



City of Oak Harbor
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**Shoreline Master Program
STAFF DISCUSSION DRAFT
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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 173-060. 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. ~~The policies and regulations cover the following uses and activities: Agriculture; Aquaculture; Boating Facilities (including marinas); Commercial Development (water dependent, water related, water enjoyment, and non water related); Forest Practices; Manufacturing/Industrial Development; Mining/Mineral Extraction; Government Facilities; Parking (primary and accessory); Recreational Development; Residential Development; Scientific, Historical, Cultural, or Educational Uses; Transportation; Utilities (primary and accessory); and Restoration Activities.~~ 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 ~~the aspirations of the local citizenry~~ 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 ~~Analysis-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. Management Policies~~ 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 while protecting existing ecological functions. A

secondary purpose is to ~~and restoring~~ restore ecological functions in a manner that is compatible with intensive water-oriented uses, 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 related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses. Existing uses in the high-intensity 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 for development should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Non-water-oriented uses should not be allowed except as part of mixed-use developments. Non-water-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where 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 ~~intensive development~~ 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.

3.5. The City should explore redevelopment possibilities for the former Seaplane Base, in coordination with the Navy, for economic development purposes.

4.6. 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.

5.7. Where safety and feasibility allow, waterfront development in the Maritime environment should provide visual and physical public access to the shoreline.

6.8. 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 ~~zoned for a wide range of multi-family residential, commercial, or recreation uses~~ designated on the City's future Land Use Map as Central Business District, Residential Office and High Density Residential. These areas are sited for a range of commercial and residential uses, but are generally not less suited for ~~water-dependent~~ 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 water-oriented uses, including 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.~~
- ~~7.4. 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, and would not conflict with or limit opportunities for water-oriented uses or be proposed for sites without direct access to the shoreline, such as properties on the north side of SE Bayshore Drive and SE Pioneer Way.~~
- 8.5. Moorage structures are discouraged in this environment because conditions are generally not suitable, but ~~where~~ when allowed through a conditional use permit, joint-use piers or public piers should be required.
- ~~9.6. 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.
- ~~10.8. 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.~~

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, ~~specifically the Dillard's Addition and Driftwood Beach Addition subdivisions~~ 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.
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. The City should require connection to the sanitary sewer system when existing properties using on-site sewage systems (OSS), commonly referred to as septic systems, are developed, redeveloped or substantially modified and a sanitary sewer system is available.~~
- ~~7.6. Private p~~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 [practices-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. The City should require connection to the sanitary sewer system when existing properties using on-site sewage systems (OSS), commonly referred to as septic systems, are developed, redeveloped or substantially modified and a sanitary sewer system is available.~~
- ~~8.7.~~ 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.

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. In addition, any area within 200 feet of the OHWM that is located between the mapped extent of the Residential and Residential-Bluff Conservancy Environments in Figure 1, which does not meet the criteria for wetland designation, is designated Urban Public Facility.

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 ~~that, in addition to ensuring no net loss of ecological function, such projects implement measures to enhance the condition and ecological function of the shoreline environment and~~ 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 ~~High Intensity Maritime~~ environment on NASWI; and
 - Shorelines lying north and east of the ~~High Intensity 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, ~~such projects implement measures to enhance the condition and ecological function of the shoreline environment and~~ 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 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 and uses on 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 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. Shoreline uses and modifications should be designed and managed consistent with mitigation sequencing to meet no net loss~~prevent degradation of water quality and alteration of natural hydrological conditions.~~

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 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. Specific issues to address in such evaluations include, but are not limited to:
 - a. ~~Water quality;~~
 - b. ~~Conservation of aquatic vegetation (control of noxious weeds and enhancement of vegetation that supports more desirable ecological and recreational conditions);~~
 - c. ~~Changing visual character as result of new residential development, including additions; and individual vegetation conservation practices (both along shoreline and in upland areas);~~
4. ~~Shoreline stabilization and modifications. 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. 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.~~
- ~~3.2.~~ 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.
- ~~4.3.~~ 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 ~~and regulations~~ 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.
- ~~5.3. 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.~~
- ~~6.4. Encourage water-dependent, water-related, or water-enjoyment commercial and industrial development in appropriate shoreline environments outside of single family residential areas. Non-water-oriented commercial uses that are not accessory to a water-oriented use should be discouraged.~~
- ~~7.5. 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.
- ~~8.7. 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:
 - i. Recording the site with the State Department of Archaeology and Historic Preservation, or listing the site in the National Register of Historic Places, Washington Heritage Register, as applicable, or any locally developed historic registry;
 - ii. Adaptive re-use of buildings or structures according to the U.S. Secretary of the Interior's Standards for Rehabilitation.
 - iii. Preservation in place;
 - iv. Re-internment in the case of grave sites;
 - v. Covering an archaeological site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);
 - vi. Excavation and recovery of archaeological resources;
 - vii. Inventorying prior to covering of archaeological resources with structures or development; and
 - viii. 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:
 - i. A statement that work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the Administrator and other appropriate governments and agencies.

- ii. Contact information for applicable parties, agencies and governments including the 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, and/or appropriate Tribal Repatriation Office.
 - iii. Proposed measures to stabilize, contain or otherwise protect the area of inadvertent discovery until a site investigation and/or site assessment is conducted.
- i. 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:
 - i. The type and/or level of public access that is consistent with the long term protection of both historic resource values and shoreline ecological functions and processes;
 - ii. 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.
 - ii. 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.
- 1. 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.

2. 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.

a.—Archaeological and Historic Resources

1.—**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.

~~2.—Policies~~

- ~~1.—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.—Relevant tribes that should be consulted pursuant to these policies and regulations include the Swinomish, Snoqualmie, Suquamish, Stillaguamish, Tulalip and Samish.~~
- ~~3.—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.~~
- ~~4.—Provide opportunities for education related to archaeological, historical and cultural features where appropriate and incorporated into public and private programs and development.~~
- ~~5.—The City should work with tribal, state, federal and local governments as appropriate sites in observance of applicable state and federal laws protecting such information from general public disclosure. As appropriate, such sites should be protected, preserved and/or restored for study, education and/or public enjoyment to the maximum possible extent.~~
- ~~6.—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.~~
- ~~7.—Cooperation among involved private and public parties is encouraged to achieve the Archaeological, Historical and Cultural element goals and objectives of this Program.~~
- ~~8.—Owners of property containing identified historic, cultural or archaeological sites are encouraged to make development plans known well in advance of application, so that relevant 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.~~
- ~~9.—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.~~
- ~~10.—Historic, cultural and archaeological site development should be planned and carried out so as to prevent impacts to the resource. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.~~
- ~~11.—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.~~
- ~~12.—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.~~

~~3.—Regulations~~

~~1.—Known Archaeological, Historic and Cultural Resources~~

- ~~a.—Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural or archaeological resource(s), the 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. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. The applicant shall submit a minimum of five (5) copies of the site assessment to the Administrator for distribution to the applicable parties for review.~~
- ~~b.—If the cultural resource site assessment identifies the presence of significant historic or archaeological resources, a Cultural Resource Management Plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, and relevant 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.~~
- ~~c.—A CRMP shall contain the following minimum elements:
 - ~~i.—The purpose of the project; and~~
 - ~~ii.—A site plan for proposed on-site development; and~~
 - ~~iii.—Depth and location of all ground disturbing activities including, but not limited to, utilities, driveways, clearing and grading; and~~
 - ~~iv.—An examination of project on-site design alternatives; and~~
 - ~~v.—An explanation of why the proposed activity requires a location on, or access across and/or through, a significant historic or archaeological resource; and~~
 - ~~vi.—A description of the historic/archaeological resources affected by the proposal; and~~
 - ~~vii.—An assessment of the historic/archaeological resource and an analysis of the potential adverse impacts as a result of the activity; and~~~~

- ~~viii. An analysis of how these impacts have been avoided; or~~
- ~~ix. Where avoidance is not possible, how these impacts have been mitigated/minimized; and~~
- ~~x. A recommendation of appropriate mitigation measures, which may include but are not limited to the following:~~
 - ~~i. Recording the site with the State Department of Archaeology and Historic Preservation, or listing the site in the National Register of Historic Places, Washington Heritage Register, as applicable, or any locally developed historic registry;~~
 - ~~ii. Preservation in place;~~
 - ~~iii. Re-internment in the case of grave sites;~~
 - ~~iv. Covering an archaeological site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);~~
 - ~~v. Excavation and recovery of archaeological resources;~~
 - ~~vi. Inventorying prior to covering of archaeological resources with structures or development; and~~
 - ~~vii. Monitoring of construction excavation.~~
- ~~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 Washington State Department of Archaeology and relevant 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, and/or appropriate Tribal Repatriation Office.~~
 - ~~3. Proposed measures to stabilize, contain or otherwise protect the area of inadvertent discovery until a site investigation and/or site assessment is conducted.~~
- ~~d. 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 relevant Tribes to address the following:

- i.—The type and/or level of public access that is consistent with the long term protection of both historic resource values and shoreline ecological functions and processes; and
- ii.—Site and resource specific conditions and/or improvements including the following, as applicable:
 - hours of operation;
 - interpretive and/or directional signage;
 - lighting;
 - pedestrian access, and/or
 - traffic and parking.

e.—Where provision of public access for purposes of public education related to an archaeological or cultural resource site is desired by the property owner, the Washington State Department of Archaeology and Historic Preservation, 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 relevant Tribes.

f.—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 relevant Tribes prior to approval of the CRMP.

g.—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.

h.—Upon 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 relevant 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:

- i.—The date of application, the date of notice of completion for the application, and the date of the notice of application;
- ii.—A site map including the street address, tax parcel number, township, range, and section of the proposed project area;

- ~~iii. A description of the proposed project action and a list of the project permits included in the application, and, if applicable, a list of any studies requested by the City;~~
- ~~iv. The identification of other permits not included in the application to the extent known by the City;~~
- ~~v. The identification of existing environmental documents that evaluate the proposed project and, if not otherwise stated on the document providing notice of application, the location where the application and any studies can be reviewed;~~
- ~~vi. Any other information determined appropriate by the City;~~
- ~~vii. A statement indicating those development regulations that will be used for project mitigation or a determination of consistency if they have been identified at the time of notice;~~
- ~~viii. A statement of the limits of the comment period and the right of each agency to comment on the application within a fifteen (15) day time period, request a copy of the decision once made, and to appeal a decision when allowed by law.~~

~~i. 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 shall be incorporated to the maximum extent practicable. Permit or other requirements administered by the Washington State Department of Archaeology and Historic Preservation pursuant to RCW 27.44 and RCW 27.53 may apply in addition.~~

~~2. Inadvertent Discovery~~

- ~~a. Whenever historic, cultural or archaeological sites or artifacts are discovered in the process of development on shorelines, work on that portion of the development site shall be stopped immediately, the site secured and the find reported as soon as possible to the Administrator. Upon notification of such find, the property owner shall notify the Washington State Department of Archaeology and Historic Preservation, and relevant Tribes, and the Administrator shall conduct a site investigation to determine the significance of the discovery. Based upon the findings of the site investigation and consultation with the Washington State Department of Archaeology and Historic Preservation, and relevant Tribes, the Administrator may require that an immediate site assessment be conducted or may allow stopped work to resume.~~
- ~~b. If a site assessment is required, the area of inadvertent discovery shall be stabilized, contained or otherwise protected until the site assessment and/or CRMP is completed. The site assessment shall be prepared pursuant to SMP 23.90.07.B.1.a to determine the significance of the discovery and the extent of damage to the resource and shall be~~

~~distributed to the Washington State Department of Archaeology and Historic Preservation, and relevant Tribes for a fifteen (15) day review period or, in the case of inadvertent discovery of human remains, a thirty (30) day review period to determine the significance of the discovery. If the site has been determined not to be significant by the above listed agencies or governments, or if the above listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.~~

- ~~e. Upon receipt of a positive determination of a site's significance, the Administrator may invoke the provisions of SMP 23.90.07.B.1.b through .d above for a Cultural Resource Management Plan, if such action is reasonable and necessary to implement related SMP objectives.~~

~~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.~~

3.4. 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 § 12-6, 2005 and codified under ~~Chapter Title~~ 20 of the Oak Harbor Municipal Code, which are herein incorporated into this SMP, except as specifically modified or exempted in this Section.

- 4.2. 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.

- 5.3. 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 City Shoreline Administrator.

- 6.4. 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.

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.

e.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.

4.5. 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. ~~Degradation of the shoreline and its waters resulting from contaminants such as petroleum products, chemicals, metals, nutrients, solid or human waste, or soil sediments from erosion are also addressed.~~

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 ~~Director~~ 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.

5.6. 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 ~~public~~ 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, the development of the upland areas portions of public access sites,~~ such as parking ~~facilities~~ 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 and people with disabilities to the greatest extent feasible.
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 lands should be commensurate with the scale of the proposed development and should be proportional to the impact on public access created by the new development.~~
- ~~13.~~ 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.
- ~~14.~~ 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.
- ~~15.~~ 14. Ensure ~~existing and proposed~~ public access and recreational uses (including upland auxiliary 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.
- ~~16.~~ 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 ~~the management of~~ 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.
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 ~~to 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 ~~12-12~~-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.

6.7. 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 ~~favor long-range goals and support the overall public interest~~ 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 ~~in related to the preparing preparation, administration and enforcement and administering 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 development into areas where such uses already exist, rather than allow high-intensity 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 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 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 ~~encourage~~ implement restoration of presently degraded wetland areas.
 - ~~b. Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities or general enhancement of shoreline 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.

7.8. 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, ~~create hydraulic roughness~~ help stabilize shorelines, form pools, and increase ~~structural 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 ~~associated 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.
- 4.5. 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. Conserve vegetation. Vegetation retention, maintenance and replacement. Shoreline developments shall ~~address conservation and maintenance of vegetation through compliance~~ comply with ~~this Section, the tree retention~~ Landscape and Screening standards in OHMC Chapter 19.46.045 (Ordinance No. 165155 § 120, 20092011), 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. Removal, topping, and damage to oak trees is also regulated under OHMC 20.16 — Oak Tree Protection.
- ~~6. 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.~~
- ~~7.6.~~ 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.

~~8.7.~~ 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 ~~in Subsection b and c~~ below.
- b. Impervious surface coverage shall be limited as shown in Section 4.C, Table 2. The following ~~water-oriented~~ 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.

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

~~9.8.~~ 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 ~~b and e~~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.

~~10.~~ Mitigation required. Where impacts to shoreline vegetation are permitted and after mitigation sequencing has been applied as outlined in Section 3.B.4, Environmental Impacts, new developments or site alterations shall be required to develop and implement a mitigation plan. When required, mitigation 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 to ensure full implementation of the mitigation plan (OHMC 20.12.100). ~~Mitigation plans shall describe actions that will ensure no net loss of ecological functions to the maximum extent practicable at the site scale. Mitigation measures shall be maintained over the life of the use and/or development. Specific regulations for compensation of tree removal are provided in regulations 4 and 5 below.~~

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.

~~44.10.~~ 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.

~~42.~~ Non-Hazard Tree Removal in Shoreline Jurisdiction. ~~For any trees removed in shoreline jurisdiction after implementation of standard mitigation sequencing, the following tree replacement strategies shall be implemented:~~

- ~~a.~~ Significant trees removed shall be replaced at a 2:1 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 revegetation shall be replaced at a 1:1 ratio. Retained trees shall be replaced at a 2:1 ratio.
- ~~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 replacement requirements based on a mitigation plan prepared by a qualified professional that demonstrates no net loss of ecological function.
- ~~f.~~ Land surface modifications within shoreline setbacks shall include a shoreline restoration plan for review and approval by the City. The restoration plan shall be designed to stabilize soil surfaces, filter run-off and ensure no net loss. All new plantings installed in shoreline setbacks must be native species, except as otherwise provided in this Section.

~~43.11.~~ Unauthorized vegetation removal. Vegetation removal conducted without the appropriate review and approvals anywhere within shoreline jurisdiction also requires the submittal and approval of a restoration shoreline landscaping plan prepared by a qualified professional, and must be consistent with the provisions of Section 3.B.4, Environmental Impacts and any relevant requirements of OHMC 19.46.045 (Ordinance No. 1555 § 20, 2009) as outlined in Regulation 4 above. The mitigation 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.

~~44.12.~~ 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 19.46.045 ~~(Ordinance No. 1555 § 20, 2009)~~. Such removal of noxious weeds and/or invasive species shall be

incorporated in ~~mitigation-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.

~~15.13.~~ 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.

8.9. Critical Saltwater Habitat

a. Applicability

Kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sand lance; 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 ~~a~~Analysis of project alternatives should be conducted for any project proposed within mapped Critical Saltwater Habitat.
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 ~~if~~ 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. 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 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 a net improvement in shoreline ~~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.

9.10. 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. ~~“Water quality” means the physical characteristics of water within shoreline jurisdiction, including water quantity and hydrological, physical, chemical, aesthetic, recreation related, and biological characteristics.~~ 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 ~~regulatory~~ 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 ~~storage basins~~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. ~~Control measures include but are not limited to dikes, runoff intercepting ditches, catch basins, settling wet ponds, sedimentation ponds, oil/water separators, filtration systems, grassy swales, planted buffers, and fugitive dust controls.~~
2. Shoreline development and uses shall adhere to all required setbacks, buffers and standards for stormwater ~~storage basins~~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.
- 4.5. 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. ~~The policies and regulations cover the following uses and activities: Agriculture, Boating Facilities, Commercial Development, Forest Practices, Manufacturing and Industrial Development, Mining and Mineral Extraction, Parking, Recreational Facilities, Residential Development, Scientific, Historical, Cultural, or Educational Uses, Signage, Transportation, and Utilities. The policies and regulations, which provide basic criteria for evaluating shoreline permit applications, are used to implement the broader goals, policies and intent of the Shoreline Management Act and this Program.~~

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	Maritime	Urban Mixed Use	Residential	Residential Bluff Conservancy	Urban Public Facility	Conservancy	Aquatic
SHORELINE USES							
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
Aquaculture¹	X 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 Environment
Private joint-use piers	P	C	X	X	X	X	
Public piers	P	C	X	X	X/P ⁴ €	X	

¹ Non-commercial aquaculture by a public agency for recovery of a native population is 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.

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 USES							
Boat launch	P	X	X	X	EP	C	
Commercial⁵							
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	C	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)	EP	P	P	P	P	XC	X
Residential Development							
Single family	X	P	P	P	X	X	X
Multi-family	X	P	X	X	X	X	X
Scientific, Historical, Cultural, or Educational Uses	P	P	P	P	P	P	P
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)							

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.

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.

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
Solid Waste Disposal or Transfer Sites (excluding storage of recyclable materials)	X	X	X	X	X	X	X
Waste Water Treatment Plant	C	X C	X	X	C	C	X ⁹
Transmission Lines and Other <u>Primary</u> Facilities	C	C	C	C	C	C	C
Utilities (Accessory to Permitted Development)	P	P	P	P	P	C	C
Other Uses and Activities							
Restoration activities	P	P	P	P	P	P	P

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

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 Height¹	35 feet	35 feet (CBD-1 and CBD-2), <u>55 feet (CBD)¹⁰</u>	35 feet	35 feet	35 feet	25 feet	N/A
Shoreline Setback²	50 feet ³	50 feet ⁶	50 feet ⁴	50 feet ⁵	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%	20 <u>40%</u> / 80% <u>80%</u> ⁹	10%	N/A
Maximum Impervious Surface Coverage - Setback Zone 1 (VMZ)⁷	20% ³	0%	0%	0%	0%	0%	N/A
Maximum Impervious Surface Coverage - Setback Zone 2⁷	40% ³	20%	20%	10%	20%	0%	N/A
Minimum Lot Frontage and Width	100 feet <u>N/A</u>	60 feet <u>N/A</u>	60 feet	60 feet	N/A	N/A ⁸	N/A
Minimum Lot Size	N/A	N/A	7,200 SF	7,200 SF	N/A	N/A ⁸	N/A

1. Height limits apply to all permanent and temporary structures and non-~~water-related~~water-related accessory structures. 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 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~~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 structures) 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~~water-dependent activity be allowed within the minimum setback.

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 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 structures 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.

5. 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 ~~additional~~critical area report requirements in Chapter 3, Section B.4.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.

6. 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 structures 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 40 feet. At least 12 feet of the setback shall be dedicated to public access and recreational use (i.e. the Waterfront Trail).

7. Where impervious surfaces that exceed the limits noted are deemed necessary by the Shoreline Administrator to accommodate public access, a ~~water-dependent~~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.

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

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

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 farming or culturing of food fish, shellfish, or other aquatic plants and animals. Aquaculture encompasses a wide variety of activities including hatching, seeding, planting, cultivating, feeding, raising, and harvesting of aquatic plants and animals. 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 for recovery of a native population is preferred and should be allowed in all environments.
2. Limit all other aquaculture uses to the Maritime and Aquatic environments as a conditional use.

3. Ensure aquaculture 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. Fish net pens shall, at a minimum, meet state approved administrative guidelines for the management of net pen cultures.
 - 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.
 - c. Net cleaning activities shall be conducted on a frequent enough basis so as not to violate state water quality standards. When feasible, the cleaning of nets and other apparatuses shall be accomplished by air drying, spray washing, or hand washing.
- 5.9. All floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.

3.4. 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 exists 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.

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.
- ~~f. No new marina development shall be permitted to locate within one half mile of a sewage outfall, with the exception of public marinas located next to downtown, with moorage spaces devoted to day use by pleasure craft, and moorage for commercial vessels.~~

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. ~~In no case shall the ramp extend beyond the point where the water depth is 6 feet below the OHWM, unless the City determines that a greater depth is needed for a public boat launch facility.~~
 - 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

iii.iv. Designs other than above.

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 ~~all types of~~ boat waste, including sewage, bilge fluids, oil, ~~gas~~, and diesel.

4.5. 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 ~~marinas, commercial docking, moorage, boat repair facilities~~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 ~~need-demand~~ exists for a ~~water dependent~~~~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. ~~T~~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 ~~as the primary use or navigation is severely limited at the proposed site~~ and the use provides a significant public benefit with respect to SMA objectives, such as providing for public access and ecological ~~benefit~~restoration, or
 - ~~a.~~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.
- 6.2. Shoreline permit applications for commercial and mixed-use development shall include a detailed statement explaining how the type of commercial use(s) proposed, how they relate to the water or shoreline and whether they are ~~water dependent~~~~water-dependent~~, ~~water related~~~~water-related~~, water enjoyment or non-~~water oriented~~~~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.
- 7.3. 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.

~~8.4.~~ All commercial developments which are non-~~water-dependent~~~~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.

~~9.5.~~ All commercial uses must be sited and designed to avoid impacts to existing navigation, recreation and public access.

~~10.6.~~ 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.

~~11.8.~~ All commercial development shall comply with mitigation sequencing and no net loss as required in Chapter 5, Section B.5.c.

~~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~~Water-dependent and ~~water-related~~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 fire fighting, 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.

6.7. 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 as determined by the Administrator, 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 in shoreline areas must directly serve a permitted shoreline use. Where public access is included as part of a development proposal, additional parking spaces available to the general public may be allowed.~~
- ~~3.2.~~ 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.
- ~~4.3.~~ 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. Exterior parking facilities for nonresidential uses shall be landscaped with vegetation in such a manner that plantings provide an effective “full screen” within three years of project completion when viewed from adjacent areas within Shoreline jurisdiction.
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.

7.8. 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 ~~local~~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 ~~restoration~~ 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. ~~Failure to meet this standard will result in permit denial.~~ 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 ~~swimming facilities,~~ piers, moorages, floats and launching facilities waterward of the OHWM shall be governed by the regulations relating to ~~either~~ 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~~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.
- ~~40.11.~~ 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.

8.9. 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. Improvements to existing liveaboard vessels outside of marinas should be allowed, provided they result in no expansion of useable living area.
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. ~~Failure to meet this standard will result in permit denial.~~ 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 ~~and houseboats~~ 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.

9. ~~Signage and Outdoor Advertising~~

a. ~~Applicability~~

~~A sign is defined means 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 light 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 (see OHMC19.36.100 for more detailed treatment of exempt signs), and religious symbols as a device of any material or medium, including structural component parts, which is used, or intended to be used, to attract attention to the subject matter for advertising, identification or informative purposes. The following provisions apply to any public or private sign directing attention to a service, community, site, facility, or entertainment, conducted or sold either on or off premises:~~

b. ~~Policies~~

- ~~1.—Signs in the shoreline environment should be the minimum size necessary to achieve their purpose and should be placed in a manner that minimizes impacts on views.~~
- ~~2.—Signs should be designed and placed so that they are compatible with the aesthetic quality of the existing shoreline and adjacent land and water uses.~~
- ~~3.—Signs should not block or otherwise interfere with visual access to the water or shorelines.~~
- ~~4.—Outdoor advertising and billboards are not an appropriate use of the shoreline areas within shoreline jurisdiction.~~

c. ~~Regulations~~

- ~~1.—Signs shall comply with the City's sign regulations, OHMC Chapter 19.36.~~
- ~~2.—Sign plans and designs shall be submitted for review and approval at the time of shoreline permit approval.~~
- ~~3.—Temporary or obsolete signs shall be removed within seven (7) days of elections or termination of any other functions. Examples of temporary signs include: real estate signs, directions to events, political advertisements, event or holiday signs, and construction signs.~~
- ~~4.—Signs that do not meet the policies and regulations of this program shall be removed or required to conform within two years of the adoption of this master program.~~

- ~~5. Free-standing signs shall not be approved or installed where it is feasible to mount, affix, or paint the proposed sign on a building.~~
- ~~6. The following types of signs may be allowed in all shoreline environments:
 - ~~a. Water navigational signs and highway signs necessary for operation, safety and direction.~~
 - ~~b. Public information signs directly relating to a shoreline use or activity.~~
 - ~~c. Off-premise, freestanding signs for community identification, information, or directional purposes.~~
 - ~~d. National, site and institutional flags or temporary decorations customary for special holidays and similar events of a public nature.~~~~
- ~~7. The following signs are prohibited:
 - ~~a. Off-premises detached outdoor signs advertising a good or service.~~
 - ~~b. Spinners, streamers, pennants, flashing lights, and other animated signs used for commercial purposes.~~
 - ~~c. Signs placed on trees or other natural features.~~
 - ~~d. Commercial signs for products, services, or facilities located off-site.~~~~

10. Transportation

a. Applicability

Transportation facilities that serve the City of Oak Harbor shorelines include roads, access drives, pedestrian paths, seaplane operations, 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~~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.
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 required allowed under City road standards. ~~Gravel and more innovative materials~~ 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, ~~sewage~~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.
 - c. ~~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.~~
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.
2. ~~New utilities installed in the shoreline jurisdiction should be located underground whenever possible to minimize adverse effects on scenic views and other aesthetic resources.~~

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-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 ~~so as not to destroy or obstruct~~ 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.

40:11. 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-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, ~~and maintenance care~~. 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.
6. ~~Proposals for new utility corridors (e.g. local power or water distribution) shall fully substantiate the infeasibility of existing routes.~~

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	P	P	P	P	P	P	
Bulkheads	P	P	P	C	P	C	
Breakwaters, jetties, weirs and groins	C	C	X	X	C	X	
CLEARING AND GRADING	P	P	P	C	P	C	
DREDGING	C P	C	C	C	C	C	
FILL							
Fill upland of OHWM	P	P	P	P	P	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
Fill waterward of OHWM ¹	C	C	C	C	C	C	
OVERWATER STRUCTURES							
Recreational Float (Not Associated with a Pier or Dock)	X P	X	X	X	X P ³	X	C
Overwater Boathouse	P	X	X	X	X	X	
Pier, Dock, Float (Including Combinations)	P	C ₂	X	X	C²X P ³	X	
Moorage <u>Ball and Buoy</u>	<u>P</u>	<u>P</u>	<u>C</u>	<u>C</u>	<u>P</u>	<u>C</u>	
Marina	P	X ₄	X	X	C	X	
Boat Ramp	P	X	X	X	P	C	
Launching Rails	P	X	X	X	X	X	
Boat Lifts	P	C X	X	X	X	X	
Boat Lift Canopies	P	C X	X	X	X	X	
Covered Moorage and Boat Houses	P	X	X	X	X	X	

1. Fill proposed as part of a soft shoreline stabilizatoin 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 expansion 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.

2. Piers, docks, and floats in the Urban Mixed Use ~~and Urban Public Facility~~ 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.

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

4. 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 [nourishment 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 [expanded-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.

e.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.

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

e.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.

f.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	<ul style="list-style-type: none"> • Nonstructural methods are preferred, and the need for a structural stabilization measures to protect a primary structure must be demonstrated before approval.
New or Enlargement of Hard Shoreline Structural Measures (enlargement includes	<ul style="list-style-type: none"> • Allowed when existing primary structure is 10 ft. or less from

Shoreline Stabilization Measures	Requirements
additions and increases in size, such as height, width, length, or depth, to existing shoreline stabilization measures)	<p>OHWL</p> <ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • Allowed when existing primary structure is 10 ft. or less from OHWM 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. For hard and soft shoreline stabilization measures, nonstructural measures, such as planting vegetation, or installing on-site drainage improvements are shown not to be feasible or sufficient to protect the primary structure.~~
 - ~~v.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.

3. Submittal Requirements for New or Enlarged Structural Stabilization Measures. In addition to the requirements described in 5.C.2.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 ~~with an engineering degree.~~ 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 ~~additional submittal requirements below in subsections 8, 9 and 10 for~~ 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. For the purposes of the 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.2.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 ~~lakeshore~~ 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 ~~submittal~~ requirements below in ~~subsections~~ 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 ~~submittal~~ requirements below in ~~subsections~~ 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. ~~Fee for a consultant selected by the City to review the shoreline stabilization plan, the monitoring and maintenance program, the narrative justification of demonstrated need, and drawings. In addition, the~~ The Planning Official ~~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 any a structural shoreline stabilization measure.
10. General Design Standards - 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.
 - iii. These standards may be modified for ~~water dependent~~ 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. 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 ~~only at the property lines~~ 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 ~~the shorelines~~ 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 ~~stream, or lake and associated shorelines, side channels, and wetlands~~ water body. In a ~~lake-marine shoreline~~ setting, dredging is normally done for specific purposes or uses such as deepening a navigational channel or ~~obtaining bottom material~~ 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.

~~Of all activities on shorelines, dredging poses one of the greatest threats to water quality and aquatic life.~~ 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 ~~new and maintenance~~ 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~~water-dependent use 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 MTCA or CERCLA habitat restoration, or any other~~ significant 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. 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 ~~lakeshoreline~~. 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. ~~Further, the City should assess the overall value of the fill site in its present state versus the proposed shoreline use to be created to ensure consistency with the Shoreline Management Act and this Master Program.~~
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.~~ a. Support water-dependent uses,
 - ~~a.b.~~ b. Provide public access,
 - ~~b.c.~~ c. Allow for the remediation and disposal of contaminated sediments as part of an interagency clean-up plan,
 - ~~e.d.~~ d. Allow the disposal of dredged sediments in accordance with DNR rules, ~~and/or~~
 - ~~d.e.~~ 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 ~~all~~ 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 (~~Clearing and Grading~~) of this SMP.

4. Piers, Docks, Floats, ~~and Mooring~~ Balls and Mooring Buoy

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 ~~and piers~~, 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 ~~docks and piers~~ 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.
- ~~8.3.~~ Piers should be preferred over floating docks where significant littoral drift does not occur and where scenic values will not be impaired.
- ~~9.4.~~ Because opportunities for private docks-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.
- ~~10.5.~~ Public docks-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 lessor for the marina.
- ~~11.6.~~ 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.
- ~~12.7.~~ Piers, ~~and docks~~, floats, mooring balls, and mooring buoys outside of marinas should not allow moorage of houseboats or live aboard vessels.
- ~~13.8.~~ 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.

~~44.9.~~ 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.

~~45.10.~~ 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.

~~46.11.~~ 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.

~~47.12.~~ 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.

~~48.13.~~ ~~Piers should be preferred over floating docks where significant littoral drift does not occur and where scenic values will not be impaired.~~

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). ~~Where liveaboards are allowed, pump-out facilities shall be available.~~
- 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.

e.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.

f.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.

g.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.

h.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 ~~must be below the pier deck~~ 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 outside of marinas may be permitted as indicated in Table 2, subject to the following dimensional regulations:
- a. Docks, piers and floats shall not extend beyond the inner harbor line, unless approved by WDNR.
 - 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~~ water-dependent commercial, industrial or port use requires a wider structure.
 - ~~c. 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.~~
 - ~~d. Float orientation: Floats shall be installed in a north-south orientation to the maximum extent practicable.~~
 - e.c. Docks and piers shall be the shortest length necessary to achieve a water depth of 3 feet at MLLW. In no event shall the structure extend more than 60 feet beyond the OHWM provide moorage for the intended boating use.
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.

~~5.6.~~ 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~~0% 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%.

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

~~b.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.

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

~~6.7.~~ 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.

~~e.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.

~~d. Mitigation plantings shall be subject to the following requirements:~~

~~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. 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. An alternative planting plan or mitigation measure in lieu of meeting these requirements shall be allowed if approved by other state and federal agencies.~~

~~i. 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.~~

~~ii. The restoration area shall average ten (10) feet in depth measured landward of the OHWM along 75 percent of the shoreline frontage, but may be a minimum of five (5) feet wide to allow for variation in landscape bed shape and plant placement. Total square feet of landscaped area shall be equal to a continuous 10 foot wide area.~~

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.

e.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.

~~7.8.~~ 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.

~~g-h.~~ Where liveboards are allowed, pump out facilities shall be available.

~~8.9.~~ 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.

~~9.10.~~ 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~~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.

~~40.11.~~ Mooring Balls and Buoys. Mooring balls and buoys shall be permitted ~~only by conditional use permit~~ 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~~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

6. 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.
7. 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. ~~Jetties-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

~~Herein is~~ This Chapter establishes ~~ed~~ an administrative system ~~designed to~~ assigning responsibilities for implementation of the Master Program and shoreline permit review, ~~to~~ prescribing an orderly process by which to review proposals and permit applications, and ~~to ensure~~ 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 ~~apply~~ 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~~ ~~revisions~~ 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 ~~appropriate applications needs~~ 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 substantial development permit~~ shoreline variance and conditional use 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 ~~their~~ 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 ~~redesignation permit~~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.
- a. ~~Investigating, developing, and proposing amendments to this Master Program as deemed necessary to more effectively and equitably achieve its goals and policies.~~
- 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. Identification of the name of the shoreline (water body) that the site of the proposal is associated with. This should be the water body from which jurisdiction of the act over the project is derived.~~
- ~~6.5.~~ A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.
- ~~7.6.~~ A general description of the property as it now exists including its physical characteristics and improvements and structures.
- ~~8.7.~~ 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.
- ~~9.8.~~ 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 ~~conditional use permits and~~ 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.

F. Substantial Development Permits and Exemptions

11. 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.

b.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.

12. Determination of Exemption. The following guidelines ~~are to be used~~ shall supplement Regulation 3 below when ~~in~~ 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.

44.13. List of Exemptions. The following list outlines ~~twelve (12) 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, ~~does not exceed five thousand seven hundred eighteen (\$5,718) dollars, if such development does not materially interfere with the normal public use of the water or "shorelines of statewide significance."~~ The dollar threshold established in this subsection must be adjusted for inflation by the Office of Financial Management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The Office of Financial Management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on "shorelines of statewide significance." The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials 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.
- 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. includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.~~ "Normal repair" means to restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to the shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and where the replacement structure or development is comparable to the original structure or development with respect to size, shape, configuration, location and external appearance. The replacement structure or development shall not cause substantial adverse effects to shoreline resources or the shoreline environment.
- c. Construction of a normal protective bulkhead common to single family residences. ~~A "normal protective bulkhead" includes those structural and nonstructural developments installed; 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. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per linear foot of wall may be used as backfill. When an existing bulkhead is being repaired by~~

~~construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife;~~

- d. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment 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. ~~Where new protective structures are deemed by the Shoreline Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to the Act and this Master Program, obtained. All emergency construction shall be consistent with the policies of the Act and this Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;~~
- e. Construction or modification of navigational aids such as channel markers and anchor buoys.
- e.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 having jurisdiction thereof, other than requirements imposed pursuant to the Act. "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.;
- f.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 ~~ten thousand dollars (\$10,000), but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500) occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter~~ the threshold established by the Shoreline Management Act, as amended.

~~g-h.~~ h-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;

~~h-i.~~ h-i. Any project with certification from the Governor pursuant to Chapter 80.50 RCW.

~~i-j.~~ i-j. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under WAC 173-27-040(2)(m).

~~j.~~ j. ~~Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:~~

~~k.~~ k. ~~The activity does not interfere with the normal public use of the surface waters;~~

~~l.~~ l. ~~The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;~~

~~m.~~ m. ~~The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;~~

~~n.~~ n. ~~A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions~~ WAC 173-27-040(2)(m).

~~o-k.~~ o-k. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, ~~through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under chapter 43.21C RCW;~~

~~p-l.~~ p-l. Watershed restoration projects as defined in WAC 173-27-040(2)(o). ~~The Shoreline Administrator shall review the projects for consistency with the Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within forty five (45) days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects.~~

~~q-m.~~ q-m. A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the ~~following conditions identified in WAC 173-27-040(2)(p)~~ apply:

- ~~r. The project has been approved in writing by the Washington Department of Fish and Wildlife;~~
- ~~s. The project has received Hydraulic Project Approval by the Washington Department of Fish and Wildlife pursuant to chapter 77.55 RCW; and~~
- ~~t. The Shoreline Administrator has determined that the project is substantially consistent with this Shoreline Master Program. The Shoreline Administrator shall make such determination in a timely manner and provide it by letter to the project proponent. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with this Master Program, as follows:~~
 - ~~u. In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the following criteria:~~
 - ~~v. A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:~~
 - ~~w. Elimination of human-made fish passage barriers, including culvert repair and replacement;~~
 - ~~x. Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or~~
 - ~~y. Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.~~
 - ~~z. A fish habitat enhancement project must be approved in one of the following ways:~~
 - ~~aa. By the Department of Fish and Wildlife pursuant to chapter 77.95 or 77.100 RCW;~~
 - ~~bb. By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;~~
 - ~~cc. By the Department of Ecology as a Department of Fish and Wildlife-sponsored fish habitat enhancement or restoration project;~~
 - ~~dd. Through the review and approval process for the Jobs for the Environment program;~~
 - ~~ee. Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the Natural Resource Conservation Service;~~
 - ~~ff. Through a formal grant program established by the legislature or the Department of Fish and Wildlife for fish habitat enhancement or restoration; and~~
 - ~~gg. Through other formal review and approval processes established by the legislature.~~
 - ~~hh. Fish habitat enhancement projects meeting the criteria of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat~~

enhancement projects meeting the criteria of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

- ~~ii.~~—A hydraulic project approval permit is required for projects that meet the criteria of this subsection and are being reviewed and approved under this section. An applicant shall use a Joint Aquatic Resource Permit Application form developed by the Office of Regulatory Assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the Department of Fish and Wildlife and to the Shoreline Administrator. The Shoreline Administrator shall accept the application as notice of the proposed project. The Department of Fish and Wildlife shall provide a fifteen-day (15) comment period during which it will receive comments regarding environmental impacts. Within forty-five (45) days, the Department of Fish and Wildlife shall issue a permit with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The Department of Fish and Wildlife shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the Department of Fish and Wildlife determines that the review and approval process created by this section is not appropriate for the proposed project, the Department of Fish and Wildlife shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.
- ~~jj.~~—Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the Hydraulic Appeals Board pursuant to the provisions of this chapter.
- ~~kk.~~ No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of this subsection and that are reviewed and approved according to the provisions of this section.
- ~~m.~~—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, and transmit a copy to 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.
- m. 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.

14. 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, and transmit a copy to 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.

12:15. 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 ~~(4)(a) through (f) Chapter 6, subsection G.3.a.i through G.3.a.vi of this section 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 under WAC 173-27-100 may be authorized after original permit authorization has expired provided that this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
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 ~~or yards;~~ ~~area;~~ bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses;
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.
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 any distance 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 ~~fifty-sixty (650)~~ 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 ~~six months~~ 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 ~~six months~~ 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 ~~twelve-twenty-four (1224)~~ 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 circumstances, 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 ~~most restrictive requirement shall be applied, except when constrained by federal or state law, or where specifically provided otherwise in this SMP~~ 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.

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 commercial cultivation of fish, shellfish, and/or other aquatic animals or plants including the incidental preparation of these products for human use.

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 WAC 173-27-030(1).

Average grade level - The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure; 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.

Best available science - 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 925.

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 Management Practices (BMPs) - BMPs are methods of improving water quality that can have a great effect when applied by numerous individuals. BMPs encompass a variety of behavioral, procedural, and structural measures that reduce the amount of contaminants in stormwater runoff and in receiving waters.

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.

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.

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. 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 ~~f~~ the substrate of the [Lakewater body](#).

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

Degrade - To scale down in desirability or salability, to impair in respect to some physical property or to reduce in structure or function.

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)).

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.

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.

EII – 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 (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 manner 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 173-22-030(2)).

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.

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.

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.

Habitat - The place or type of site where a plant or animal naturally or normally lives and grows.

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)).

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.

Impervious surface - Any nonvertical surface artificially covered or hardened so as to prevent or impede the percolation of water into the soil mantle including, but not limited to, roof tops, swimming pools, paved or graveled roads and walkways or parking areas, but excluding landscaping and surface water retention/detention facilities.

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.

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.

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) 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.

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 vegetation – Those species of plants that occur naturally, and that distribute and reproduce without aid. Native plants in western Washington are those that existed prior to intensive settlement that began in the 1850s.

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 - Includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land (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.

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.

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).

Pier - a fixed, pile-supported moorage structure.

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.

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.

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.

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 lots 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.

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.

Sediment - The fine grained material deposited by water or wind.

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 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 stabilize the soil to control erosion, sedimentation and flooding using live plant materials as a main structural component.

Terrestrial - Of or relating to land as distinct from air or water.

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:

1. 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,
2. 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.