, but which use, because of the passage of the ordinance codified in this title, does not conform to the use regulations of the district in which the use exists.

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

Normal protective bulkhead - Those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land (WAC 173-27-040(2)(c)).

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

Oak tree - A Garry Oak (Quercus garryana, also known as Oregon White Oak) tree more than six feet tall. "Oak tree" shall not apply to any tree grown or held for sale in a licensed nursery, nor to the first removal or transplanting of a tree pursuant to the operation of a licensed nursery business.

Off-site compensation - To replace critical areas away from the site on which a critical area has been impacted.

On-site compensation - To replace critical areas at or adjacent to the site on which a critical area has been impacted.

Ordinary High Water Mark (OHWM) - That mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining fresh water shall be the line of mean high water. See RCW 90.58.030(2)(b) and WAC 173-22-030(11).

Overwater structure - Any device or structure projecting over the ordinary high water mark, including, but not limited to piers, docks, floats, and moorage.

Permeability - The capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

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

Person - Any person, individual, public or private corporation, firm, association, joint venture, partnership, owner, lessee, tenant, or any other entity whatsoever or any combination of such, jointly or severally.

Pesticide - A chemical used to kill pests, including herbicides, insecticides and fungicides.

Pier - a fixed, pile-supported moorage structure.

Porous soil types - Soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices, or other openings which allow the passing of water. High permeable soils in Oak Harbor include: Hoypus gravelly loamy sand, Snakelum Course sandy loam, Keystone loamy sand and Norma loam. Moderate permeable soils include: Coastal Beach, Made Land, Whidbey gravelly sandy loam, Townsend sand loam, and Swantown gravelly sandy loam.

Potable water - Water that is safe and palatable for human consumption.

Practical alternative - An alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and has less impacts to critical areas.

Primary association area - The area used on a regular basis by, that is in close association with, or is necessary for the proper functioning of the habitat of a species protected under the critical areas regulations of this title. "Regular basis" means that the habitat area is normally, or usually, known to contain the species, or it is likely to contain the species based on its known habitat requirements. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

Priority habitat - Habitat type or elements with unique or significant value to one or more species as classified by the State Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element, as identified in WAC 173-26-020.

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

> (a) Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be

reviewed by the department of fish and wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

(b) Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

(c) Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

(d) Criterion 4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

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

Public access - Public access is the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Refer to WAC 173-26-221(4).

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

Qualified Professional - "Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or a related field, and have at least five years of related work experience.

(a) A qualified professional for aquatic shoreline habitats or wetlands must have a degree in biology and professional experience related to the subject habitats and related species.

(b) A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

(c) A qualified professional for urban forestry must have academic and field experience that makes them competent in urban forestry. This may include arborists certified by the International Society of Arboriculture or foresters certified by the Society of American Foresters. Qualified professionals in urban forestry must possess the ability to evaluate the health and hazard potential of existing trees, and the ability to prescribe appropriate measures necessary for the preservation of trees during land development.

(d) A qualified professional for vegetation mitigation plan must have academic and field experience that makes them competent in the subject area. This includes, but is not limited to, a landscape architect or biologist with direct experience preparing shoreline habitat enhancement and mitigation plans.

RCW - Revised Code of Washington.

RCW 90.58 - The Shoreline Management Act of 1971.

Recharge - The process involved in the absorption and addition of water to ground water.

Recreational facilities Use or Development - Facilities such as boat or yacht clubs, swimming pools, athletic clubs, golf and country clubs, for the use of the general public and operated by the municipal corporation.

Recreational Float - A floating structure that is moored, anchored, or otherwise secured in the water off-shore and that is generally used for recreational purposes such as swimming and diving.

Repair or maintenance - An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

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

Restoration - "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 to aboriginal or pre-European settlement conditions.

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

Riparian habitat - Areas adjacent to aquatic systems that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other.

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

Runoff - Water that is not absorbed into the soil but rather flows along the ground surface following the topography.

Salmonids - Members of the Salmonidae family of fishes, including regionally important species such as salmon, steelhead, and trout.

Sediment - The fine grained material deposited by water or wind.

Seeps - Spots where water oozes from the earth, often forming the source of a small stream.

Seismic hazard areas - Areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.

SEPA - Washington State Environmental Policy Act, Chapter 43.21C RCW.

Setback - A required open space, specified in shoreline master programs, measured horizontally upland from and perpendicular to the ordinary high water mark.

Shall - "Shall" means a mandate; the action must be done.

Shorelands or Shoreland Areas - Those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous flood plain areas landward two hundred 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 the Shoreline Management Act.

Shoreline Administrator - The City of Oak Harbor Planning and Community Development Director or his/her designee, charged with the responsibility of administering the shoreline master program.

Shoreline environment designations - The categories of shorelines established by local shoreline master programs in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. See WAC 173-26-211.

Shoreline jurisdiction - The term describing all of the geographic areas covered by the SMA, related rules and the applicable master program. Also, such areas within a specified local government's authority under the SMA.

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

Shoreline Master Program (SMP) - The comprehensive use plan and related use regulations which are used by local governments to administer and enforce the permit system for shoreline management. Master programs must be developed in accordance with the policies of the SMA, be approved and adopted by the state, and be consistent with the rules (WACs) adopted by Ecology.

Shoreline Modification - those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged

basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

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

Shoreline stabilization – Actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind or wave action. These actions include structural measures such as bulkheads and nonstructural methods such as soil bioengineering.

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

Shorelines Hearings Board - A state-level quasi-judicial body, created by the SMA, which hears appeals by any aggrieved party on the issuance of a shoreline permit, enforcement penalty and appeals by local government. See RCW 90.58.170; 90.58.180.

Shorelines of statewide significance - A select category of shorelines of the state, defined in RCW 90.58.030(2)(e), where special preservationist use preferences apply and where greater planning authority is granted by the SMA. SMP policies, use regulations, and Permit review must acknowledge the use priorities for these areas established by the SMA. See RCW 90.58.020.

Shorelines of the state - Shorelines and shorelines of statewide significance.

Should - "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this Master Program, against taking the action.

Sign - Any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided, however, that sources of light used primarily to attract attention to the sign itself or as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff's notices, court notices or official public notices and the flag of a government or noncommercial institution, and signs not visible from the street or sidewalk.

Significant portion of its range - That portion of a species range likely to be essential to the long-term survival of the population in Washington.

Significant tree - A healthy evergreen or deciduous tree 12 inches or more in diameter measured four feet above existing grade.

Significant Vegetation Removal - The removal or alteration of trees, shrubs, or ground cover by clearing, grading, cutting, burning, chemical treatment, or other methods that cause significant impacts to ecological

functions provided by such vegetation. The removal of noxious or invasive weeds does not constitute significant vegetation removal. Tree pruning (with the exception of topping), where it does not affect ecological functions, does constitute significant vegetation removal.

Single-family residence - A detached building designed for and occupied exclusively by one family and the household employees of that family.

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

Soil bioengineering - An applied science that combines structure, biological and ecological concepts to construct living structures that stabilizes the soil to control erosion, sedimentation and flooding using live plant materials as a main structural component.

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

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

Species, endangered - Any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

Species of local importance - Those species of local concern designated by the city of Oak Harbor due to their population status or their sensitivity to habitat manipulation, or that are game species.

Species, threatened - Any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

Steep slope - Naturally occurring slopes that rise 10 feet or more for every 25 feet horizontal, with a total vertical relief greater than 10 feet. A slope is delineated by establishing its toe and top. Existing slopes modified with engineering oversight or in accordance with standard construction industry techniques are not considered steep slopes.

Stream - An area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

Terrestrial - Of or relating to land as distinct from air or water.

Topping, tree - The severing of the main stem of a tree in order to reduce its overall height; provided, that no more than 40 percent of the live crown shall be removed.

Trimming, tree - The pruning or removal of limbs; provided, that the main stem is not severed and no more than 40 percent of the live crown is removed.

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

Unstable slope - A naturally occurring slope with a gradient between 15 and 39 percent (dividing the vertical rise by the horizontal extent), with a total vertical relief greater than 10 feet, where springs or ground water seepage is present on the slope. Existing slopes modified with engineering oversight or in accordance with standard construction industry techniques are not considered unstable slopes.

Upland - Generally described as the dry land area above and landward of the ordinary high water mark.

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

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

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

Variance - A means by which an adjustment is made in the application of the specific regulations of this title to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same zone or vicinity and which adjustment remedies disparity in privileges. A variance is a form of special exception.

WAC - Washington Administrative Code.

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

Water-enjoyment use - A recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline.

In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

Water-oriented use - Refers to any combination of water-dependent, water-related, and/or water enjoyment uses and serves as an all-encompassing definition for priority uses under the SMA. Non-water-oriented serves to describe those uses which have little or no relationship to the shoreline and are not considered priority uses under the SMA. Examples include professional offices, automobile sales or repair shops, mini-storage facilities, multifamily residential development, department stores and gas stations.

Water-related use - A use or a portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

(a) Of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water or,

(b) The use provides a necessary service supportive of the water-dependent commercial activities and the proximity of the use to its customers makes its services less expensive and/or more convenient. Examples include manufacturers of ship parts large enough that transportation becomes a significant factor in the products cost, professional services serving primarily water-dependent activities and storage of water-transported foods. Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker and log storage.

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

Watershed restoration plan - A plan developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, and/or the Department of Transportation acting within or 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, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to 43.21C RCW, the State Environmental Policy Act.

Wetlands - "Wetlands" or "wetland areas" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined

swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

Wetland mitigation bank - A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing advance mitigation to compensate for future, permitted impacts to similar resources.

Wetland mosaic - An area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50 percent of the total area of the entire mosaic, including uplands and open water. (Ord. 1440 § 1, 2005).

Shoreline Environment Designations

*The Aquatic shoreline environment designation extends to the City's in-water jurisdiction line.

Data represented on this map were collected at different accuracy levels by various sources, including the City of Oak Harbor, Island County, NASWI, WA DNR Shorezone data and WDFW. Shoreline jurisdiction and wetland boundaries are approximate and have not been formerly delineated or surveyed and are intended for planning analysis only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map. No warranties of any sort, including, but not limited to accuracy, fitness or merchantability, accompany this map.

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Feet

Map Date: September 2012

City of Oak Harbor

AHBL

Chapter 17.20

Flood Damage Prevention

Chapter 17.20
FLOOD DAMAGE PREVENTION*

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Article I. Statutory Authorization, Findings of Fact, Purpose and Objectives

17.20.010 Statutory authorization.

The Legislature of the state of Washington has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. (Ord. 835 § 1.1, 1989).

17.20.020 Findings of fact.

(1) The flood hazard areas of the city of Oak Harbor are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental

services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare;

(2) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss. (Ord. 835 § 1.2, 1989).

17.20.030 Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

(1) To protect human life and health;

(2) To minimize expenditure of public money and costly flood control projects;

(3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) To minimize prolonged business interruptions;

(5) To minimize damage to public facilities and utilities such as water and gas mains, electric telephone and sewer lines, streets, and bridges located in areas of special flood hazard;

(6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

(7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and

(8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. (Ord. 835 § 1.3, 1989).

17.20.040 Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

(1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;

(4) Controlling filling, grading, and other development which may increase flood damage; and

(5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other areas. (Ord. 835 § 1.4, 1989).

Article II. Definitions

17.20.050 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

(1) "Appeal" means a request for a review of the building official's interpretation of any provision of this chapter or a request for a variance.

(2) "Area of shallow flooding" means a designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does

not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

(3) "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

(4) "Basement" means any area of a building having its floor subgrade (below ground level) on all sides. The floor does not have to be finished; it can be a dirt floor.

(5) "Critical facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.

(6) "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials located within the area of special flood hazard.

(7) "Flood" or "flooding" means a general and temporary condition or partial or complete inundation of normally dry land areas from:

(a) The overflow of inland or tidal waters; and/or

(b) The unusual and rapid accumulation of runoff of surface waters from any source.

(8) "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

(9) "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

(10) "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

(11) "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter found at OHMC 17.20.190(1)(b).

(12) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

(13) "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(14) "New construction" means structures for which the "start of construction" commenced on or after the effective date of the ordinance codified in this chapter.

(15) "Recreational vehicle" means a vehicle which is:

(a) Built on a single chassis;

(b) Four hundred square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light duty truck; and

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(16) "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(17) "Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

(18) "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either: (a) before the improvement or repair is started; or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either: (a) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or (b) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(19) "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

(20) "Water-dependent" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. (Ord. 1472 § 1, 2006; Ord. 835 § 2, 1989).

Article III. General Provisions

17.20.060 Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city of Oak Harbor. (Ord. 835 § 3.1, 1989).

17.20.070 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration on Flood Insurance Maps for the city of Oak Harbor, with an effective date of August 16, 1995, and any revisions thereto, are adopted by reference and declared to be a part of this chapter. The Flood Insurance Maps (numbered 53029C0140D, 53029C0120D, 53029C0145D and 53029C0000) are on file at Oak Harbor City Hall, 3075-300 Avenue West, Oak Harbor, Washington 98277. (Ord. 1472 § 1, 2006; Ord. 1016 § 1, 1995;

Ord. 835 § 3.2, 1989).

17.20.080 Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $500.00 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city of Oak Harbor from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 835 § 3.3, 1989).

17.20.090 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restriction shall prevail. (Ord. 835 § 3.4, 1989).

17.20.100 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 835 § 3.5, 1989).

17.20.110 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of Oak Harbor, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. (Ord. 835 § 3.6, 1989).

Article IV. Administration

17.20.120 Development permit required.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in OHMC 17.20.070. The permit shall be for all structures including manufactured homes, as set forth in OHMC 17.20.050, and for all development including fill and other activities, also as set forth in OHMC 17.20.050. (Ord. 835 § 4.1.1, 1989).

17.20.130 Application for development permit.

Application for a development permit shall be made on forms furnished by the building official and may include but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, draining

facilities, and the location of the foregoing. Specifically, the following information is required:

(1) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

(2) Elevation in relation to mean sea level to which any structure has been floodproofed;

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in OHMC 17.20.190(2); and

(4) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development. (Ord. 835 § 4.1.2, 1989).

17.20.140 Designation of the building official.

The building official is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions. (Ord. 835 § 4.2, 1989).

17.20.150 Duties of responsible official.

Duties of the building official shall include, but not be limited to:

(1) Permit Review.

(a) Review all development permits to determine that the permit requirements of this chapter have been satisfied.

(b) Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.

(c) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the provisions of OHMC 17.20.200 are met.

(2) Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with OHMC 17.20.070, the building official shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer OHMC 17.20.190 and 17.20.200.

(3) Information to be Obtained and Maintained.

(a) Where base flood elevation data is provided through the Flood Insurance Study or required as in subsection (2) of this section, obtain and record the actual (as-built) elevation (in relation to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures, and whether or not the structure contains a basement.

(b) For all new or substantially improved floodproofed structures:

(i) Verify and record the actual elevation (in relation to mean sea level); and

(ii) Maintain the floodproofing certifications required in OHMC 17.20.130(3).

(c) Maintain for public inspection all records pertaining to the provisions of this chapter.

(4) Alteration of Watercourses.

(a) Notify adjacent communities and the Washington State Department of Ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(5) Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact locations of the boundaries of the areas of special flood hazards (for example, where there appears to be a

conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in OHMC 17.20.160 and 17.20.170. (Ord. 835 § 4.3, 1989).

17.20.160 Variance procedure – Appeal board.

(1) The appeal board as established by the city of Oak Harbor shall hear and decide appeals and requests for variances from the requirements of this chapter.

(2) The appeal board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the building official in the enforcement or administration of this chapter.

(3) Those aggrieved by the decision of the appeal board, or any taxpayer, may appeal such decision to the Island County superior court by writ of certiorari filed and served within 30 days of the decision.

(4) In passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

(a) The danger that materials may be swept onto other lands to the injury of others;

(b) The danger to life and property due to flooding or erosion damage;

(c) The susceptibility of the proposed facilities and its contents to flood damage and the effect of such damage on the individual owner;

(d) The importance of the services provided by the proposed facility to the community;

(e) The necessity to the facility of a waterfront location, where applicable;

(f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(g) The compatibility of the proposed use with existing and anticipated development;

(h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(i) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Upon consideration of the factors of subsection (4) of this section and the purposes of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(6) The building official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request. (Ord. 835 § 4.4.1, 1989).

17.20.170 Conditions for variances.

(1) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (a) through (k) in OHMC 17.20.160(4) have been fully considered. As the lot size increases the technical justification required for issuing the variance

increases.

(2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.

(3) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant;

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in OHMC 17.20.160(4), or conflict with existing local laws or ordinances.

(6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except OHMC 17.20.170(1), and otherwise complies with OHMC 17.20.180(1) and (2).

(8) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (Ord. 835 § 4.4.2, 1989).

Article V. Provisions for Flood Hazard Reduction

17.20.180 General standards.

In all areas of special flood hazards, the following standards are required:

(1) Anchoring.

(a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(b) All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

(2) Construction Materials and Methods.

(a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(c) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(3) Utilities.

(a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and

(c) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(4) Subdivision Proposals.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage;

(b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

(d) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

(5) Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (OHMC 17.20.150(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates. (Ord. 835 § 5.1, 1989).

17.20.190 Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in OHMC 17.20.070, or OHMC 17.20.150(2), the following provisions are required:

(1) Residential Construction.

(a) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.

(b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

(ii) The bottom of all openings shall be no higher than one foot above grade;

(iii) Openings may be equipped with screens, louvers, or other coverings or devices;

provided, that they permit the automatic entry and exit of floodwaters.

(2) Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to or above the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

(a) Be floodproofed so that below one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

(b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in OHMC 17.20.150(3)(b);

(d) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (1)(b) of this section;

(e) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to one foot above the base flood level will be rated as at the base flood level).

(3) Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the base floodplain. Construction of new critical facilities shall be permissible within the base floodplain if no feasible alternative site is available. Critical facilities constructed within the base floodplain shall have the lowest floor elevated to three feet or more above the level of the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base floodplain shall be provided to all critical facilities to the extent possible.

(4) Manufactured Homes. All manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is to or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of OHMC 17.20.180(1)(b).

(5) Recreational Vehicles. Recreational vehicles placed on sites are required to either:

(a) Be on the site for fewer than 180 consecutive days;

(b) Be fully licensed and ready for highway use, on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

(c) Meet the requirements of subsection (4) of this section and be securely anchored to an adequately anchored foundation system in accordance with the provisions of OHMC 17.20.180(1)(b). (Ord. 1472 § 1, 2006; Ord. 835 § 5.2, 1989).

17.20.200 Floodways.

Located within areas of special flood hazard established in OHMC 17.20.070 are areas designated as

floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating, through hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) Construction or reconstruction of residential structures is prohibited within designated floodways, except for (a) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (b) repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either (i) before the repair, reconstruction, or repair is started, or (ii) if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes or to structures identified as historic places shall not be included in the 50 percent.

(3) If subsection (1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V of this chapter. (Ord. 1472 § 1, 2006; Ord. 835 § 5.3, 1989).

17.20.210 Wetlands management.

To the maximum extent possible, avoid the short and long term adverse impacts associated with the destruction or modification of wetlands, especially those activities which limit or disrupt the ability of the wetland to alleviate flooding impacts. The following process should be implemented:

(1) Review proposals for development within base floodplains for their possible impacts on wetlands located within the floodplain.

(2) Ensure that development activities in or around wetlands do not negatively affect public safety, health, and welfare by disrupting the wetlands' ability to reduce flood and storm drainage.

(3) Request technical assistance from the Department of Ecology in identifying wetland areas. Existing wetland map information from the National Wetlands Inventory (NWI) can be used in conjunction with the community's FIRM to prepare an overlay zone indicating critical wetland areas deserving special attention. (Ord. 835 § 5.4, 1989).

17.20.220 Encroachments.

The cumulative effect of any proposed development, where combined with all other existing and anticipated development shall not increase the water surface elevation of the base flood more than one foot at any point. (Ord. 835 § 5.5, 1989).

Critical Areas

Title 20

Title 20
ENVIRONMENT*

Chapters:

20.02 Critical Areas Definitions
20.04 State Environmental Policy Act
20.12 General Critical Areas Regulations
20.14 SEPA Environmental Review Process
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Chapter 20.02
CRITICAL AREAS DEFINITIONS

Sections:

20.02.010 Purpose.
20.02.020 Definitions.

20.02.010 Purpose.

For purposes of the city's critical areas regulations, Chapter 20.12, General Critical Areas Regulations; Chapter 20.16, Oak Tree Protection; Chapter 20.24, Wetlands; Chapter 20.25, Fish and Wildlife Habitat Conservation Areas; Chapter 20.28, Geologically Sensitive Areas; and Chapter 20.32, Critical Aquifer Recharge Areas, and to clarify the intent and meaning of certain words or terms, the following list of definitions is provided. All other words used in these chapters carry their customary meanings. Words in the present tense include the past tense and words in the singular include the plural, and vice versa. (Ord. 1440 § 1, 2005).

20.02.020 Definitions.

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

(2) "Anadromous fish" means fish that spawn and rear in freshwater and mature in the marine environment.

(3) "Applicant" means a person who files an application for a critical areas permit and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, or the authorized agent of such a person.

(4) "Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(5) "Aquifer recharge areas" means areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.

(6) "Best available science" means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. Examples of best available science are included in "Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas," published by the Washington State Department of Community, Trade and Economic Development.

(7) "Best management practices (BMPs)" means conservation practices or systems of practices and management measures that:

   (a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;

   (b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;

   (c) Protect trees, vegetation and soils designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and

(d) Provide standards for proper use of chemical herbicides within critical areas.

(8) "Bog" means a low nutrient, acidic wetland with organic soils, which is sensitive to disturbance and impossible to re-create through compensatory mitigation.

(9) "Buffer" or "buffer zone" means an area that is contiguous to and protects a critical area, which is required for the continued maintenance, functioning, and/or structural stability of a critical area.

(10) "Critical aquifer recharge area" means as defined in OHMC 20.32.010.

(11) "Critical areas" include any of the following areas or ecosystems: critical aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, and wetlands, as defined in Chapter 36.70A RCW and this title.

(12) "Cumulative impacts or effects" means the combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

(13) "Developable area" means a site or portion of a site that may be utilized as the location of development, in accordance with the rules of this title.

(14) "Development" means a land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulk heading; driving of pilings; or any project of a temporary or permanent nature which modifies structures, land, or shorelines and which does not fall within the allowable exemptions contained in the Oak Harbor Municipal Code.

(15) "Director" means the director of the city of Oak Harbor department of development services, or other city staff granted the authority to act on behalf of the director.

(16) "Drip line" means a line projected to the ground delineating the outermost extent of a tree's foliage in all directions.

(17) "Fish and wildlife habitat conservation areas" means as defined in OHMC 20.25.010.

(18) "Forage fish" means small fish that consume plankton, which are consumed by other fish higher in the food chain, such as salmon.

(19) "Functions and values" means the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; ground water recharge and discharge; erosion control; wave attenuation; protection from hazards; historical, archaeological, and aesthetic value protection; educational opportunities; and recreation.

(20) "Geologically sensitive areas" means as defined in OHMC 20.28.010.

(21) "Ground water" means water in a saturated zone or stratum beneath the surface of land or a surface water body.

(22) "Growth Management Act" means Chapters 36.70A and 36.70B RCW, as amended.

(23) "Habitat conservation areas" means areas designated as fish and wildlife habitat conservation areas.

(24) "Hazardous substances" 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.

(25) "Historic condition" means a condition of the land, including flora, fauna, soil, topography, and

hydrology, that existed before the area and vicinity were developed or altered by human activity.

(26) "Impervious surface" means a hard surface area that either prevents or retards the entry of water into the soil mantle, as under natural conditions prior to development, or that 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, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater.

(27) "Infiltration" means the downward entry of water into the immediate surface of soil.

(28) "In-kind compensation" means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

(29) "Isolated wetlands" means those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water, including other wetlands.

(30) "Landslide hazard areas" means areas that are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors, including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.

(31) "Mature forested wetland" means a wetland with at least 30 percent of the surface area covered by woody vegetation greater than 20 feet in height, which is at least partially rooted within the wetland, where the largest trees are at least 80 years old or are greater than 21 inches in diameter at breast height.

(32) "Mitigation" means avoiding, minimizing, or compensating for adverse critical areas impacts. Mitigation, in the following sequential order of preference, is:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

(c) Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;

(d) Minimizing or eliminating a hazard by restoring or stabilizing the hazard area through engineered or other methods;

(e) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

(f) Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and

(g) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.

(33) "Monitoring" means evaluating the impacts of development proposals on the biological, hydrological, and geological elements of such systems, and assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features,

including gathering baseline data.

(34) "Native growth protection area (NGPA)" means an area where native vegetation is preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants and animal habitat.

(35) "Native vegetation" means plant species that are indigenous to the area in question.

(36) "Oak tree" means a Garry Oak (Quercus garryana, also known as Oregon White Oak) tree more than six feet tall. "Oak tree" shall not apply to any tree grown or held for sale in a licensed nursery, nor to the first removal or transplanting of a tree pursuant to the operation of a licensed nursery business.

(37) "Off-site compensation" means to replace critical areas away from the site on which a critical area has been impacted.

(38) "On-site compensation" means to replace critical areas at or adjacent to the site on which a critical area has been impacted.

(39) "Ordinary high water mark" means that mark which is 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, that the soil has a character distinct from that of the abutting upland in respect to vegetation.

(40) "Permeability" means the capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

(41) "Person" means any person, individual, public or private corporation, firm, association, joint venture, partnership, owner, lessee, tenant, or any other entity whatsoever or any combination of such, jointly or severally.

(42) "Pesticide" means a chemical used to kill pests, including herbicides, insecticides and fungicides.

(43) "Porous soil types" means soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices, or other openings which allow the passing of water. High permeable soils in Oak Harbor include: Hoypus gravelly loamy sand, Snakelum Course sandy loam, Keystone loamy sand and Norma loam. Moderate permeable soils include: Coastal Beach, Made Land, Whidbey gravelly sandy loam, Townsend sand loam, and Swantown gravelly sandy loam.

(44) "Potable water" means water that is safe and palatable for human consumption.

(45) "Practical alternative" means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and has less impacts to critical areas.

(46) "Primary association area" means the area used on a regular basis by, that is in close association with, or is necessary for the proper functioning of the habitat of a species protected under the critical areas regulations of this title. "Regular basis" means that the habitat area is normally, or usually, known to contain the species, or it is likely to contain the species based on its known habitat requirements. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

(47) "Priority habitat" means habitat type or elements with unique or significant value to one or more species as classified by the State Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element, as identified in WAC 173-26-020.

(48) "Project area" means all areas within 50 feet of the area proposed to be disturbed, altered, or used

by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

(49) "Qualified professional" means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or a related field, and have at least five years of related work experience.

(a) A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species.

(b) A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

(c) A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

(50) "Recharge" means the process involved in the absorption and addition of water to ground water.

(51) "Repair or maintenance" means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

(52) "Restoration" means measures taken to restore an altered or damaged natural feature, including:

(a) Active steps taken to restore damaged wetlands, streams, protected habitat, or their buffers to the functioning condition that existed prior to an unauthorized alteration; and

(b) Actions performed to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

(53) "Riparian habitat" means areas adjacent to aquatic systems that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other.

(54) "Salmonids" means members of the Salmonidae family of fishes, including regionally important species such as salmon, steelhead, and trout.

(55) "Seeps" means spots where water oozes from the earth, often forming the source of a small stream.

(56) "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.

(57) "SEPA" means Washington State Environmental Policy Act, Chapter 43.21C RCW.

(58) "Significant portion of its range" means that portion of a species range likely to be essential to the long-term survival of the population in Washington.

(59) "Significant tree" means a healthy evergreen or deciduous tree 12 inches or more in diameter measured four feet above existing grade.

(60) "Soil survey" means the most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.

(61) "Species" means any group of animals classified as a species or subspecies as commonly accepted by the scientific community.

(62) "Species, endangered" means any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government

as an endangered species.

(63) "Species of local importance" means those species of local concern designated by the city of Oak Harbor due to their population status or their sensitivity to habitat manipulation, or that are game species.

(64) "Species, priority" means any fish or wildlife species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels as classified by the Washington State Department of Fish and Wildlife, including endangered, threatened, sensitive, candidate and monitor species, and those of recreational, commercial, or tribal importance.

(65) "Species, threatened" means any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

(66) "Steep slope" means naturally occurring slopes that rise 10 feet or more for every 25 feet horizontal, with a total vertical relief greater than 10 feet. A slope is delineated by establishing its toe and top. Existing slopes modified with engineering oversight or in accordance with standard construction industry techniques are not considered steep slopes.

(67) "Stream" means an area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

(68) "Topping, tree" means the severing of the main stem of a tree in order to reduce its overall height; provided, that no more than 40 percent of the live crown shall be removed.

(69) "Trimming, tree" means the pruning or removal of limbs; provided, that the main stem is not severed and no more than 40 percent of the live crown is removed.

(70) "Unavoidable" means adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

(71) "Unstable slope" means a naturally occurring slope with a gradient between 15 and 39 percent (dividing the vertical rise by the horizontal extent), with a total vertical relief greater than 10 feet, where springs or ground water seepage is present on the slope. Existing slopes modified with engineering oversight or in accordance with standard construction industry techniques are not considered unstable slopes.

(72) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland 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 nonwetland areas to mitigate the conversion of wetlands.

(73) "Wetland mitigation bank" means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing advance mitigation

to compensate for future, permitted impacts to similar resources.

(74) "Wetland mosaic" means an area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50 percent of the total area of the entire mosaic, including uplands and open water. (Ord. 1440 § 1, 2005).

Chapter 20.04
STATE ENVIRONMENTAL POLICY ACT

Sections:

20.04.010 Policies and authority.
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20.04.110 Use of exemptions.
20.04.120 Environmental checklist procedure.
20.04.130 DNS/mitigated DNS.
20.04.140 Environmental impact statement (EIS) – WAC provisions adopted.
20.04.145 Integrated SEPA process and GMA.
20.04.150 Preparation of EIS – Additional considerations.
20.04.160 Commenting – WAC provisions adopted.
20.04.170 Public notice requirements.
20.04.180 Responsible official to perform consulted agency responsibilities.
20.04.190 Existing environmental documents – WAC provisions adopted.
20.04.200 SEPA and agency decisions – WAC provisions adopted.
20.04.210 Substantive authority.
20.04.212 Substantive policies.
20.04.215 Appeal.
20.04.220 Categorical exemptions – WAC provisions adopted.
20.04.227 Critical areas.
20.04.230 Agency compliance – WAC provisions adopted.
20.04.240 Fees.
20.04.250 Adoption by reference.

20.04.010 Policies and authority.

(1) The city of Oak Harbor adopts by reference the policies of the State Environmental Policy Act as expressed in RCW 43.21C.010 and 43.21C.020 both as now in effect or as hereafter amended or otherwise modified.

(2) The city possesses the authority to deny or condition actions so as to mitigate or prevent adverse environmental impacts. This authority applies to all city activities including actions as defined in

this chapter as well as activities which are categorically exempt or excluded from the definition of action whether or not such activities are considered to be ministerial in nature. (Ord. 1141 § 2, 1998).

20.04.020 General requirements – WAC.

The city adopts by reference the following sections or subsections of Chapter 197-11 WAC (State Environmental Policy Act Rules adopted by the State of Washington Department of Ecology):

WAC

197-11-040 Definitions.
197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.
197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.
197-11-210 SEPA/GMA integration.
197-11-220 SEPA/GMA definitions.
197-11-228 Overall SEPA/GMA integration procedures.
197-11-230 Timing of an integrated GMA/SEPA process.
197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis, and expanded scoping.
197-11-235 Documents.
197-11-250 SEPA/Model Toxics Control Act integration.
197-11-253 SEPA lead agency for MTCA actions.
197-11-256 Preliminary evaluation.
197-11-259 Determination of nonsignificance for MTCA remedial actions.
197-11-262 Determination of significance and EIS for MTCA remedial actions.
197-11-265 Early scoping for MTCA remedial actions.
197-11-268 MTCA interim actions.

(Ord. 1141 § 3, 1998).

20.04.030 Definitions – WAC provisions adopted.

The city adopts by reference the following sections or subsections of Chapter 197-11 WAC (State Environmental Policy Act Rules as adopted by the State of Washington Department of Ecology):

WAC

197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum.
197-11-708 Adoption.
197-11-710 Affected tribe.
197-11-712 Affecting.

197-11-714 Agency.
197-11-716 Applicant.
197-11-718 Built environment.
197-11-720 Categorical exemption.
197-11-721 Closed record appeal.
197-11-722 Consolidated appeal.
197-11-724 Consulted agency.
197-11-726 Cost-benefit analysis.
197-11-728 City.
197-11-730 Decisionmaker.
197-11-732 Department.
197-11-734 Determination of nonsignificance (DNS).
197-11-736 Determination of significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 SEPA.
197-11-792 Scope.
197-11-793 Scoping.

197-11-794 Significant.
197-11-796 State agency.
197-11-797 Threshold determination.
197-11-799 Underlying governmental action.

(Ord. 1141 § 4, 1998).

20.04.040 Additional definitions.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this chapter, the following terms shall have the following meanings unless the context indicates otherwise:

(1) "Department" means any division, subdivision or organizational unit of the city of Oak Harbor established by ordinance, rule or order.

(2) "Early notice" means the city of Oak Harbor's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal. (Mitigated DNS procedures.)

(3) "Ordinance" means the ordinance, resolution or the procedure used by the City of Oak Harbor to adopt regulatory requirements.

(4) "SEPA Rules" means Chapter 197-11 WAC adopted by the Department of Ecology. (Ord. 1141 § 5, 1998).

20.04.050 Responsible official.

(1) For those proposals for which the city is the lead agency the responsible official shall be the city supervisor. An alternate designation may be a permanent or temporary transfer of the duties and may include one or more cases.

(2) For all proposals for which the city is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required EIS and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA Rules that were adopted by reference in WAC 173-806-020.

(3) The city shall retain all documents required by the SEPA Rules (Chapter 197-11 WAC) and make them available in accordance with Chapter 42.17 RCW.

(4) Public information concerning SEPA documents may be obtained from the Planning Office, City Hall, 865 S.E. Barrington Drive, Oak Harbor, Washington 98277, phone (360)679-5551. (Ord. 1141 § 6, 1998).

20.04.060 Lead agency determination and responsibilities.

(1) The department within the city receiving an application for or initiating a proposal that involves a nonexempt action shall determine the lead agency for that proposal under WAC 197-11-050 and 197-11-922 through 197-11-940 as now in effect or as hereafter amended or otherwise modified unless the lead agency has been previously determined or the department is aware that another department or agency is in the process of determining the lead agency.

(2) When the city is the lead agency for a proposal, the department receiving the application shall notify the responsible official, who shall supervise compliance with the threshold determination requirements and, if an EIS is necessary, shall supervise preparation of the EIS.

(3) When the city is not the lead agency for a proposal, all departments of the city shall use and consider as appropriate either the MDNS, DNS or the final EIS of the lead agency in making

decisions on the proposal. No city department shall prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency unless required under WAC 197-11-600.

(4) If the city or any of its departments receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-922 through 197-11-940 the department shall notify the responsible official. The city may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the city must petition to the Department of Ecology for the lead agency determination under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the city may be initiated by the responsible official.

(5) Departments of the city are authorized to make agreements as to lead agency status or share lead agency duties for a proposal under WAC 197-11-942 and 197-11-944; provided, that the responsible official and any department that will incur responsibilities as the result of such agreement must approve the agreement.

(6) Any department making a lead agency determination for a private project shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

(7) When the city is lead agency for a Model Toxics Control Act (MTCA) remedial action, the Department of Ecology shall be provided an opportunity under WAC 197-11-253(5) to review the environmental documents prior to public notice being provided. If the SEPA and MTCA documents are issued together with one public comment period under WAC 197-11-253(6), the city shall decide jointly with Ecology who receives the comment letters and how copies of the comment letters will be distributed to the other agency. (Ord. 1141 § 7, 1998).

20.04.070 Transfer of lead agency status to a state agency.

For any proposal for a private project where the city would be the lead agency and for which one or more state agencies have jurisdiction, the responsible official may elect to transfer the lead agency duties to the state agency. The state agency, the jurisdiction appearing first on the priority listing in WAC 197-11-936, shall be the lead agency, and the city shall be an agency with jurisdiction. To transfer lead agency duties, the responsible official must transmit a notice of the transfer together with any relevant information available on the proposal to the appropriate state agency with jurisdiction. The responsible official shall also give notice of the transfer to the private applicant and any other agencies with jurisdiction over the proposal. (Ord. 1141 § 8, 1998).

20.04.080 City action – Timing considerations.

For nonexempt proposals, the declaration of nonsignificance or the draft EIS for the proposal shall accompany the city staff recommendation to any appropriate advisory body such as the planning commission. (Ord. 1141 § 9, 1998).

20.04.090 Categorical exemptions and threshold determinations – WAC provisions adopted.

The city adopts by reference the following sections or subsections of Chapter 197-11 WAC (State Environmental Policy Act Rules as adopted by the State Department of Ecology) as now in effect or as hereafter amended or otherwise modified:

WAC

197-11-300 Purpose of this part.

197-11-305 Categorical exemptions.

197-11-310 Threshold determination required.
197-11-315 Environmental checklist.
197-11-330 Threshold determination process.
197-11-335 Additional information.
197-11-340 Determination of nonsignificance (DNS).
197-11-350 Mitigated DNS.
197-11-355 Optional DNS process.
197-11-360 Determination of significance (DS)/ Initiation of scoping.
197-11-390 Effect of threshold determination.

(Ord. 1141 § 10, 1998).

20.04.100 Thresholds for categorical exemptions.

(1) The following exempt levels for minor new construction under WAC 197-11-800(1)(b)(i) shall apply to meet the local conditions:

(a) For residential dwelling units in WAC 197-11-800(1)(b)(i), up to four dwelling units;

(b) For agricultural structures in WAC 197-11-800(1)(b)(ii), up to 10,000 square feet;

(c) For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800(1)(b)(iii), up to 4,000 square feet and up to 20 parking spaces;

(d) For parking lots in WAC 197-11-800 (1)(b)(iv), up to 20 parking spaces;

(e) For landfills and excavations in WAC 197-11-800(1)(b)(v), up to 100 cubic yards throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a Class I, II or III forest practice under RCW 76.09.050.

(2) Whenever the city establishes new exempt levels under this section, it shall send them to the Department of Ecology Headquarters Office, Olympia, Washington, under WAC 197-11-800(1)(c). (Ord. 1382 § 1, 2004; Ord. 1141 § 11, 1998).

20.04.110 Use of exemptions.

(1) Each department within the city that receives an application for a license or, in a case of governmental proposals, the department initiating the proposal shall determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The city shall not require completion of an environmental checklist for an exempt proposal.

(2) In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.

(3) If a proposal includes both exempt and nonexempt actions, the city may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

(a) The city shall not give authorization for:

(i) Any nonexempt action,

(ii) Any action that would have an adverse environmental impact, or

(iii) Any action that would limit the choice of alternatives;

(b) A department may withhold approval of an exempt action that would lead to

modification of the physical environment when such modification would serve no purpose if nonexempt action or actions were not approved; and

(c) A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action or actions were not approved. (Ord. 1141 § 12, 1998).

20.04.120 Environmental checklist procedure.

(1) Except as provided in subsection (3) below, a completed environmental checklist in the form provided in WAC 197-11-960 shall be filed at the same time as an application for permit, license, certificate or other approval not specifically exempted in this chapter, except a checklist is not needed if the city and applicant agree an EIS is required, SEPA compliance has been completed or SEPA compliance has been initiated by another agency. The city shall use the environmental checklist to determine the lead agency and, if the city is the lead agency, for making the threshold determination.

(2) For private proposals, the city will require the applicant to complete the environmental checklist, providing assistance as necessary. For city proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

(3) For projects submitted as planned actions under WAC 197-11-164, the city shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. The modified environmental checklist form may be prepared and adopted along with or as part of a planned action ordinance, or developed after the ordinance is adopted. In either case, a proposed modified environmental checklist form must be sent to the Department of Ecology to allow at least a 30-day review prior to use. (Ord. 1141 § 13, 1998).

20.04.130 DNS/mitigated DNS.

(1) As provided in this section and in WAC 197-11-350, the responsible official may issue a determination of nonsignificance (DNS) based on conditions attached to the proposal by the responsible official or on changes to or clarifications of the proposal made by the applicant.

(2) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. The request must:

(a) Follow the submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

(b) Precede the city's actual threshold determination for the proposal.

(3) The responsible official should respond to the request for early notice within 10 working days. The response shall:

(a) Be written;

(b) State whether the city considers issuance of a DS likely and, if so, indicate the general or specific area or areas of concern that are leading the city to consider a DS; and

(c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

(4) As much as possible, the city should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(5) When an applicant submits a changed or clarified proposal along with a revised environmental checklist, the city shall base its threshold determination on the changed or clarified proposal and

should make the determination within 15 days of receiving the changed or clarified proposal:

(a) If the city indicated specific mitigation measures in its response to the request for early notice and the applicant changed or clarified the proposal to include those specific mitigation measures, the city shall issue and circulate a determination of nonsignificance under WAC 197-11-340(2);

(b) If the city indicated the areas of concern but did not indicate specific mitigating measures that would allow it to issue a DNS, the city shall make the threshold determination issuing a DNS or DS as appropriate;

(c) The applicant's proposed mitigation measures must be in writing and must be specific. For example, proposal to "control noise" or "prevent storm water runoff" are inadequate whereas proposals to "muffle machinery to X number of decibels" or "construct a 200-foot storm water retention pond at Y location" are adequate;

(d) Mitigation measures which justify issuance of a mitigated DNS may be incorporated in the DNS by reference to agency staff reports, studies or other documents.

(6) A mitigated DNS is issued under WAC 197-11-340(2) requiring a 14-day comment period and public notice.

(7) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit or enforced in any manner specifically prescribed by the city.

(8) If the city's tentative decision on the permit or approval does not include mitigation measures that were incorporated in the mitigated DNS for approval, the city should evaluate the threshold determination to assure consistency with WAC 197-11-340(3)(a) (withdrawal of DNS).

(9) The city's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal as opposed to a written request for early notice shall not bind the city to consider the clarifications or changes in its threshold determination.

(10) Anyone violating or failing to comply with any mitigation measure imposed under this section shall, upon conviction thereof, be subject to a civil penalty not exceeding $250.00. Each day of violation shall be a separate offense. Anyone who shall continue to violate or fail to comply with such measure after receiving notice of the violation shall be guilty of a gross misdemeanor punishable by a fine of up to $5,000 or 365 days in jail or both such fine and jail time. In addition, any permits authorizing work which are subject to the mitigation measures imposed under this section may be suspended or revoked pending restoration or settlement of claims resulting from the violation of the mitigation measures.

(a) Responsibility. The person primarily responsible for SEPA compliance shall be the person obtaining the permit. A person other than the permittee may be held liable under this the penalty provision of this chapter if he/she has notice of the SEPA conditions.

(b) Notice and Correction. It is directed that when feasible, a notice to correct shall be used in lieu of filing citations or complaints. It is recognized that a correction notice process may not be feasible (appropriate or workable) where an action cannot be corrected such as the protection of unique or special natural vegetation, species habitat, air and noise pollution standards and restrictions on time or duration of construction or other work or where the violation is wilful.

The correction notice process shall have the following elements:

(i) The city attorney shall give written notice describing the violation and directing

the person cease violation or to correct and giving a reasonable time limit to correct.

(ii) Notice may be served in person, by certified mail or by posting the notice at a visible location on or near the property; provided, that when posting the property, the permittee shall be personally served or sent a letter by certified mail.

(iii) The city and permittee may enter into an agreement to meet the SEPA conditions within the time specified by notice or agreement.

(iv) If the permittee cannot achieve compliance with the SEPA condition, the city attorney or his or her designee may file a citation or complaint for each day of violation under this section.

(c) Definitions for This Section.

(i) "Permittee" includes the property owner or other person who obtains the development permit.

(ii) "Person" includes natural persons, corporations and other legal entities having independent power to act with regard to property or persons.

(d) The civil and criminal liability under this subsection is supplemental to other remedial authority under SEPA and the ordinances and codes of the city of Oak Harbor. (Ord. 1271 § 1, 2001; Ord. 1141 § 14, 1998).

20.04.140 Environmental impact statement (EIS) – WAC provisions adopted.

The city of Oak Harbor adopts by reference the following sections or subsections of Chapter 197-11 WAC (State Environmental Policy Act Rules adopted by the State of Washington Department of Ecology):

WAC

197-11-400	Purpose of EIS.
197-11-402	General requirements.
197-11-405	EIS types.
197-11-406	EIS timing.
197-11-408	Scoping.
197-11-410	Expanded scoping.
197-11-420	EIS preparation.
197-11-425	Style and size.
197-11-430	Format.
197-11-435	Cover letter or memo.
197-11-440	EIS contents.
197-11-442	Contents of EIS on nonproject proposals.
197-11-443	EIS contents when prior nonprojects EIS.
197-11-444	Elements of the environment.
197-11-448	Relationship of EIS to other considerations.
197-11-450	Cost-benefit analysis.
197-11-455	Issuance of DEIS.
197-11-460	Issuance of FEIS.

(Ord. 1141 § 15, 1998).

20.04.145 Integrated SEPA process and GMA.

The city adopts by reference the following sections of Chapter 197-11 WAC as now in effect or hereafter adopted or amended:

WAC

197-11-210 SEPA/GMA integration.
197-11-220 SEPA/GMA definitions.
197-11-228 Overall SEPA/GMA integration procedures.
197-11-230 Timing of an integrated GMA/ SEPA process.
197-11-232 SEPA/GMA integration procedures for preliminary planning, environmental analysis and expanded scoping.
197-11-235 Documents.
197-11-250 SEPA/Model Toxics Control Act (MTCA) integration.
197-11-253 SEPA lead agency for MTCA actions.
197-11-256 Preliminary evaluation.
197-11-259 Determination of nonsignificance for MTCA remedial action.
197-11-262 Determination of significance and EIS for MTCA remedial actions.
197-11-265 Early scoping for MTCA remedial actions.
197-11-268 MTCA interim actions.

(Ord. 1141 § 16, 1998).

20.04.150 Preparation of EIS – Additional considerations.

(1) Preparation of draft and final EISs and SEISs is the responsibility of the city staff under the direction of the responsible official. Before the city issues an EIS, the responsible official shall be satisfied that it complies with this chapter and Chapter 197-11 WAC.

(2) The draft and final EIS or SEIS shall be prepared by the city staff, the applicant, or a consultant selected by the city or the applicant. If the responsible official requires an EIS for a proposal and determines that someone other than the city will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the city's procedure for EIS preparation, including approval of the draft and final EIS prior to distribution.

(3) The city may require an applicant to provide information the city does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. This does not apply to information the city may request under another ordinance or statute. (Ord. 1141 § 17, 1998).

20.04.160 Commenting – WAC provisions adopted.

The city adopts by reference the following sections or subsections of Chapter 197-11 WAC (State Environmental Policy Act Rules as adopted by the State Department of Ecology):

WAC

197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-504 Availability and cost of environmental documents.
197-11-508 SEPA register.
197-11-510 Public notice.

197-11-535	Public hearings and meetings.
197-11-545	Effect of no comment.
197-11-550	Specificity of comments.
197-11-560	FEIS response to comments.
197-11-570	Consulted agency costs to assist lead agency.

(Ord. 1141 § 18, 1998).

20.04.170 Public notice requirements.

(1) Whenever possible, the city shall integrate the public notice required under this section with existing notice procedures for the city's nonexempt permit(s) or approval(s) required for the proposal.

(2) Whenever possible, when the city issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3) the city shall give public notice as follows:

(a) If an environmental document is issued concurrently with the notice of application, the public notice requirements for the notice of application in RCW 36.70B.110(4) will suffice to meet the SEPA public notice requirements in WAC 197-11-510(1).

(b) If no public notice is otherwise required for the permit or approval, the city shall give notice of the DNS or DS by (Note: Select at least one of the following):

(i) Posting the property, for site-specific proposals;

(ii) Publishing notice in a newspaper of general circulation in the city, or general area where the proposal is located;

(iii) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(iv) Notifying the news media;

(v) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or

(vi) Publishing notice in agency newsletters and/or sending notice to agency mailing lists (either general lists or lists for specific proposals for subject areas).

(c) Whenever the city issues a DS under WAC 197-11-360(3), the city shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(3) If a DNS is issued using the optional DNS process, the public notice requirements for a notice of application in RCW 36.70B.110(4) as supplemented by the requirements in WAC 197-11-355 will suffice to meet the SEPA public notice requirements in WAC 197-11-510(b).

(4) Whenever the city issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license, and at least one of the following:

(a) Posting the property, for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(c) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals; and/or

(f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists

(general mailing list kept by the city).

(5) Public notice for projects that qualify as planned actions shall be tied to the underlying permit as specified in WAC 197-11-172(3).

(6) The city may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense. (Ord. 1141 § 19, 1998).

20.04.180 Responsible official to perform consulted agency responsibilities.

(1) The responsible official shall be responsible for preparation of written comments for the city in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a draft EIS.

(2) The responsible official shall be responsible for the city's compliance with WAC 197-11-550 whenever the city is a consulted agency and is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from all appropriate departments of the city. (Ord. 1141 § 20, 1998).

20.04.190 Existing environmental documents – WAC provisions adopted.

The city adopts by reference the following sections or subsections of Chapter 197-11 WAC (State Environmental Policy Act Rules as adopted by the State Department of Ecology):

WAC

197-11-164 Planned actions – Definition and criteria.

197-11-168 Ordinances or resolutions designating planned actions –Procedures for adoption.

197-11-172 Planned actions – Project review.

197-11-600 When to use existing environmental documents.

197-11-610 Use of NEPA documents.

197-11-620 Supplemental environmental impact statement procedures.

197-11-625 Addenda – Procedures.

197-11-630 Adoption – Procedures.

197-11-635 Incorporation by reference – Procedures.

197-11-640 Combining documents.

(Ord. 1141 § 21, 1998).

20.04.200 SEPA and agency decisions – WAC provisions adopted.

The city adopts by reference the following sections or subsections of Chapter 197-11 WAC (State Environmental Policy Act Rules as adopted by the State Department of Ecology):

WAC 197-11-650 Purpose of this part. 197-11-655 Implementation. 197-11-660 Substantive authority and mitigation. 197-11-680 Appeals.

(Ord. 1141 § 22, 1998).

20.04.210 Substantive authority.

(1) The policies and goals set forth in this chapter are supplementary to those in the existing authorization of the city of Oak Harbor.

(2) The city may attach conditions to a permit or approval for a proposal so long as:

(a) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

(b) Such conditions are in writing; and

(c) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

(d) The city has considered whether other local, state or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

(e) Such conditions are based on one or more policies in OHMC 20.04.212 and cited in the license or other decision document.

(3) The city may deny a permit or approval for a proposal on the basis of SEPA so long as:

(a) A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a final EIS or final supplemental EIS prepared pursuant to this chapter; and

(b) A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

(c) The denial is based on one or more policies identified in OHMC 20.04.212 and identified in writing in the decision document. (Ord. 1382 § 2, 2004; Ord. 1141 § 23, 1998).

20.04.212 Substantive policies.

The city designates and adopts the following policies as the basis for the city's exercise of authority to this section:

(1) The city shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs and resources so that the state, the city and its citizens may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) Preserve important historic, cultural and natural aspects of our national heritage;

(e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;

(g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources; and

(h) The city recognizes that each person has a fundamental and inalienable right to a healthful environment as well as a responsibility to contribute to the preservation and enhancement of the environment.

(2) The city adopts by reference the policies, in the following laws, codes, ordinances, resolutions, agreements and plans as now existing or hereinafter amended, as a possible basis for the exercise of substantive authority in the conditioning or denying of proposals:

(a) Chapter 43.21C RCW, State Environmental Policy Act;

(b) Chapters 36.70A through 36.70C RCW, State Growth Management Act;

(c) OHMC Title 11, Streets and Sidewalks;

(d) OHMC Title 12, Storm Water;

(e) OHMC Title 13, Water;
(f) OHMC Title 14, Sewers;
(g) OHMC Title 15, Garbage and Refuse;
(h) OHMC Title 16, Mobile Homes;
(i) OHMC Title 17, Buildings;
(j) OHMC Title 18, Planning;
(k) OHMC Title 19, Zoning;
(l) OHMC Title 20, Environment;
(m) OHMC Title 21, Subdivisions;
(n) Chapter 3.63 OHMC, Impact Fees;
(o) Chapter 3.64 OHMC, Fee Schedule;
(p) City of Oak Harbor Comprehensive Plan;
(q) City of Oak Harbor Comprehensive Water Plan;
(r) City of Oak Harbor Comprehensive Sewer Plan;
(s) City of Oak Harbor Comprehensive Storm Water Plan;
(t) City of Oak Harbor Comprehensive Plan Transportation Element;
(u) City of Oak Harbor Capital Facilities Plan;
(v) City of Oak Harbor Comprehensive Plan Woodlands Area Map;
(w) City of Oak Harbor Commercial and Industrial Design Guidelines;
(x) City of Oak Harbor General Rules and Regulations for the Prevention and Control of Fires and Fire Hazards;
(y) Landscape Policy Manual;
(z) Oak Harbor Comprehensive Parks and Recreation Plan, Freund Marsh Master Plan, City Beach Park Master Plan, and other adopted park and recreation plans;
(aa) Drainage, storm water, transportation, development guidelines and other engineering plans or documents governing development within the city;
(bb) Transportation Improvement Program (TIP);
(cc) All intergovernmental and/or interlocal agreements between the city of Oak Harbor and surrounding jurisdictions, including federal, state and local agencies, special purpose districts, or other municipal, governmental or public entities, including without limitation all such agreements concerning transportation, education, parks and recreation, fire services, or other infrastructure elements, including, but not limited to, the interlocal agreement between Island County and the city of Oak Harbor pertaining to joint land use policies for unincorporated areas of urban growth area, countywide planning policies, coordinated water system plan;
(dd) Washington State Department of Ecology Criteria for Sewage Works Design "Orange book" (Chapter 14.03 OHMC);
(ee) Washington State Department of Ecology Stormwater Management Manual for the Puget Sound Basin (OHMC 12.30.010), 1992 version for capacity and design standards and current version for water quality and best practice standards;
(ff) Washington State Department of Health Water system design manual (Chapter 246-290 WAC);
(gg) Washington State DOT/APWA standard Specifications for road and bridge construction (OHMC 21.40.020);
(hh) Washington State DOT/APWA Standard Plans (OHMC 21.40.020);

(ii) Washington State Department of Transportation Local Agency Guidelines Manual;

(jj) American Association of State and Highway Transportation Officials (AASHTO), A Policy on Geometric Design of Highways and Streets Fourth Edition 2001 (sometimes referred to as the "Green Book");

(kk) Institute of Transportation Engineers trip generation manual (OHMC 11.32.040);

(ll) Standard Methods for the Examination of Water and Waste Water, 19th Edition, 1992; Section 5520 (OHMC 14.09);

(mm) Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title 11 commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act;

(nn) Section 307(c) of the Clean Water Act;

(oo) Manual on Uniform Traffic Control Devices, Millennium Edition;

(pp) 1997 Uniform Sign Code published by the International Conference of Building Officials;

(qq) 1997 Uniform Code for the Abatement of Dangerous Buildings published by the International Conference of Building Officials;

(rr) 1997 Uniform Housing Code published by the International Conference of Building Officials;

(3) Effective July 1, 2004, the city adopts by reference the additional policies, in the following codes, as now existing or hereinafter amended, as a possible basis for the exercise of substantive authority in the conditioning or denying of proposals:

(a) The 2003 Edition of the International Building Code, including Sections 101 through 106 of Appendix E, Appendix I and Appendix J, published by the International Code Council as amended by the Washington State Building Code Council on November 21, 2003, and published as Chapter 51-50 WAC;

(b) The 2003 Edition of the International Residential Code, excepting Chapters 11 and 25 through 42, and including Appendices H and J, as published by the International Code Council as amended by the Washington State Building Code Council on November 21, 2003, and published as Chapter 51-51 WAC;

(c) The 2003 Edition of the International Mechanical Code, published by the International Code Conference as amended by the Washington State Building Code Council on November 21, 2003, and published as Chapter 51-52 WAC;

(d) The 2003 Edition of the Uniform Plumbing Code, Plumbing Code Standards and appendices published by the International Association of Plumbing and Mechanical Officials as amended by the Washington State Building Code Council on November 21, 2003, and published as Chapters 51-56 and 51-57 WAC;

(e) The 2003 Edition of the International Fire Code, Fire Code Standards and appendices, published by the International Code Council as amended by the Washington State Building Code Council on November 21, 2003, and published as Chapters 51-54 and 51-55 WAC;

(f) 2003 Washington State Energy Code, as amended by the Washington State Building Code Council on November 21, 2003, and published as Chapter 51-11 WAC;

(g) 2003 Washington State Ventilation and Indoor Air Quality Code, as amended by the

Washington State Building Code Council on November 21, 2003, and published as Chapter 51-13 WAC. (Ord. 1382 § 3, 2004).

20.04.215 Appeal.

(1) The following decisions are subject to administrative appeal:

(a) A final determination of DNS.

(b) When any proposal or action not requiring a decision of the city council is conditioned or denied on the basis of SEPA by a nonelected official.

(c) When both administrative appeal of the final DNS and the substantive determination by a nonelected official are allowed, the appeals must be consolidated.

(2) Such appeal shall be in accordance with Chapter 1.24 OHMC and shall lie before the city council. Appeal must be perfected by giving notice within 15 days of the effective date of the decision of the responsible official.

(3) The procedural determination by the city's responsible official shall carry substantial weight in any appeal proceeding.

(4) The city shall give official notice under WAC 197-11-680(5) whenever it issues a permit or approval for which a statute or ordinance establishes a time limit for commencing judicial appeal. (Ord. 1141 § 24, 1998).

20.04.220 Categorical exemptions – WAC provisions adopted.

The city adopts by reference the following sections or subsections of Chapter 197-11 WAC (State Environmental Policy Act Rules as adopted by the State Department of Ecology):

WAC

197-11-800 Categorical exemptions.

197-11-880 Emergencies.

197-11-890 Petitioning DOE to change exemptions.

(Ord. 1141 § 25, 1998).

20.04.227 Critical areas.

(1) The city determines that all categorical exemptions will not apply in the critical areas identified in the critical areas provisions of Chapter 20.20 OHMC and the city's comprehensive plan.

(2) The scope of environmental review of actions within these areas which would otherwise be categorically exempt shall be limited to:

(a) Documenting whether the proposal is consistent with the requirements of the critical areas ordinance; and

(b) Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and with other applicable environmental review laws.

(3) All categorical exemptions not listed in subsection (1) apply whether or not the proposal will be located in a critical area. (Ord. 1141 § 26, 1998).

20.04.230 Agency compliance – WAC provisions adopted.

The city adopts by reference the following sections or subsections of Chapter 197-11 WAC (State Environmental Policy Act Rules as adopted by the State Department of Ecology):

WAC

197-11-900 Purpose of this part.
197-11-902 Agency SEPA policies.
197-11-916 Application to ongoing actions.
197-11-920 Agencies with environmental expertise.
197-11-922 Lead agency rules.
197-11-924 Determining the lead agency.
197-11-926 Lead agency for governmental proposals.
197-11-928 Lead agency for public and private proposals.
197-11-930 Lead agency for private projects with one agency with jurisdiction.
197-11-932 Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a city.
197-11-934 Lead agency for private projects requiring licenses from a local agency, not a city, and one or more state agencies.
197-11-936 Lead agency for private projects requiring licenses from more than one state agency.
197-11-938 Lead agency for specific proposals.
197-11-940 Transfer of lead agency status to a state agency.
197-11-942 Agreements on lead agency status.
197-11-944 Agreements on division of lead agency duties.
197-11-946 DOE resolution of lead agency disputes.
197-11-948 Assumption of lead agency status.
(Ord. 1141 § 27, 1998).

20.04.240 Fees.

The city shall require the following fees for its activities in accordance with the provisions of this chapter as set out in the city's fee ordinance in Chapter 3.64 OHMC as now in effect or hereafter amended.

(1) Environmental Impact Statement. The responsible official may determine that the city will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the city and may bill such costs and expenses directly to the applicant. Such consultants shall be selected by mutual agreement of the city and applicant after a call for proposals. The city may require the applicant to post bond or otherwise ensure payment of such costs.

(2) The city may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal. (Ord. 1141 § 28, 1998).

20.04.250 Adoption by reference.

Sections of the Washington Administrative Code (WAC) adopted by reference shall be as now in effect or as hereby amended or otherwise modified.

A copy of the Washington Administrative Code adopted by reference is on file with the city clerk's office. It is further directed that the city clerk shall keep a copy of the referenced Washington Administrative Code sections and shall make a copy of the sections of the Washington Administrative Code adopted by reference available for public inspection. (Ord. 1141 § 29, 1998).

Chapter 20.12
GENERAL CRITICAL AREAS REGULATIONS

Sections:

20.12.010 **Purpose.**
20.12.020 **Relationship to other regulations.**
20.12.030 **Jurisdiction.**
20.12.040 **Exempt activities.**
20.12.050 **Public agency and utility exceptions.**
20.12.060 **Reasonable use.**
20.12.070 **Critical area identification form and report.**
20.12.080 **Density calculation.**
20.12.090 **Mitigation sequencing.**
20.12.100 **Mitigation plan requirements.**
20.12.110 **Determination.**
20.12.120 **Variances.**
20.12.130 **Enforcement and penalties.**
20.12.140 **Signs and fencing.**
20.12.150 **Building setbacks.**

20.12.010 Purpose.

(1) The purpose of the critical areas regulations in this chapter is to designate and classify ecologically sensitive and hazardous areas and to protect them and their functions and values, while also allowing for reasonable use of private property.

(2) Critical areas regulations in this chapter implement the goals, policies, guidelines, and requirements of the city comprehensive plan and the Growth Management Act as they relate to critical areas.

(3) The city finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of flood waters, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation. These beneficial functions and values are not listed in order of priority. (Ord. 1440 § 2, 2005).

20.12.020 Relationship to other regulations.

(1) These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.

(2) Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.

(3) These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any conditions required pursuant to

critical areas regulations in this chapter shall be included in the SEPA review and threshold determination and shall constitute compliance with SEPA with respect to critical areas.

(4) The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of critical areas regulations in this chapter.

(5) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required. The applicant is responsible for complying with these requirements, apart from the process established in this chapter. (Ord. 1440 § 2, 2005).

20.12.030 Jurisdiction.

(1) The city shall regulate all uses, activities, and developments within, adjacent to, or likely to affect one or more critical areas, consistent with the best available science and the provisions herein.

(2) Critical areas regulated by this chapter include:

(a) Garry oak trees;

(b) Wetlands, as designated in Chapter 20.24 OHMC;

(c) Fish and wildlife habitat conservation areas, as designated in Chapter 20.25 OHMC;

(d) Geologically sensitive areas, as designated in Chapter 20.28 OHMC; and

(e) Critical aquifer recharge areas, as designated in Chapter 20.32 OHMC.

(3) All areas within the city meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of critical areas regulations in this chapter.

(4) The approximate location and extent of critical areas within the city are shown on the adopted critical area maps. The adopted maps do not include the location of all critical areas; therefore, it is the actual presence of critical areas that triggers the requirements of this chapter, whether or not the critical area is identified on the adopted maps. (Ord. 1440 § 2, 2005).

20.12.040 Exempt activities.

The following developments, activities, and associated uses shall be exempt from the provisions of this chapter and Chapter 20.16 OHMC, Oak Tree Protection; Chapter 20.24 OHMC, Wetlands; Chapter 20.25 OHMC, Fish and Wildlife Habitat Conservation Areas; Chapter 20.28 OHMC, Geologically Sensitive Areas; and Chapter 20.32 OHMC, Critical Aquifer Recharge Areas:

(1) Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventive action in a timeframe too short to allow for compliance with the requirements of this chapter. After the emergency, the person or agency undertaking the action shall report any impacts to the critical area to the director. The director may require submittal of a critical areas report to guide restoration or mitigation for these impacts. Final approval of the report, restoration and mitigation shall be in accordance with provisions of this chapter.

(2) Operation, maintenance, repair, modification, addition to, or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, if the activity does not further alter or increase the impact to, or encroach further within, a critical area or buffer and there is no increased risk to life or property as a result of the action. Operation

and maintenance includes vegetation management performed in accordance with best management practices; provided, that such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of a structure or utility, and do not directly impact species or habitat protected under Chapter 20.25 OHMC.

(3) Educational and research activities that do not degrade the functions and values of a critical area or buffer. (Ord. 1440 § 2, 2005).

20.12.050 Public agency and utility exceptions.

(1) If the application of critical areas regulations in this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a critical area identification form; critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act. The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with review criteria in subsection (4) of this section.

(3) Hearing Examiner Review. The hearing examiner shall review the application and director's recommendation, and conduct a public hearing pursuant to the provisions of Chapter 18.40 OHMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (4) of this section.

(4) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions are the following:

(a) There is no other practical alternative to the proposed development with less impact on critical areas and their buffers, including minimizing removal of native vegetation and significant trees;

(b) The application of this chapter would unreasonably restrict the ability to provide services to the public;

(c) The proposal does not pose a threat to the public health, safety, or welfare on or off the development proposal site;

(d) The proposal protects and mitigates impacts to the functions and values of the critical area to the greatest extent feasible, consistent with the best available science; and

(e) The proposal is consistent with other applicable regulations and standards.

(5) The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1440 § 2, 2005).

20.12.060 Reasonable use.

(1) If the application of critical areas regulations in this chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an appropriate action, or the property owner may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a reasonable use exception shall be

made to the city and shall include a critical area identification form; critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act. The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection (4) of this section.

(3) Hearing Examiner Review. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of Chapter 18.40 OHMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the reasonable use exception review criteria in subsection (4) of this section.

(4) Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions follow:

(a) The application of the normal standards of this chapter would deny all reasonable economic use of the property;

(b) No other reasonable economic use of the property has less impact on the critical area, allowing for a building footprint of up to 1,500 square feet for single-family residential development and up to 4,000 square feet for multifamily and nonresidential development. The actual floor area of buildings may be larger. Associated impervious surface for driveways, parking and other purposes shall be the minimum necessary to meet the usual and customary needs of the land use;

(c) The proposal protects and mitigates impacts to the functions and values of the critical area to the greatest extent feasible, consistent with the best available science, allowing for reductions in critical area buffers and setbacks of up to 50 percent, with mitigation;

(d) The inability of the applicant to derive reasonable economic use of the property is not the result of subdivision or other actions by the applicant after the effective date of the ordinance codified in this chapter, or its predecessor;

(e) The proposal does not pose a threat to the public health, safety, or welfare on or off the development proposal site; and

(f) The proposal is consistent with other applicable regulations and standards.

(5) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

(6) Variance Available. If the applicant is not satisfied with relief provided by this section, the applicant may apply for a variance, under the standards of OHMC 20.12.120. (Ord. 1440 § 2, 2005).

20.12.070 Critical area identification form and report.

(1) Submittal. Prior to the city's consideration of any proposed activity not found to be exempt under OHMC 20.12.040, the applicant shall submit to the director a complete critical area identification form on forms provided by the city.

(2) Review Process. The director shall review the critical area identification form and, as needed, conduct a site inspection and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal. If the director finds that no critical areas are present on or adjacent to the project area

or that the proposal will not impact a critical area in a manner contrary to the purpose, intent and requirements of critical areas regulations in this chapter, the director shall rule that the critical area review is complete and note on the identification form that no further review is required. If the director finds that a critical area may be affected by the proposal, the director shall notify the applicant that a critical areas report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report. A determination regarding the absence of one or more critical areas by the director is not an expert certification regarding the presence of critical areas and is subject to possible reconsideration and reopening if new information is received.

(3) Critical Areas Report. Detailed requirements for critical areas reports are identified in the chapters for specific types of critical areas. Preparation of critical areas reports and their review by the city, which may include referral to independent qualified professionals, shall be at the applicant's expense. (Ord. 1440 § 2, 2005).

20.12.080 Density calculation.

(1) Where development is partly prohibited due to the presence of critical areas, as defined in this title, an applicant may be permitted to transfer the density attributable to the undevelopable area of the property to another noncritical portion of the same site or property subject to the limitations of this section. Up to 100 percent of the density that could be achieved on the unbuildable portion of the site can be transferred to the noncritical area portion of the property, subject to:

(a) The density limitation of the underlying zoning district;

(b) The minimum lot size of the underlying zoning district may be reduced by up to 25 percent; and

(c) Applicable setbacks may be reduced to 15 feet, and the lot coverage standards of underlying zoning regulations may be increased to 60 percent. (Ord. 1440 § 2, 2005).

20.12.090 Mitigation sequencing.

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

(3) Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the historical conditions or the conditions existing at the time of the initiation of the project;

(4) Minimizing or eliminating a hazard by restoring or stabilizing the hazard area through engineered or other methods;

(5) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;

(6) Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and

(7) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation may include a combination of the above measures. (Ord. 1440 § 2, 2005).

20.12.100 Mitigation plan requirements.

When mitigation is required, the applicant shall submit for approval by the city a mitigation plan as part of the critical areas report. The mitigation plan shall include:

(1) A written report identifying environmental goals and objectives of the compensation proposed, including:

(a) A description of the anticipated impacts to the critical areas and the mitigating actions proposed, including the site selection criteria; mitigation goals and objectives, in relation to the functions and values of the impacted critical area; and dates for beginning and completion of mitigation activities.

(b) A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and

(c) An analysis of the likelihood of success of the compensation project.

(2) Measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of critical areas regulations in this chapter have been met.

(3) Details of the mitigation proposed, such as:

(a) The proposed construction method, sequence, timing, and duration;

(b) Grading and excavation details;

(c) Erosion and sediment control features;

(d) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and

(e) Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

(4) A program for monitoring construction of the mitigation project and for assessing the completed project against its goals and objectives. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one, three, five, seven and 10 after site construction), and how monitoring data will be evaluated to determine if performance standards are being met. A monitoring report shall be submitted to document milestones, successes, problems, and contingency actions of the compensation project. The mitigation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years in the case of mitigation for buffer alterations and for not less than 10 years for mitigation of wetland alterations. If performance standards are being met after these minimum periods, requirements for additional monitoring may be waived, if the director determines they are unnecessary.

(5) Identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.

(6) Financial guarantees to ensure that the mitigation plan is fully implemented and meeting performance standards. Guarantees shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable

financial institution with terms and conditions acceptable to the city. Guarantees shall remain in effect for a minimum of five years until the city determines, in writing, that the standards bonded for have been met, to ensure that the required mitigation has been fully implemented and demonstrated to function. Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration. (Ord. 1440 § 2, 2005).

20.12.110 Determination.

(1) Upon review of a critical areas report, if the director determines that a proposed activity complies with OHMC 20.12.090, 20.12.100 and requirements related to specific types of critical areas, the director shall prepare a written notice of determination and identify any required conditions of approval, which shall be attached to the underlying permit or approval. This determination shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved.

(2) If the director determines that a proposed activity does not adequately mitigate its impacts on critical areas, the director shall prepare written notice of the determination that includes findings of noncompliance. No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not comply with this chapter. Following notice of noncompliance, the applicant may request consideration of a revised critical areas report. If the revision is found to be substantial and relevant to the critical areas review, the director may reopen the review and make a new determination based on the revised report.

(3) Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this chapter may be appealed according to, and as part of, the appeal procedure for the permit or approval involved. (Ord. 1440 § 2, 2005).

20.12.120 Variances.

(1) Variances from the standards of critical areas regulations in this chapter may be authorized by the city in accordance with the procedures set forth in Chapter 19.66 OHMC. The hearing examiner shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

(2) Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:

(a) Special conditions and circumstances exist that are peculiar to the land or lot that are not applicable to other lands in the same district;

(b) The special conditions and circumstances do not result from the actions of the applicant;

(c) A literal interpretation of the provisions of critical areas regulations in this chapter would deprive the applicant of reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;

(d) Granting the variance requested will not confer on the applicant any special privilege that is denied by critical areas regulations in this chapter to other lands, structures, or buildings under similar circumstances;

(e) The granting of the variance is consistent with the general purpose and intent of critical areas regulations in this chapter, and with mitigation will not further degrade the

functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;

(f) The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat; and

(g) The granting of the variance is consistent with the general purpose and intent of the city comprehensive plan and adopted development regulations.

(3) Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this chapter.

(4) Time Limit. The city shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance.

(5) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application. (Ord. 1440 § 2, 2005).

20.12.130 Enforcement and penalties.

(1) Inspections. Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period. The director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

(2) When a critical area or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the critical area or buffer shall be restored. The city shall have the authority to issue a stop work order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter. All development work shall remain stopped until a restoration plan is prepared and approved by the city. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsection (3) of this section. The director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

(3) Minimum Performance Standards for Restoration.

(a) For alterations to critical aquifer recharge areas, wetlands, and habitat conservation areas, restoration shall return the affected environment to the historic conditions or the conditions existing at the time of the initiation of the project; if that is infeasible, restoration shall replace, enhance, or provide substitute resources or environments meeting the criteria for mitigation in OHMC 20.12.090 and 20.12.100.

(b) For alterations to flood and geological hazards, the following minimum performance standards shall be met for restoration:

(i) The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;

(ii) Any risk to public safety or other critical areas resulting from the alteration shall be eliminated or minimized; and

(iii) To the extent feasible, the hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

(c) Restoration of oak trees shall be through a replacement ratio of at least five trees for every tree removed, topped or killed in violation of Chapter 20.16 OHMC. Replacement trees must be of a genetic stock from the Puget Sound/Georgia Strait ecoregion, unless such trees are not reasonably available. At least two trees must survive at least five years after planting and must grow to a height of at least eight feet.

(4) Penalties. Any person convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The city may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this chapter. The civil penalty shall be assessed at a maximum rate of $1,000 dollars per day per violation. (Ord. 1440 § 2, 2005).

20.12.140 Signs and fencing.

(1) Temporary Markers. The outer perimeter of buffers and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

(2) Permanent Signs. As a condition of any permit or authorization issued pursuant to critical areas regulations in this chapter, the director may require signs identifying postproject buffers and critical areas as "critical areas." If the buffers or critical areas have predominantly native vegetation or are so restored by the project, signs may use the term "native growth protection areas." Signs shall be made of an enamel-coated metal face and attached to a metal post or other nontreated material of equal durability. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity. Signs shall be worded as follows or with alternative language approved by the director:

Critical Area (or Native Growth Protection Area, as appropriate)
Do Not Disturb
Contact City of Oak Harbor Regarding Uses, Restrictions, and Opportunities for Stewardship

(3) Fencing. If the director determines fencing is necessary to protect the functions and values of the critical area, the director shall condition any permit or authorization issued pursuant to critical areas regulations in this chapter to require the applicant to install a permanent fence at the edge of the wetland buffer (e.g., split-rail fence). (Ord. 1440 § 2, 2005).

20.12.150 Building setbacks.

Unless otherwise provided, buildings and other structures shall be set back a distance of 10 feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

(1) Landscaping;

(2) Uncovered decks;

(3) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area; and

(4) Impervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to water quality regulations. (Ord. 1440 § 2, 2005).

Chapter 20.14
SEPA ENVIRONMENTAL REVIEW PROCESS

Sections:

20.14.010 **Overview – Intent.**
20.14.020 **Cumulative effects.**
20.14.030 **Parking and traffic.**
20.14.040 **Landscaping.**
20.14.050 **Drainage.**
20.14.060 **Light and glare.**

20.14.010 Overview – Intent.

(1) Policy Intent. It is the intent of the city that the SEPA environmental review process be implemented by integrating the consideration of environmental impacts with existing planning and decision-making processes. To the greatest extent possible, the mechanism for mitigating or preventing adverse impacts to the environment will be incorporated into present and future city ordinances relating to the affected element of the environment. The SEPA review process and the measures necessary to minimize or prevent adverse impacts are, therefore, not to be treated as a separate review or permitting process, but rather are to be employed as an integral element of the existing decision-making process.

(2) Policies. In assessing the environmental impacts of a proposal and in determining the need for conditioning or denial, the responsible official or his designee shall utilize SEPA, all policies, guidelines and regulations adopted pursuant to SEPA, and shall use other environmentally related policies adopted by the city council in the form of resolutions, codes, ordinances, regulations or plans identified in appendix A which is attached to the ordinance codified in this chapter and on file in the SEPA public information center, and federal and state and regional environmental quality standards. (Ord. 575 § 1, 1980).

20.14.020 Cumulative effects.

(1) Policy Intent. Recognizing that:

(a) Comprehensive land use controls and other regulations cannot always anticipate or eliminate adverse impacts upon public facilities and services, natural systems or the surrounding area; and

(b) A single development, use or modification, though otherwise consistent with zoning regulations, may create adverse impacts upon facilities and services, natural systems or the surrounding area when aggregated with the impacts of prior development; and a single development may induce, due to a casual relationship, other developments, which ultimately will adversely affect public facilities and service, natural systems or the surrounding area;

It is the policy of the city to condition or deny proposals to minimize or prevent such adverse environmental impacts from occurring.

(2) Policies.

(a) The analysis of cumulative effects shall include a reasonable assessment of the present and planned capacity of such public facilities as sewers, storm drains, solid waste disposal, parks, schools, streets, utilities and parking areas to serve the area affected by

the proposal.

(b) The analysis of cumulative effects shall include a reasonable assessment of the adequacy of the present and planned public services such as health, police and fire protection and social services to serve the area affected by the proposal.

(c) The analysis of cumulative effects shall include a reasonable assessment of the capacity of natural systems, i.e. air, water, light and land, to absorb the direct and reasonably anticipated impacts of the proposal.

(d) Based in part upon such analysis, a project may be modified to lessen its demand for support services and facilities or its impact on natural systems. Modification may also be required to provide for subsequent projects which can be expected to share the need for support services and facilities or use of the natural systems' capacity. (Ord. 575 § 2, 1980).

20.14.030 Parking and traffic.

(1) Policy Intent. Recognizing that new development and some modifications will generate travel and parking demands, with resultant adverse impacts on the surrounding areas relative to parking and traffic flow, it is the policy of the city to:

(a) Modify off-street parking requirements to mitigate adverse impacts;

(b) Make other requirements as necessary to assure reasonable access and flow.

(2) Policies.

(a) The responsible official or his designee shall examine the proposed building occupants' likely vehicle use patterns and guest and service parking needs.

(b) In determining the necessary off-street parking, the responsible official or his designee shall weigh these needs against factors such as:

(i) Availability of on-street parking;

(ii) Existing traffic conditions;

(iii) Trend in local area development;

(iv) Parking characteristics of the proposed building in the immediate area;

(v) Availability of goods, services, and recreation within reasonable pedestrian distance.

(c) The responsible official or his designee may require measures to mitigate adverse parking impacts.

(d) The responsible official or his designee may require curb cuts, construction of sidewalks and other pedestrian access amenities or deeding of street right-of-way.

(e) Any condition or mitigating measure must be continuously met by the property owner. (Ord. 575 § 3, 1980).

20.14.040 Landscaping.

(1) Policy Intent. Recognizing that certain developments, although consistent with zoning, may require separation from adjacent uses or modification if they are to exist in harmony with the surrounding area, the responsible official or his designee may require foliage and greenery to promote the aesthetic and natural qualities of Oak Harbor. Also, recognizing that vegetation can sometimes mitigate adverse environmental impacts, the responsible official or his designee may require new landscaping or preservation of existing landscaping to reduce stormwater runoff, erosion, and acoustical and aesthetic incompatibility with the surrounding area.

(2) Policies.

(a) Landscaping may be required when it can provide a buffer between incompatible land uses or zones such as between parking areas and pedestrian ways.

(b) Landscaping may be required when it can reduce the potential for erosion or excessive storm water runoff.

(c) Landscaping may be required for new development to reduce the site coverage by impervious surfaces and to add to the beauty of the city.

(d) Preference shall be given for special landscaping compatible with surrounding flora.

(e) The responsible official or his designee may require existing vegetation to be retained.

(f) Maintenance of landscaped areas and replacement of dying or dead plants shall be the responsibility of the property owner. (Ord. 575 § 4, 1980).

20.14.050 Drainage.

(1) Policy Intent. Recognizing that property development and redevelopment usually contribute to increased rates and volumes of stormwater runoff, it is the policy of the city to:

(a) Prevent stormwater flooding and related property damage, safety hazards, nuisance problems and water quality degradation from increasing as a result of property development and redevelopment;

(b) Preserve and enhance the aesthetic quality of the water and water courses;

(c) Preserve and enhance the suitability of waters for recreation and wildlife habitat.

(2) Policies.

(a) On or off-site control of stormwater, in conjunction with property development and redevelopment, shall be required throughout the city.

(b) The peak stormwater runoff discharge rate from property development or redevelopment involving more than 2,000 square feet of impervious surface shall not exceed 0.2 cubic feet per second per acre under an appropriate design storm condition. For purposes of this section, property development shall include demolition of an existing building, structure or impervious surface and subsequent construction of a new building, structure or impervious surface.

(c) Drainage control plan shall accompany or be included with the application and/or request for any city action on a proposed project.

(d) Approval of the most suitable method of drainage control shall be made by the responsible official or his designee on a case by case basis. (Ord. 575 § 5, 1980).

20.14.060 Light and glare.

(1) Policy Intent. Recognizing that development and redevelopment sometimes include lighting and/or reflective surface materials which can adversely affect the surrounding area, and that such adverse impacts may be mitigated by alternative lighting techniques and surface materials, it is the policy of the city to consider the adverse impacts and the effectiveness of mitigating measures, and to weigh the costs of conditioning or denying the proposal against the benefits to be gained.

(2) Policies.

(a) If the responsible official or his designee finds a significant potential for adverse impacts due to light and glare, the responsible official or his designee shall assess the impacts and need for mitigation.

(b) The responsible official or his designee may mitigate adverse impacts of lighting and glare by measures including, but not limited to:

(i) Limiting the reflective qualities of surface materials that can be used in the development;

(ii) Limiting the area and intensity of illumination;

(iii) Limiting the location or angle of illumination;

(iv) Limiting the hours of illumination. (Ord. 575 § 6, 1980).

Chapter 20.16
OAK TREE PROTECTION*

Sections:

20.16.010 Harm prohibited.
20.16.020 Permits for removal, topping and trimming.
20.16.030 Variances.

20.16.010 Harm prohibited.

(1) No person shall remove, top, damage, destroy, break, injure, mutilate or kill any oak tree or permit any animal under his control to do so or to permit any toxic chemicals to seep, drain or empty onto or about any oak tree, except as allowed by this chapter.

(2) During building or construction operations, suitable protective barriers shall be erected around oak trees and shrubs which may be subject to injury.

(3) No paving or hard surface area shall be allowed within the drip line of an oak tree to the maximum extent possible. An administrative variance may allow paving or hard surface on up to 25 percent of the area within the drip line when there is no practical alternative. (Ord. 1441 § 1, 2005).

20.16.020 Permits for removal, topping and trimming.

Permits for removal or trimming of an oak tree may be granted by the director when the following conditions are determined to exist:

(1) Removal or Topping. A permit for removal or topping may be granted when it is determined by the director that the oak tree is so diseased or damaged that it presents a danger to the public or adjacent property and trimming is inadequate to ameliorate the danger. Wherever feasible, dead oak trees shall be left as snags, for their habitat value.

(2) Trimming. A permit for trimming shall be granted when it is determined:

(a) That trimming is needed for safety or public welfare or to remove diseased or dead branches; or

(b) That branches hang over an existing building or interfere with utility lines or right-of-way access.

(3) The director shall respond to a request for a permit within 10 days of application. No fee shall be charged for a permit. Appeal of a decision by the director shall be to the hearing examiner and shall be made in writing within 10 days of the decision. (Ord. 1441 § 1, 2005).

20.16.030 Variances.

In order to ameliorate the impact of this chapter, the following variances may be allowed under the zoning code:

(1) Setbacks. A variance may be granted to allow intrusion of a building into a setback yard by 10 feet to preserve an oak tree located elsewhere on the property.

(2) Parking. Parking requirements may be reduced by two vehicles per oak tree preserved on the property.

(3) Landscaping. A credit of one and one-half square feet for landscaping requirements under the city zoning code shall be given for every square foot of area devoted to oak tree use. (Ord. 1441 § 1, 2005).

Chapter 20.24
WETLANDS

Sections:

20.24.010 Identification and rating.
20.24.020 Exemptions.
20.24.030 Wetland buffers.
20.24.040 Critical areas reports.
20.24.050 Compensatory mitigation.

20.24.010 Identification and rating.

(1) Identification and Delineation. Wetlands shall be identified and delineated by a qualified wetland professional in accordance with the Washington State Wetlands Identification and Delineation Manual (Washington Department of Ecology Publication No. 96-94, or as revised and approved by Ecology), using the criteria in the definition of wetland in OHMC 20.02.020. Wetland delineations are valid for three years; after such date the city shall determine if a revision or additional assessment is necessary.

(2) Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington (Ecology Publication No. 04-06-025, or as revised and approved by Ecology), which contains the definitions and methods for determining if the criteria below are met.

(a) Category I wetlands include:

(i) Relatively undisturbed estuarine wetlands larger than one acre;

(ii) Wetlands identified by scientists of the Washington Department of Natural Resources Natural Heritage Program as high-quality wetlands;

(iii) Bogs larger than one-half acre;

(iv) Mature forested wetlands larger than one acre;

(v) Wetlands in coastal lagoons; or

(vi) Wetlands that perform many functions well (scoring at least 70 points under the Department of Ecology's rating system).

(b) Category II wetlands include:

(i) Estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre;

(ii) Wetlands identified by the Washington State Department of Natural Resources as containing "sensitive" plant species;

(iii) Bogs between one-fourth and one-half acre in size; or

(iv) Wetlands with a moderately high level of functions (scoring between 51 and 69 points under the Department of Ecology's rating system).

(c) Category III wetlands have a moderate level of functions (scoring between 30 and 50 points under the Department of Ecology's rating system).

(d) Category IV wetlands have a relatively low level of functions (scoring less than 30 points under the Department of Ecology's rating system).

(3) Illegal Modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge. (Ord. 1440 § 3, 2005).

20.24.020 Exemptions.

All isolated Category III and IV wetlands less than 1,000 square feet that are not associated with riparian areas or buffers, not part of a wetland mosaic, and do not contain habitat identified as essential for local populations of priority species identified by the Washington State Department of Fish and Wildlife or species of local importance identified in Chapter 20.25 OHMC are exempt from provisions contained in this chapter. All such wetlands between 1,000 and 2,500 square feet are exempt from the normal mitigation sequencing process (i.e., can be filled) if impacts are fully mitigated based on provisions in OHMC 20.24.050. (Ord. 1440 § 3, 2005).

20.24.030 Wetland buffers.

(1) Standard Buffer Widths. Wetland buffers shall be measured perpendicular from the wetland boundary as surveyed in the field, with the following standard widths:

(a) Category I. Buffer widths for Category I wetlands are based on habitat function scores (derived from the 2004 Wetland Rating System for Western Washington) in accordance with the following graduated scale:

Points for Habitat from Wetland Rating Form	≤21	22	23	24	25	≥26
Wetland Buffer Width	100	120	140	160	180	200

(b) Category II. Buffer widths for Category II wetlands are based on habitat function scores (derived from the 2004 Wetland Rating System for Western Washington) in accordance with the following graduated scale:

Points for Habitat from Wetland Rating Form	≤21	22	23	24	25	≥26
Wetland Buffer Width	100	110	120	130	140	150

(c) Category III. Wetland buffer widths for Category III wetlands are based on habitat function scores (derived from the 2004 Wetland Rating System for Western Washington) in accordance with the following graduated scale:

Points for Habitat from Wetland Rating Form	≤15	16	17	18	19	20	≥21
Wetland Buffer Width	70	75	80	85	90	95	100

(d) Category IV. The wetland buffer width for Category IV wetlands shall be 50 feet.

(2) Increased Buffer Widths. When a larger buffer is necessary to protect wetland or other critical area functions and values based on site-specific characteristics, the director shall require increased buffer widths in accordance with the recommendations of a qualified professional. Examples include when a wetland buffer provides habitat for a species protected under Chapter 20.25 OHMC, or if the buffer or adjacent uplands are susceptible to erosion and standard erosion control measures may not prevent adverse impacts to the wetland.

(3) Buffer Reductions Incentives. Standard buffer widths may be reduced under the following conditions; provided, that functions of the post-project wetland are equal to or greater after use of

these incentives:

(a) Lower Impact Land Uses. Standard buffer widths assume high-intensity land use is occurring adjacent to the wetland, as is characteristic of an urban area. These widths may be reduced up to 25 percent if measures to minimize the impacts of the land use adjacent to the wetlands are applied, such as infiltration of stormwater, retention of as much native vegetation and soils as possible, direction of noise and light away from the wetland, and other measures that may be suggested by a qualified wetlands professional. Buffer widths may also be reduced up to 25 percent for lower impact land uses such as agriculture, at the discretion of the director and if best management practices are applied. If proposed future land uses are more intense, they are not eligible to maintain this reduction.

(b) Restoration. Buffer widths may be reduced up to 25 percent if the buffer is restored or enhanced from a preproject condition that is disturbed (e.g., dominated by invasive species), so that functions of the postproject wetland and buffer are equal or greater. The restoration plan must meet requirements in OHMC 20.12.100 for a mitigation plan and OHMC 20.24.040 for a critical areas report.

(c) Combined Reductions. Buffer width reductions allowed under subsections (3)(a) and (b) of this section may be added. However, the total reduction may be no more than 25 percent when the director determines that the soils or other conditions of a wetland are particularly sensitive to nutrient or pollutant loading. This exception applies to the wetlands known commonly as Freund Marsh and Seventh Avenue Wetland, and other wetlands the director may identify.

(4) Buffer Averaging. The director shall have the authority to average buffer widths on a case-by-case basis, where a qualified wetlands professional demonstrates to the director's satisfaction that all of the following criteria are met:

(a) The total area contained in the buffer after averaging is no less than that contained within the buffer prior to averaging;

(b) Decreases in width are generally located where wetland functions may be less sensitive to adjacent land uses and increases are generally located where wetland functions may be more sensitive to adjacent land uses, to achieve no net loss or a net gain in functions; and

(c) The averaged buffer, at its narrowest point, shall not result in a width less than 75 percent of that allowed under other provisions of this section; provided, that minimum buffer widths shall never be less than 75 feet for Category I wetlands and Category II wetlands identified under subsection (3)(c) of this section, 50 feet for other Category II wetlands, 35 feet for Category III wetlands and 25 feet for Category IV wetlands.

(d) Effect of Mitigation. If wetland mitigation occurs such that the rating of the wetland changes, the requirements for the category of the wetland after mitigation shall apply.

(5) Signage. Signs shall identify postproject wetland buffers as critical areas or native growth protection areas, in accordance with OHMC 20.12.140(2).

(6) Allowed Uses. The following uses may be permitted within a wetland buffer, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize negative impacts to the buffer and adjacent wetland:

(a) Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

(b) Passive recreation facilities designed and in accordance with an approved critical areas

report, including:

(i) Wildlife viewing structures; and

(ii) Walkways and trails, provided pathways minimize adverse impacts on water quality. They should generally be parallel to the perimeter of the wetland, located in the outer 25 percent of the wetland buffer area, and avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width. Raised boardwalks utilizing nontreated pilings may be acceptable.

(c) Stormwater management facilities, limited to stormwater dispersion outfalls and bioswales, may be allowed within the outer 25 percent of the buffer of Category III or IV wetlands only; provided, that:

(i) No other location is feasible; and

(ii) Their location, with mitigation, will not degrade the functions or values of the wetland. (Ord. 1440 § 3, 2005).

20.24.040 Critical areas reports.

If required by the director in accordance with OHMC 20.12.070(2), a critical areas report shall be prepared by a qualified wetlands professional and shall include the following:

(1) A site plan for the project containing the following:

(a) Maps (to scale) depicting delineated and surveyed wetlands and required buffers on-site, as well as buffers for off-site wetlands that extend onto the project site or that might be impacted by the proposed activity; the proposed development; grading and clearing limits; and areas of proposed impacts to wetlands and/or buffers (include square footage estimates).

(b) A depiction of the proposed stormwater management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas.

(2) A written report for the project containing the following:

(a) Identification of all the local, state, and/or federal wetland-related permit(s) required for the project;

(b) A vicinity map for the project;

(c) Documentation of any fieldwork performed on the site, including field data sheets for delineations, function assessments, baseline hydrologic data, etc.;

(d) A description of the methodologies used to conduct the wetland delineations, function assessments, or impact analyses, including references and all assumptions made and relied upon;

(e) For all wetlands on the subject property and all off-site wetlands that could be impacted by the proposed action (using best available information if adjacent property access is denied) provide the following: hydrogeomorphic and Cowardin classification; characterization of vegetation, soils, and hydrology indicators; wetland rating (OHMC 20.24.010); wetland buffer width (OHMC 20.24.030); and wetland acreage estimates;

(f) Description of the proposed activity and assessment of cumulative impacts to wetlands and buffers from development of the site, including a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod and water quality alterations;

(g) Evaluation of existing and postproject functions of the wetland and adjacent buffer using a functional assessment method recognized by local or state agency staff (e.g., Methods

for Assessing Wetland Functions, Ecology Publication No. 99-115) and including all data sheets and references for the method used; and

(h) An analysis of site development alternatives, including a no development alternative.

(3) If compensatory mitigation is proposed, a mitigation plan is required that includes the information identified in OHMC 20.24.050(6).

(4) Unless otherwise provided, a critical areas report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. (Ord. 1440 § 3, 2005).

20.24.050 Compensatory mitigation.

(1) All significant adverse impacts to wetlands and buffers as determined by the director shall be mitigated in accordance with the standards in OHMC 20.12.090, 20.12.100 and this section, and with reference to the Department of Ecology's Guidance on Wetland Mitigation in Washington State, Part 2 (Ecology Publication No. 04-06013B) and Appendix 8-C of the Department of Ecology's Wetlands in Washington – Volume 2: Guidance for Protecting and Managing Wetlands (Ecology Publication No. 05-06-008), or updated guidance by Ecology.

(2) If impacts to wetlands are unavoidable, mitigation to achieve compensation for wetland functions shall be approached in the following order of preference:

(a) Reestablishment of natural or historic functions to a former wetland through restoration of physical, chemical or biological processes (e.g., removing fill, plugging ditches, breaking drain tiles, breaching dikes, etc.).

(b) Rehabilitation of natural or historic functions of a degraded wetland through restoration of physical, chemical or biological processes (e.g., removing fill, plugging ditches, breaking drain tiles, breaching dikes, etc.).

(c) Creation of wetlands on disturbed upland sites, where the postproject hydrologic regime can demonstrably support the proposed wetland plant community.

(d) Enhancement of vegetation or other characteristics of a wetland site to improve specific functions, such as filtration of pollutants or wildlife habitat.

(e) Preservation or protection of a wetland that would not be adequately accomplished through existing regulations.

(3) Mitigation shall be on-site, where feasible. Where this is infeasible, off-site mitigation shall be in the same drainage basin or subbasin as the altered wetland, unless a higher level of ecological functioning would result from an alternate approach, as determined by the director. Where feasible, mitigation shall prioritize the preservation and restoration of contiguous wildlife habitat corridors to minimize the isolating effects of development on habitat areas.

(4) It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. If that is infeasible, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

(5) Wetland Replacement Ratios.

(a) When an applicant proposes to alter a wetland, the affected wetland acreage shall be replaced through wetland restoration, creation, enhancement or preservation, according to the ratios established in the table below. The ratios apply to mitigation that is on-site, timed prior to or concurrent with alteration, having a high probability of success, and

in-kind (i.e., losses of wetland acreage shall be replaced by creation or restoration of new acreage; degradation of wetland functions shall be replaced by restoration or enhancement of new wetland functions, etc.). Where these conditions do not hold, ratios shall be adjusted accordingly, as determined by the director.

(b) Ratios for remedial actions resulting from unauthorized alterations shall be greater than set forth in the table, as determined by the director.

(c) Ratios in the table are based on the assumption that the wetland category, based on OHMC 20.24.010(2) and hydrogeomorphic (HGM) class/subclass of the wetland proposed as compensation are the same as the category and HGM class/subclass of the wetland impacted. Ratios for projects in which the wetland category and HGM class/subclass of wetlands proposed as compensation is not the same as that of the wetland impacted will be determined on a case-by-case basis using the recommended ratios as a starting point.

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation	Enhancement	Preservation
Category I – Estuarine, Bog, Coastal Lagoon, Natural Heritage Site	Not considered possible	6:1	Case-by-case	10:1
Category I – Mature Forested	6:1	12:1	24:1	24:1
Category I – Based on functions	4:1	8:1	16:1	20:1
Category II – Estuarine	Case-by-case	4:1	Case-by-case	20:1
Category II – Based on functions	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

(6) If compensatory mitigation is proposed, the wetlands critical areas report must contain a mitigation plan prepared by a qualified wetlands professional, including the following information in addition to that required by OHMC 20.12.100 and 20.24.040:

(a) A baseline study that analyzes the existing functions of the wetland and wetland buffer, functions that will be lost, and functions after mitigation;

(b) Description of how lost functions will be replaced;

(c) Description of when mitigation will occur relative to project construction;

(d) Provisions for adequate monitoring to ensure success of the mitigation plan. The monitoring plan shall outline the approach for monitoring construction of the mitigation project, and for assessment of the completed project, and shall include a monitoring schedule. A monitoring report shall be submitted to the department annually for a period of up to five years unless a more frequent time period is required by the director, and shall document successes, problems and contingency actions of the mitigation project. Monitoring activities may include, but are not limited to:

(i) Establishing vegetation monitoring plots to track changes in plant species composition and density over time;

(ii) Measuring base flow rates and storm water runoff to model and evaluate hydrologic predictions;

(iii) Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and

(iv) Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions.

(e) A contingency plan specifying what corrective actions will be taken should the mitigation not be successful.

(7) Wetland Mitigation Banks. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

(a) The bank is certified under state law;

(b) The director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and

(c) The proposed use of credits is consistent with the terms and conditions of the bank's certification.

Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification. (Ord. 1440 § 3, 2005).

Chapter 20.25
FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Sections:

20.25.010 **Designation of fish and wildlife habitat conservation areas.**
20.25.020 **Designation of habitats and species of local importance.**
20.25.030 **Mapping.**
20.25.040 **Riparian buffers.**
20.25.050 **Critical areas reports.**
20.25.060 **Approval of activities.**

20.25.010 Designation of fish and wildlife habitat conservation areas.

Fish and wildlife habitat conservation areas include:

(1) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association. The Washington State Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service should be consulted for current listing status;

(2) State priority habitats and areas associated with state priority species, as identified by the Washington State Department of Fish and Wildlife;

(3) Garry oak (Quercus garryana) stands and individual trees;

(4) Other habitats and species of local importance, as identified by the city in accordance with OHMC 20.25.020;

(5) Commercial and recreational shellfish areas, including all public and private tidelands or bedlands suitable for shellfish harvest as well as shellfish protection districts established pursuant to Chapter 90.72 RCW;

(6) Geoduck concentration areas, including all public and private bedlands suitable for geoduck colonization;

(7) Eelgrass beds;

(8) Forage fish spawning areas;

(9) Lakes or ponds that provide fish or wildlife habitat, except artificial ponds created for a nonwildlife purpose such as stormwater detention facilities, wastewater treatment facilities, farm ponds, and temporary construction ponds; and

(10) Areas of rare plant species or high-quality ecosystems identified by the Washington State Department of Natural Resources through the Natural Heritage Program under Chapter 79.70 RCW. (Ord. 1440 § 4, 2005).

20.25.020 Designation of habitats and species of local importance.

(1) Habitats and species of local importance are those identified for protection by the city. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

(2) The city shall accept and consider nominations for habitat areas and species to be designated as locally important on an annual basis. Habitats and species may be nominated for designation by any person.

(3) Habitats and species to be designated shall exhibit at least one of the criteria in subsections (3)(a)

through (3)(c) of this section and shall meet the criteria in subsections (3)(d) through (3)(f) of this section.

(a) Local populations of native species are vulnerable or declining or are likely to become threatened or endangered based on existing or predictable threats;

(b) The species or habitat has recreational, commercial, game, tribal, or other special value;

(c) Long-term persistence of a species within the urban growth area of Oak Harbor is dependent on the protection, maintenance and/or restoration of the nominated habitat;

(d) Protection by county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the city; and

(e) Without protection, there is likelihood that the species or habitat will decline over the long term.

(f) Nominated areas must represent high-quality native habitat or habitat that either has a high potential to recover to a suitable condition and is of limited availability or provides landscape connectivity contributing to conservation of the designated species or habitat.

(4) A petition to nominate an area or a species to this category shall contain all of the following, using best available science:

(a) A statement demonstrating that nomination criteria are met;

(b) A proposal for whether specific habitat features should be protected (for example, nest sites, breeding areas, and nurseries), or whether the habitat or ecosystem is being nominated in its entirety;

(c) Proposed management strategies for the species or habitats. Where restoration of habitat is proposed, a conceptual plan for restoration must be provided as part of the nomination;

(d) Signatures of all petitioners.

(5) The director shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to the characteristics enumerated in subsection (3) of this section and make a recommendation to the planning commission based on those findings.

(6) The planning commission shall hold a public hearing for proposals found to be complete and make a recommendation to the city council based on the characteristics enumerated in subsection (3) of this section.

(7) Following the recommendation of the planning commission, the city council shall hold an additional public hearing and shall determine by ordinance whether the designation criteria in this section have been met. Designation of a habitat or species of local importance shall be by ordinance.

(8) Approved nominations shall be specified in OHMC 20.25.010 and shall be subject to the provisions of the critical areas regulations in this title. (Ord. 1440 § 4, 2005).

20.25.030 Mapping.

The following, in addition to critical areas maps available through the city, may be used as a guide for locating fish and wildlife habitat conservation areas:

(1) Washington State Department of Fish and Wildlife priority habitat and species maps;

(2) Maps developed by the Island County marine resources committee, including the location of eelgrass and forage fish spawning areas;

(3) Maps developed by the Water Resources Inventory Area 6 (Whidbey and Camano Islands) Salmon Technical Advisory Group, including the distribution of salmon species;

(4) Washington State Department of Natural Resources Natural Heritage Program maps and

mapping data;

(5) Washington State Department of Health inventory of shellfish harvest areas.

These sources are to be used as references for the city, project applicants and property owners, but may be superseded by new data. (Ord. 1440 § 4, 2005).

20.25.040 Riparian buffers.

(1) Standard Buffer Widths. Aquatic fish and wildlife habitat conservation areas shall be protected with vegetated buffers, which also provide riparian wildlife habitat. These buffers shall have the following standard widths, measured perpendicular from the ordinary high water mark of the waterbody:

(a) Salmonid-bearing streams: 100 feet throughout all reaches used by salmonids at any life stage at any time of the year, including reaches likely to be used by salmonids after foreseeable downstream restoration, as determined by the director;

(b) Other streams and stream reaches, including seasonal streams: 50 feet;

(c) Marine shorelines identified as fish and wildlife habitat conservation areas: 100 feet.

(2) Reductions for Lower Impact Land Uses. Buffer widths in subsection (1) of this section assume high-intensity land use is occurring adjacent to the waterbody, as is characteristic of an urban area. These widths may be reduced up to 25 percent if measures to minimize the impacts of the land use adjacent to the waterbody are applied, such as infiltration of stormwater, retention of as much native vegetation and soils as possible, direction of noise and light away from the waterbody, and other measures that may be suggested by a qualified professional. Buffer widths may also be reduced up to 25 percent for lower impact land uses such as agriculture, at the discretion of the director and if best management practices are applied. If proposed future land uses are more intense, they are not eligible to maintain this reduction.

(3) Reductions for Restoration. Buffer widths may be reduced up to an additional 25 percent if the buffer is restored or enhanced from a preproject condition that is disturbed (e.g., dominated by invasive species), so that functions of the postproject buffer are equal or greater. The restoration plan must meet requirements in OHMC 20.12.100 for a mitigation plan and OHMC 20.25.050 for a critical areas report. This reduction may be added to reductions for lower impact land uses.

(4) Buffer Averaging. The director shall have the authority to average buffer widths on a case-by-case basis, where a qualified professional demonstrates to the director's satisfaction that all of the following criteria are met:

(a) The total area contained in the buffer after averaging is no less than that contained within the buffer prior to averaging;

(b) Decreases in width are generally located where riparian functions may be less sensitive to adjacent land uses, and increases are generally located where riparian functions may be more sensitive to adjacent land uses, to achieve no net loss or a net gain in functions; and

(c) The averaged buffer, at its narrowest point, shall never be less than 25 feet.

(5) Signage. Signs shall identify postproject riparian buffers as critical areas or native growth protection areas, in accordance with OHMC 20.12.140(2).

(6) Allowed Uses. The following uses may be permitted within a riparian buffer, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize negative impacts to the buffer and adjacent waterbody:

(a) Conservation or restoration activities aimed at protecting the soil, water, vegetation, or

wildlife.

(b) Passive recreation facilities consistent with an approved critical areas report, including:

(i) Wildlife-viewing structures; and

(ii) Walkways and trails, provided pathways minimize adverse impacts on water quality. They should generally be parallel to the perimeter of the waterbody, located in the outer 25 percent of the riparian buffer area, and avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width.

(c) Stream crossings, if necessary to provide access to property and if impacts are fully mitigated consistent with an approved critical areas report.

(d) Stormwater management facilities, limited to stormwater dispersion outfalls and bioswales, may be allowed within the outer 25 percent of riparian buffers; provided, that:

(i) No other location with less impact is feasible; and

(ii) Mitigation for impacts is provided to achieve no net loss or a net gain in functions.

(e) Marine Shoreline Erosion Control Measures. New, replacement, or substantially improved marine shoreline erosion control measures may be permitted, consistent with all necessary state and federal permits and in accordance with an approved critical areas report that demonstrates the following:

(i) No feasible alternative would provide adequate protection to upland property;

(ii) Bioengineering or soft armoring shall be employed to the greatest extent feasible;

(iii) Mitigation measures shall ensure there is no net loss of the functions or values of intertidal or riparian habitat, allowing for off-site mitigation if necessary.

(f) Streambank Stabilization. Streambank stabilization to protect structures from future channel migration is not permitted except when achieved through bioengineering or soft armoring techniques in accordance with an approved critical areas report and all necessary state and federal permits.

(g) Public Flood Protection Measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the director's review and approval of a critical areas report and all necessary state and federal permits. (Ord. 1440 § 4, 2005).

20.25.050 Critical areas reports.

If required by the director in accordance with OHMC 20.12.070(2), a critical areas report for fish and wildlife habitat conservation areas shall meet the requirements of this section.

(1) A critical areas report shall be required for all development within 300 feet of any stream or marine fish and wildlife habitat conservation area; within areas designated by the city to protect bald eagles and great blue herons or, if undesignated on city maps, within 800 feet of a bald eagle nesting site or 1,000 feet of a great blue heron colony; or within distances determined by the director for other fish and wildlife habitat conservation areas. Proposed activities that may affect oak trees must comply with Chapter 20.16 OHMC.

(2) At a minimum, the report shall contain the following:

(a) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;

(b) A copy of the site plan for the development proposal including:

(i) A map to scale depicting fish and wildlife habitat conservation areas, wetlands, buffers, the development proposal, and any areas to be cleared or graded; and

(ii) A description of the proposed stormwater management plan for the development and consideration of impacts from drainage alterations.

(iii) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site.

(3) Proposals shall be exempt from further report requirements under the following conditions:

(a) They are consistent with riparian buffer requirements in OHMC 20.25.040(1) or allowed uses in OHMC 20.25.040(6);

(b) They cut no significant trees within areas identified in subsection (1) of this section to protect bald eagles and great blue herons, and avoid land clearing and the use of heavy machinery between January 1st and August 31st in areas protected for bald eagles and between February 15th to July 31st in areas protected for great blue herons; and

(c) They comply with Chapter 20.16 OHMC and will not affect other fish and wildlife habitat conservation areas, following criteria established by the director.

(4) Reports not exempt under subsection (3) of this section shall be prepared by a qualified biologist with experience preparing reports for the relevant type of habitat.

(5) Critical areas reports for fish and wildlife habitat conservation areas shall address the following geographic areas:

(a) The land parcel of the proposed activity;

(b) All fish and wildlife habitat conservation areas, including riparian buffers identified in OHMC 20.25.040(1), within 300 feet of the project area; and

(c) All wetlands and geologically sensitive areas within 300 feet of the project area.

(6) A critical areas report for a fish and wildlife habitat conservation area shall contain an assessment of habitats, including the following information at a minimum:

(a) A detailed description of vegetation throughout the areas identified in subsection (5) of this section;

(b) Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat in these areas, and an assessment of potential project impacts on the species;

(c) A discussion of any federal, state, or local special management recommendations, including Washington State Department of Fish and Wildlife habitat management recommendations, that have been developed for habitats located in these areas or the species identified in subsection (6)(b) of this section. The Washington State Department of Fish and Wildlife must approve habitat management plans relating to bald eagles or great blue herons;

(d) A detailed discussion of the direct and indirect potential cumulative impacts on habitat from development of the site, including potential impacts to water quality;

(e) Documentation of any fieldwork performed on the site, and a description of the methodologies used to conduct habitat assessments and impact analyses, including references and all assumptions made or relied upon;

(f) An analysis of site development alternatives, including a no development alternative;

(g) A discussion of proposed mitigation, consistent with OHMC 20.12.090, Mitigation sequencing, and OHMC 20.12.100, Mitigation plan requirements; and

(h) A discussion of ongoing management practices that will protect habitat after the project

site has been developed, including proposed monitoring and maintenance programs.

(7) When appropriate, due to the type of habitat or species present or the project area conditions, the director may also require the habitat management plan to include:

(a) An evaluation by an independent qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;

(b) A request for consultation with the Washington State Department of Fish and Wildlife or the local Native American Indian tribe or other appropriate agency; and

(c) Detailed surface and subsurface hydrologic features both on and adjacent to the site.

(8) Unless otherwise provided, a critical areas report may be supplemented by or composed of, in whole or in part, any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. (Ord. 1440 § 4, 2005).

20.25.060 Approval of activities.

The director shall condition approval of activities allowed within or adjacent to a habitat conservation area, or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:

(1) Establishment of buffer zones;

(2) Preservation or restoration of critically important vegetation and/or habitat features such as snags and downed wood;

(3) Preservation or restoration of contiguous wildlife habitat corridors, to minimize the isolating effects of development on habitat areas;

(4) Limitation of access to the habitat area, including fencing to deter unauthorized access;

(5) Seasonal restriction of construction activities;

(6) Establishment of a duration and timetable for periodic review of mitigation activities; and

(7) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation. (Ord. 1440 § 4, 2005).

Chapter 20.28
GEOLOGICALLY SENSITIVE AREAS

Sections:

20.28.010 **Designation of geologically sensitive areas.**
20.28.020 **Critical areas report.**
20.28.030 **Building setback.**
20.28.040 **Modifications and flexibility.**
20.28.050 **Repair of slope instabilities.**
20.28.060 **Seasonal restriction and best management practices.**

20.28.010 Designation of geologically sensitive areas.

(1) Geologically sensitive areas include areas susceptible to erosion, sliding, earthquake, or other geologic events and conditions. Improper and incompatible development sited in these areas can pose a threat to the health and safety of citizens, placing not only itself at risk, but also potentially creating or increasing hazards to surrounding development and land uses. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically sensitive area:

(a) Areas mapped on the city of Oak Harbor geologically sensitive areas map;

(b) Unstable slopes, as defined in OHMC 20.02.020;

(c) Steep slopes, as defined in OHMC 20.02.020; and

(d) Areas of moderate to high liquefaction due to soil type and/or location or seismically induced ground disturbance such as surface rupture, fissuring, and lateral spreading.

(2) As the city is not impacted by mine or volcanic hazards and the current tsunami data is inconclusive, development in the city shall comply with standard International Building Code requirements with respect to these potential hazards. (Ord. 1440 § 5, 2005).

20.28.020 Critical areas report.

All single-family residential development within 100 feet of a designated geologically sensitive area and all commercial, industrial, or multifamily developments within 200 feet of a designated geologically sensitive area shall be considered "adjacent" to the geologically sensitive area and required to submit a critical areas report, as described in this section. The director shall approve the critical areas report only if it demonstrates that the proposed development will not increase the risk of harm to public safety or neighboring properties or critical areas. To determine if a critical areas report is required on slopes between 15 and 39 percent, the director may require the applicant to provide a letter prepared by a certified geologist or engineer that determines whether springs or ground water seepage is present on the subject slope.

(1) Geotechnical Analysis. Except as provided in subsections (2) and (3) of this section, all development proposals within or adjacent to a designated geologically sensitive area shall submit a site assessment, geotechnical report, grading and erosion control plan and landscape/revegetation plan. This analysis shall contain the following information:

(a) Site Assessment. Along with the standard site plan requirements, the following information shall be provided for the subject property, prepared by a licensed land surveyor:

(i) Topography map at two-foot contour intervals for the entire site, including

abutting public rights-of-way, private roads, or access easements;

(ii) Location of all significant trees;

(iii) Location of all manmade drainage structures or features including pipes, drains, catch basins, drainage structures, culverts, and underdrain pipes;

(iv) Location of all frequently flooded areas, as defined in Chapter 17.20 OHMC, and all other critical areas, as defined in this title, including: oak trees, wetlands, fish and wildlife habitat conservation areas, critical aquifer recharge areas, and geologically sensitive areas;

(v) Location of all existing site improvements and the amount of existing impervious surface area; and

(vi) Location of all utilities, both above and below ground.

The site plan shall also include a vicinity map, showing the location of the property in relationship to surrounding lots and other critical areas.

(b) Geotechnical Report. The report, prepared by a qualified professional, shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be prepared in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:

(i) Data regarding underlying geology, slope gradients, soil types, and subsurface information, including boring and/or test pit logs describing soil stratification and results of soil tests conducted;

(ii) Identify any previous landslide activity in the vicinity of the project and provide an assessment of the overall slope stability and the effect the development will have on the slope and adjacent properties over time;

(iii) Recommendations for grading procedures, fill placement, and compaction criteria, temporary and permanent slope inclinations and support, and design criteria for corrective measures and opinions and recommendations regarding the capabilities of the site;

(iv) Evaluation of the seismic stability of the site in drained and saturated conditions, including a statement that the design criteria of proposed structures consider a seismic event with a 10 percent probability of being exceeded in 50 years;

(v) Potential for liquefaction and proposed mitigation measures;

(vi) A description of the hydrology (both surface and subsurface) of the site, including locations of any wetlands, streams, springs, seeps, and ground water along with recommendations consistent with the city's critical areas regulations for addressing any impacts;

(vii) A recommendation on building site location, foundation type and depths, minimum building setbacks, minimum deck and accessory building setbacks, and if necessary the minimum no-disturbance setback from any geologically sensitive area based upon the geotechnical analysis. The report shall also include recommendations on the design of temporary and permanent retaining structures if any are proposed;

(viii) An estimate of bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm event; and

(ix) Recommendations and requirements for handling contaminated soils and materials if encountered on the site.

(c) Grading and Erosion Control Plan. The plan shall be prepared by a qualified professional and shall include:

(i) A schedule showing when each stage of the project will be completed, and estimate starting and completion dates, limiting the time that soil is exposed and unprotected to the shortest possible period.

(ii) Measures to be taken for slope stabilization and erosion control, using best management practices as contained in the Washington State Department of Ecology's 2005 Stormwater Management Manual for Western Washington: Volume II, Construction Stormwater Pollution Prevention (Publication No. 05-10-032), or future updated publications or other methodology as approved by the director.

(d) Landscape/Revegetation Plan. A revegetation plan shall be prepared which:

(i) Shows measures to be taken for protection and replacement of the natural vegetative cover;

(ii) Includes a note stating that vegetation trimming debris shall be removed from slopes in such a fashion as to not disturb existing vegetation; and

(iii) Includes a schedule showing when each stage of the project will be revegetated with estimated starting and completion dates.

(2) Geotechnical Letter Requirements. For the following small development applications, a letter prepared by a qualified professional may be prepared in lieu of the full geotechnical reporting requirements:

(a) Building additions less than 30 percent of their entire structure.

(b) Additions to a building's height where the footprint of the existing structure is not changed.

(c) Earth retaining walls less than 10 feet in height and set back more than 50 feet from the top of a steep slope.

(d) Detached auxiliary buildings such as garages and sheds with no living spaces.

A geotechnical letter shall include an assessment of the existing geologic and geotechnical site conditions, including surface water runoff, ground water, soil types, erosion, and slope stability. The qualified professional shall prepare conclusions and recommendations on the suitability of the proposed development and any mitigation necessary to address existing site conditions that may need to be modified due to the proposed development.

(3) Exceptions. For the following single-family and multifamily residential development applications, the director may waive the requirements for geotechnical analysis or letter, if the development is unlikely to have any impact on a geologically sensitive area:

(a) Additions to a single-family residence less than 200 square feet in size, located so that the existing structure is between the addition and a steep or unstable slope.

(b) Detached auxiliary buildings such as garages and sheds that are 50 feet or more away from a steep or unstable slope.

(c) Decks attached to single-family and multifamily structures where no additional load-bearing weight is added to an adjacent steep or unstable slope. (Ord. 1440 § 5, 2005).

20.28.030 Building setback.

(1) New structures and additions to existing structures within or adjacent to a geologically sensitive area shall be set back a minimum of 25 feet from the top of a steep or unstable slope unless a larger setback is recommended in a geotechnical analysis. In no case shall the setback be less than 25 feet from a steep or unstable slope unless allowed through the "reasonable use" provisions of OHMC 20.12.060 and supported by a geotechnical report and approved by the director. Decks which add no substantial loading weight to the sensitive area and accessory buildings 120 square feet or less may extend into the setback area to within 10 feet of the top or toe of a steep or unstable slope.

(2) Signage. After completion of the project, the top of the steep or unstable slope shall be identified with signs as a critical area or native growth protection area, in accordance with OHMC 20.12.140(2). (Ord. 1440 § 5, 2005).

20.28.040 Modifications and flexibility.

Minor alterations on steep or unstable slopes or associated setbacks may be allowed by the director where all of the following standards have been met:

(1) A site assessment has been submitted showing that the proposal will have no adverse impact on the stability or erosion susceptibility of the slope;

(2) The impacted area totals no more than 20 percent of the entire site;

(3) The modification will not increase surface water discharge or sedimentation to adjacent properties or critical areas beyond predevelopment conditions;

(4) The activity will not adversely impact other critical areas;

(5) The development will not decrease slope stability on adjacent properties; and

(6) Stormwater runoff from any new impervious surface shall be collected in a detention system and directed to an enclosed drainage system. Where minor additions of less than 1,000 square feet of new impervious areas are proposed to existing developed properties that do not have detention facilities, the stormwater runoff shall be directed to the city's storm drainage system or be designed for natural infiltration or dispersion. At no time shall concentrated stormwater runoff be allowed to flow directly over a steep or unstable slope or impact a neighboring property. (Ord. 1440 § 5, 2005).

20.28.050 Repair of slope instabilities.

Repair of slope instabilities and slope failures on an emergency basis shall be allowed by the director as needed to correct an immediate danger to the public health, welfare and safety. The director shall use the guidance of this chapter when evaluating the necessary repairs and add mitigation measures as appropriate to ensure that the intent of this chapter has been met. (Ord. 1440 § 5, 2005).

20.28.060 Seasonal restriction and best management practices.

Clearing and grading within the wet weather months (October through April) shall be allowed in or adjacent to geologically sensitive areas only with the approval of the director. The developer shall fully implement a wet weather construction plan using at a minimum the current best management practices as contained in the Washington State Department of Ecology's 2005 Stormwater Management Manual for Western Washington: Volume II, Construction Stormwater Pollution Prevention (Publication No. 05-10-032), or future updated publication. If the wet weather construction plan is not implemented or turbid water leaves the site, construction shall be stopped immediately until proper erosion control devices are implemented and established. Best management practices include, but are not limited to:

(1) Exposed soils shall be protected from the forces of rain and flowing water within two days during the winter season and seven days during the summer season.

(2) Erosion control devices shall include as appropriate silt fences, straw mats, bay bails, filter fabrics, plastic sheeting, mulch, retention of vegetative buffers, and soil stabilization plant materials.

(3) Development shall be phased to limit the area of exposed soils to no more than two acres at a time.

(4) Water flows shall be directed away from steep or unstable slopes. At no time shall water be allowed to flow freely over steep or unstable slopes.

(5) Vegetation removal or planting on steep slopes shall be conducted by hand or by nonimpacting procedures as approved by the director. Heavy equipment shall not be allowed on steep or unstable slopes. (Ord. 1440 § 5, 2005).

Chapter 20.32
CRITICAL AQUIFER RECHARGE AREAS

Sections:

20.32.010 Designation of critical aquifer recharge areas.
20.32.020 Regulated activities.
20.32.030 Critical areas report.

20.32.010 Designation of critical aquifer recharge areas.

(1) Critical aquifer recharge areas (CARAs) are those areas with a critical recharging effect on aquifers used for potable water. CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. These include aquifer recharge areas moderately or highly susceptible to degradation, as identified by the Island County aquifer recharge area map or other study using criteria established by the Washington State Department of Ecology for soil permeability, geologic matrix, infiltration and depth to water.

(2) The approximate location and extent of CARAs are shown on the city's adopted critical areas maps. These maps are to be used as a reference for the city, project applicants and property owners and may be superseded by new data. (Ord. 1440 § 6, 2005).

20.32.020 Regulated activities.

The following permitted activities or land uses are subject to the requirements of this chapter, when conducted within 200 feet of a CARA:

(1) Above or below ground storage tanks for hazardous substances or hazardous wastes.

(2) Commercial, industrial, institutional or other facilities that include: automobile washers, chemical treatment storage and disposal facilities, dry cleaners, hazardous waste generators, junk yards and salvage yards, oil and gas drilling, on-site sewage systems, pesticide storage and use, petroleum transmission facilities and/or storage tanks, solid waste handling and recycling facilities, vehicle repair and services, wastewater application to land surfaces, and other activities that create a significant risk of contaminating CARAs.

(3) Residential sewage disposal systems that serve two or more residences or that have a density greater than one system per acre.

(4) Stormwater management facilities that infiltrate the majority of water they manage. (Ord. 1440 § 6, 2005).

20.32.030 Critical areas report.

(1) For all regulated activities, the applicant shall submit a report describing the best management practices to be used to minimize the risk of aquifer contamination. At a minimum, these practices shall include those recommended by the Washington State Department of Ecology in its 2005 Stormwater Management Manual for Western Washington: Volume IV, Source Control BMPs (Publication No. 05-10-032) or future updated publications, as applicable, and shall comply with requirements in the Washington Administrative Code for the proposed activity.

(2) The following general development standards shall apply to all regulated activities:

(a) Floor drains shall be connected to an approved sanitary sewer system;

(b) Vehicle washing facilities must be self-contained and connected to an approved sanitary

sewer system;

(c) Underground tanks shall be installed in accordance with Chapter 173-360 WAC, Underground Storage Tanks;

(d) Vehicle repair and service areas shall be conducted over impermeable pads and located within an enclosed structure;

(e) Chemicals shall be stored in a manner that is protected from the weather and located within containment areas; and

(f) Additional protective measures may be required if deemed necessary by the city of Oak Harbor.

(3) The applicant shall also submit a spill prevention plan that identifies equipment being used or any structures that could fail and contaminate CARAs. The plan shall include provisions for regular inspection, repair, replacement, clean-up methods to be used, and methods to dispose of all spilled materials.

(4) If the director determines that additional precautions may be necessary to protect against ground water contamination, a hydrogeologic site evaluation prepared by a qualified professional may be required. The city may engage an independent qualified professional to review the evaluation, at the applicant's expense. The evaluation shall address some or all of the following, as specified by the director:

(a) Hydrogeologic Setting.

(i) Description of the geologic setting of the site, illustrated with geologic and soil maps;

(ii) Discussion of geologic features which may influence ground water movement, such as faults, landforms, etc.;

(iii) Description of the occurrence and movement of groundwater in the area, including a general discussion of aquifer recharge and discharge, depth of groundwater and groundwater flow patterns; and

(iv) General discussion of groundwater quality in the area.

(b) Site-Specific Hydrogeologic Data.

(i) Scaled map showing the location of wells (in use or inactive) and springs within 1,000 feet of the site or as required by the director;

(ii) Depth to groundwater layer in the immediate vicinity;

(iii) Hydrogeological cross-sections through the site and immediate vicinity with references to information used to prepare the cross-sections;

(iv) Description of groundwater movement beneath the site with considerations for the following:

(A) Areal distribution, stratification and hydraulic conductivity of the water-bearing formations;

(B) Probable migration pathways for contaminants;

(C) An estimate of the probable times of travel through the soil horizontally and vertically from a potential contaminant source;

(v) Description of how the contaminants of concern will be attenuated within the saturated zone; and

(vi) Estimate of the quantity and/or quality of water recharged to the saturated zone under anticipated operation.

(5) A mitigation plan shall be required to address groundwater impacts identified in the

hydrogeologic site evaluation, consistent with OHMC 20.12.090 and 20.12.100. The director may require that the plan include monitoring, process controls, remediation and discussion of alternatives. (Ord. 1440 § 6, 2005).

Chapter 20.50
SEPA POLICIES FOR REVIEW OF SEPA CHECKLISTS

Sections:

20.50.010 Distribution.
20.50.020 Responses to checklist.
20.50.030 Notice of completion – Time limit.
20.50.040 Information requested – Time limit.
20.50.050 Completed checklist.

20.50.010 Distribution.

After receipt of the SEPA checklist, the building department shall route copies to the appropriate department heads for their written comments. Department heads shall return their written comments to the SEPA official within two weeks. (Ord. 934 § 1, 1992).

20.50.020 Responses to checklist.

Within 30 days of receipt of an application and environmental checklist, the responsible environmental official shall:

(1) Issue a threshold determination (determination of significance or determination of nonsignificance); or

(2) Respond to the applicant, in writing, with a notification of completeness; or

(3) Request, in writing, any additional information reasonably related to whether or not the proposal is likely to have significant adverse environmental impacts. (Ord. 934 § 2, 1992).

20.50.030 Notice of completion – Time limit.

If a notification of completeness is provided to the applicant, the SEPA official shall make a threshold determination in an expeditious manner, not to exceed 90 days from the notification of completeness. (Ord. 934 § 3, 1992).

20.50.040 Information requested – Time limit.

In the event additional information is requested, and upon written response of the applicant to such request, either by providing the information or indicating an inability to provide it, the responsible official shall:

(1) Issue a threshold determination within 90 days from the receipt of the applicant's response; or

(2) Notify the applicant that a determination of significance is likely and indicate the areas of likely impact (WAC 197-11-350). A final determination shall be made within 90 days from the receipt of the applicant's response for additional information, unless the applicant requests an additional 30 days for the responsible SEPA official to evaluate mitigation measures proposed by the applicant. The responsible SEPA official shall grant such extension, if requested;

(3) The responsible official may request further information or clarification after review of the initial response for additional information. The threshold determination must then be made within 90 days from receipt of any response to the request for information. (Ord. 934 § 4, 1992).

20.50.050 Completed checklist.

(1) A completed checklist shall consist of at least the following items and additional information as set out in subsection (2) of this section:

(a) Detailed description of the proposed action;

(b) Detailed description of the site including site plan vicinity map and certified list of all property owners and their addresses within 300 feet of the project. Soil data should include drainage characteristics and types;

(c) Traffic data that will indicate any adverse environmental concerns and/or satisfy the Washington State Department of Transportation requirements;

(d) Identification of all wetlands and other critical areas such as wildlife-habitat and the effect the proposal will have on them;

(e) Identify any detrimental effects the proposal will have on the environment.

(2) In addition, at the time of submittal or within 30 days of the original submittal, the responsible official may ask for additional information on other subjects consistent with the goals of SEPA and for which additional information is needed. (Ord. 934 § 5, 1992).

Public Involvement Summary

Shoreline Master Program: Public Involvement Summary

During the course of the SMP update project, staff sought to provide multiple opportunities for the public to be involved in the process. The following summary lists public meetings at which the SMP was discussed and the public was invited to attend as a way of summarizing the public involvement for the project.

City Council

- **Dates (5 Total):** April 20, 2010; August 4, 2010; October 24, 2012; November 7, 2012; November 20, 2012.
- **Type of Notice Provided:** All meetings were noticed in the *Whidbey News Times* 15 days in advance and on the City's shoreline website. Additionally, for all 2012 meetings, staff sent letters to all property owners within shoreline jurisdiction.

Planning Commission

- **Dates (4 Total):** April 24, 2012; May 22, 2012; August 14, 2012; September 25, 2012.
- **Type of Notice Provided:** All meetings were noticed in the *Whidbey News Times* 15 days in advance and on the City's shoreline website. Additionally, for the September 25, 2012 meeting, staff sent notices to selected property owners within Dillard's Addition subdivision. Finally, a notice of all meetings was e-mailed to the "interested parties" e-mail distribution list.

Public Works Standing Committee

- **Dates (4 Total):** November 4, 2010; March 3, 2011; July 7, 2011; October 4, 2012.
- **Type of Notice Provided:** All meetings were publicly noticed at least 24 hours in advance using the City's website. A notice was also sent to the *Whidbey News Times* approximately one week before.

Governmental Services Standing Committee

- **Dates (12 Total):** January 12, 2010; April 13, 2010; July 13, 2010; November 9, 2010; March 8, 2011; July 12, 2011; February 14, 2012; May 8, 2012; July 10, 2012; August 7, 2012; September 11, 2012; October 9, 2012.
- **Type of Notice Provided:** All meetings were publicly noticed on the City's website at least 24 hours in advance. A notice was also sent to the *Whidbey News Times* on the Friday prior to the Tuesday meeting.

Park Board

- **Dates (1 date):** November 14, 2011.
- **Type of Notice Provided:** 24-hour City website notice.

Shoreline Advisory Committee (Ad Hoc)

- **Dates (8 Total):** July 13, 2011; October 10, 2011; November 2, 2011; December 7, 2011; January 11, 2012; February 15, 2012; March 7, 2012; April 4, 2012.
- **Type of Notice Provided:** All Shoreline Advisory Committee meetings were noticed on the City's shoreline website generally a week in advance. An e-mail was sent prior to each meeting to the interested parties e-mail distribution list.

Shoreline Visioning Meeting

- **Dates (1 date):** July 20, 2011
- **Type of Notice Provided:** Notice was provided in the *Whidbey News Times*, on Channel 10, on the website and in individual letters to all shoreline property owners. The *Whidbey News Times* published an online notice in advance of this meeting. In addition, there was a follow-up story summarizing the meeting.

Shoreline Property Owners Meeting

- **Dates (1 date):** April 11, 2012.
- **Type of Notice Provided:** Notice was provided in the *Whidbey News Times*, on Channel 10, on the website and in individual letters to all shoreline property owners.

General Press Release

- A press release was sent to the *Whidbey News Times* May 3, 2012 after the Shoreline Advisory Committee had completed its work. The City did not receive any press coverage at that point in time, but there were two articles in the *Whidbey News* Times for the Shoreline Visioning meeting in July 20, 2011.