CITY OF OAK HARBOR SHORELINE MASTER PROGRAM

JUNE 2021

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Acknowledgements

City Council

Mayor Robert Severns
Mayor Pro-Tem Beth Munns
Rick Almberg
Millie Goebel
Tara Hizon
Bill Larsen
Jeff Mack
Joel Servatius
Erica Wasinger
Jim Woessner

Planning Commission

Greg Wasinger, Chair
Bruce Freeman, Vice Chair
Tony Bates
Hal Hovey
Amy Malmkar
Eric Marshall
Allen McPheeters
Zachary Philipp
Debbie Schaub
Kristy Southard

City Staff

David Kuhl, AICP, Development Services Director
Steve Powers, AICP
Sarah Heller
Cac Kamak, AICP
Dennis Lefevre, AICP
Ray Lindenburg, AICP

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OAK HARBOR SHORELINE MASTER PROGRAM

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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:

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

- To carry out the responsibilities imposed on the City of Oak Harbor by the Washington State Shoreline Management Act (RCW 90.58).
- 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.
- To further, by adoption, the policies of RCW 90.58, and the policies of this Master Program.

- To comply with the Shoreline Master Program Guidelines (WAC 173-26), including standards to ensure that development under this 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 (OHWM), 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 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 13.6 miles long. The City's shoreline jurisdiction typically includes all shorelands within 200 feet of the ordinary high water mark as well as all associated wetlands that are hydraulically connected, including the Freund Marsh wetland complex. However, shorelands extending south of the marina, including Maylor Point and Crescent Harbor are under exclusive federal jurisdiction and are not subject to the City's shoreline policies and regulations. This totals approximately 10.6 linear miles, or about 78 percent of shoreline within the Oak Harbor corporate limits. 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 Chapter **1** Section **C.1** & **2** above, and in RCW 90.58 shall control in the event of a conflict.

D. Applicability

1. General Applicability

The Shoreline Master Program (Master Program) shall apply to all land and waters under the jurisdiction of the City of Oak Harbor as identified in Chapter **1** Section **C.2** above. If the provisions of this Master Program 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 Shoreline 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 173-22-070. Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the

jurisdiction of RCW 90.58. The SMP, including the permit system, shall apply to all nonfederal developments and uses undertaken on federal lands and those federal lands leased to other persons, which fall within the definition of shorelands.

While not subject to Oak Harbor Master Program policy and regulation, the majority of shoreline jurisdiction which is under exclusive federal jurisdiction (NASWI) has been included within the inventory and characterization, cumulative impact analysis, and restoration plan prepared for the 2013 Oak Harbor Shoreline Master Program. Those areas begin south of the Maritime Designation at the Oak Harbor Marina and include Maylor Point, NASWI Seaplane Base, and Crescent Harbor. It is important to maintain shoreline policies and regulations for this area in the event land is transferred to non-federal ownership or leased to non-federal interests. Shoreline policies and regulations adopted as part of this Master Program would be enforced for non-federal uses or activities which may occur in the future.

3. Applicability to All Persons and Development

This Master Program shall apply to all uses, activities and development by persons or parties on lands subject to the Master Program as identified in Chapter **1** Section **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 Master Program.

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 Chapter **6** Section **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 6 provides a definition for a Shoreline Substantial Development (SSD) for which a SSDP is required. Chapter **6** Section **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 Chapter **6** Section **F.3**; 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 Chapter **4** Section **B** of this Master Program; or a Shoreline Variance. Conditional Use Permits and Variances are discussed in more detail in Chapter **6** Sections **G** and **H**, 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 shoreline permit or City approval, provided it complies with the requirements of the Master Program.

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 this Master Program may apply to the

proposed project. The Shoreline Administrator can also provide information on the permit application process and how this Master Program 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 404 Permit by the Army Corps of Engineers (ACOE) and Section 401 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 of the Oak Harbor Municipal Code), zoning codes (Title 19), regulations relating to building construction and safety (Title 17) as well as environmental regulations (Title 20). In addition to development and use regulations, other City plans and policy documents must be considered including the Oak Harbor Comprehensive Plan and the Washington State Department of Ecology's Stormwater Management Manual for Western Washington, 2012 (as amended in December 2014).

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 shoreline 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 Shoreline Master Program

This Master Program is divided into seven Chapters:

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

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

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

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

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

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

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

G. Title

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

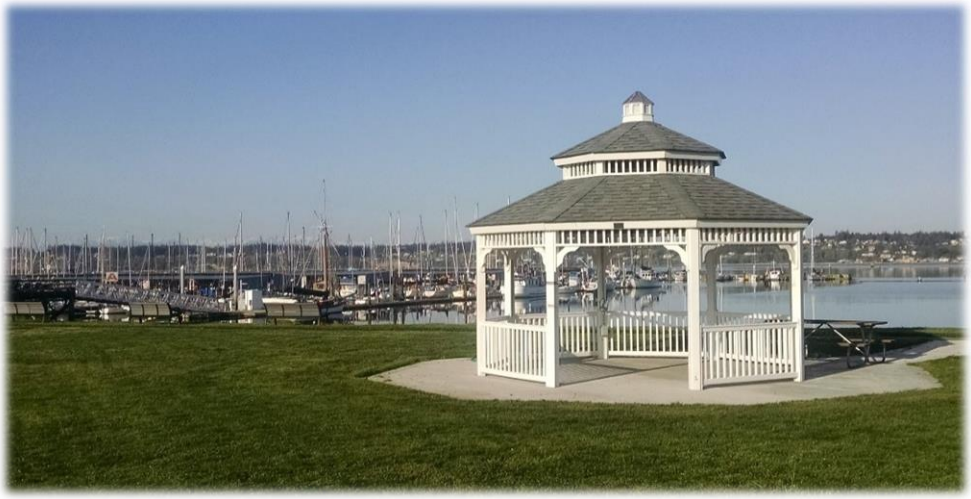
Prepared consistent with state guidelines (WAC 173-26-201), the 2013 comprehensive update developed a shoreline inventory and characterization. The inventory and characterization documented shoreline conditions and provided a basis for updating the City's Master Program goals, policies, and regulations. The characterization identified existing conditions, evaluated functions and values of shoreline resources, and explored opportunities for conservation and restoration of ecological functions.

That SMP was adopted by the City Council in November, 2012 with Washington Department of Ecology approval in December 2013.

In conformance with WAC 173-26-090, the City conducted a periodic review of the 2013 Master Program beginning in 2019. The required minimum scope of this periodic review was to assure:

1. that the Master Program complies with applicable changes to the Shoreline Management Act and Washington Department of Ecology rule changes since the comprehensive update; and,
2. consistency of the Master Program with the City's comprehensive plan and other policy documents as well as applicable development regulations adopted since the comprehensive update; and,
3. that the Master Program reflects changed circumstances, new information, or improved data.

Amendments based on the above criteria have been incorporated into this version. In conformance with WAC 173-26-104 the City and Washington Department of Ecology engaged in a shared local/state public comment period. Subsequent to this comment period, the City approved the Master Program in June 2021, with Washington Department of Ecology approval occurring later that year.



CHAPTER 2: ENVIRONMENT DESIGNATION PROVISIONS

A. Introduction

1. Shoreline Environment Designations

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

This Master Program maintains seven shoreline environments for the City of Oak Harbor. These shoreline environments include the shorelines of the City of Oak Harbor and Naval Air Station Whidbey Island, including shorelands, surface waters, and bedlands. These environments are derived from and build on policy direction contained in the Oak Harbor Shoreline Inventory and Characterization Report (November, 2011), 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 shoreline jurisdiction within the City and the relative locations of shoreline environment designations. In the event of a conflict between the designation map and the text of this Master Program, the environment descriptions provided in this chapter shall control.

B. Environments

1. Maritime Environment

a. Purpose

The purpose of the Maritime environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses and development while protecting existing ecological functions. A secondary purpose is to restore ecological functions in a manner that is compatible with intensive water-oriented uses and development, in areas that have been previously degraded.

b. Designation Criteria

Areas designated Maritime are those areas within the Oak Harbor shoreline jurisdiction that currently support high-intensity uses and development related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses. Existing uses in the Maritime environment include marinas, yacht club, boat launch ramps, parking lots, boat repair, and boat storage yards. Also included in this designation are a wide range of Navy uses not under the jurisdiction of the City of Oak Harbor and this SMP.

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.

As noted above, the Maritime environment includes lands under exclusive federal ownership. Under WAC 173-22-070, areas and uses under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of the Shoreline Management Act and this Master Program.

d. Management Policies

1. First priority should be given to water-dependent uses and development. Second priority should be given to water-related and water-enjoyment uses and development. Non-water-oriented uses should not be allowed except as part of mixed-use developments. Non-water-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is not direct access to the shoreline.
2. Provisions allowing for a mix of water-dependent and non-water-dependent uses in the vicinity of the Oak Harbor Marina should be established to foster economic development and support the vision of the Oak Harbor Marina Redevelopment Program. Standards

should be applied to assure no additional degradation of shoreline conditions and no net loss of ecological functions.

3. Full utilization of the high-intensity waterfront areas should be achieved before further expansion of this environment is allowed. Reasonable long-range projections of future growth in the vicinity of the Oak Harbor Marina and the Whidbey Island Naval Exchange should guide any future expansions of the Maritime environment. However, priority should be given to encouraging the relocation of nonwater-oriented uses when analyzing full utilization of Maritime areas and before considering expansion of such areas.
4. The City should implement the Marina Redevelopment Program in compliance with the provisions of this Master Program.
5. The City should explore redevelopment possibilities for the Seaplane Base, in coordination with the Navy, for economic development purposes.
6. Policies and regulations should assure no net loss of shoreline ecological functions as a result of new development. New development should include environmental cleanup in accordance with any relevant state and federal law and enhancement of shoreline ecological functions wherever practicable.
7. Where safety and feasibility allow, waterfront development in the Maritime environment should provide visual and physical public access to the shoreline.
8. Aesthetic objectives should be implemented by means such as height limits, setbacks, natural vegetative buffers, screening requirements, sign regulations and other development standards.

2. Urban Mixed Use Environment

a. Purpose

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

b. Designation Criteria

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

c. Designated Areas

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

d. Management Policies

1. Development should be located, sited, designed and maintained to protect and enhance the shoreline environment and to be compatible with adjacent public and private uses of the shoreline, including Windjammer Park and Flintstone Park. Please see Chapter **3**, Section **B.8.*c*** for regulations pertaining to Vegetation Conservation. Please see Chapter **4**, Section **C** for Development Standards, including setbacks.

2. First priority should be given to water-dependent uses that are consistent with the designation criteria. Second priority should be given to water-oriented uses, including residential development and passive recreation, such as the Waterfront Trail.

3. Non-water-oriented commercial uses should be allowed on sites without direct access to the shoreline, such as properties on the north side of SE Bayshore Drive and SE Pioneer Way.

4. Non-water oriented commercial uses should also be allowed where navigation is severely limited, such as properties south of SE Bayshore Drive, between Windjammer Park and Flintstone Park, if proposed as part of mixed-use developments with a residential component. The proposal must include a significant public benefit with respect to the Shoreline Management Act's objectives, such as providing public access and ecological restoration.

5. Moorage structures for multifamily or commercial uses are discouraged in this environment because conditions are generally not suitable, but when allowed through a conditional use permit, joint-use piers or public piers should be required. Provided, however, that private piers and docks for single-family residences are permitted uses in this environment and are subject to the policies and regulations in Chapter **5**, Section **C.4**.

6. Multi-family and multi-lot residential developments should provide joint use facilities for the recreational needs of their residents. Where such development is located near the Waterfront Trail, pedestrian connections should be provided to the trail to the greatest extent feasible.

7. Public access should be provided pursuant to Chapter **3**, Section **6**. Public access priorities for this area include the Waterfront Trail, visual access and connections to the Waterfront Trail.

8. Property owners should be encouraged to preserve and enhance native shoreline vegetation and use environmentally friendly landscaping practices, through non-regulatory incentives, information, outreach and other assistance. Please see Chapter **3**, Section **B.8** for regulations pertaining to Vegetation Conservation.

9. Policies and regulations should assure no net loss of shoreline ecological functions as a result of new development. New development should include environmental cleanup in accordance with any relevant state and federal law and enhancement of shoreline ecological functions wherever practicable.

3. Residential Environment

a. Purpose

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

b. Designation Criteria

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

c. Designated Areas

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

d. Management Policies

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

4. Residential - Bluff Conservancy Environment

a. Purpose

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

b. Designation Criteria

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

c. Designated Areas

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

d. Management Policies

1. Residential uses located and designed in a manner that does not accelerate bluff erosion and slope failure are the preferred uses for upland portions of the Residential - Bluff Conservancy environment. Within slope buffer, bluff and beach areas, passive recreation, public access, open space and voluntary shoreline enhancement and restoration activities are preferred uses.
2. Upland development should be located, sited, designed and maintained to protect and enhance the shoreline environment; specifically, development should be sited to avoid the potential for slope erosion and failure over the useable life of the structure, typically 100

years, and designed to prevent bluff erosion by avoiding the need for future shoreline stabilization, as these structures are expected to be less effective and more damaging to nearshore processes with anticipated sea level rise and potential increased storm events. Land subdivisions must consider impacts of fully built-out conditions on shoreline and bluff processes when permitting densified subdivisions.

3. Upland development should be located, sited, and designed to avoid clearing of vegetation or other alterations of steep slopes and buffer areas. Pruning of vegetation in accordance with accepted arboricultural standards to maintain and enhance views should be allowed. Trees should not be topped. Enhancement of shoreline bluff areas with native vegetation to prevent shoreline erosion should be encouraged. Please see Chapter **3**, Section **B.8.*c*** for regulations pertaining to Vegetation Conservation. Please see Chapter **4**, Section **C** for Development Standards, including setbacks.
4. Shoreline access structures, such as trails, walkways, and stairs, should be located, designed, and maintained to minimize alteration of shoreline bluffs and clearing of vegetation. Where feasible, shoreline access from multiple properties should be coordinated and consolidated to reduce the number of access structures.
5. Hard structural shoreline armoring in the Residential - Bluff Conservancy environment should be discouraged in favor of soft stabilization techniques, such as bioengineering, beach nourishment, and vegetative stabilization. Property owners should be encouraged to coordinate shoreline stabilization solutions across multiple properties.
6. Private property owners should be encouraged to preserve and enhance native shoreline vegetation and use environmentally friendly landscaping practices, through incentives, information and other assistance.
7. Development should not negatively impact visual or physical public access to the shoreline, including access to tidelands and waters of the state below the ordinary high water mark (e.g. beach walk access). Please see Chapter **3**, Section **6** for public access requirements.
8. Surface stormwater drainage systems should be maintained in good repair and should be constructed of materials of sufficient quality to avoid failure under normal environmental stresses (erosion/slope failure, freezing, etc.).
9. The City should coordinate with residents who live in the residential bluff conservancy environment and other properties within the related subbasin to identify bluff erosion and stormwater runoff issues, as well as potential future improvements, and funding sources for identified problems. Funding sources may include a combination of private, public, and non-profit monies.

5. Urban Public Facility Environment

a. Purpose

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

b. Designation Criteria

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

c. Designated Areas

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

d. Management Policies

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

6. Conservancy Environment

a. Purpose

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

b. Designation Criteria

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

1. They are suitable for water-related or water-enjoyment uses, but not for water-dependent uses involving structural modification of the shoreline,
2. They are open space or other sensitive areas that should not be more intensively developed,
3. They have potential for ecological restoration,

4. They retain important ecological functions, even though partially developed, or
5. They have the potential for limited development that is compatible with ecological restoration.

c. Designated Areas

Conservancy areas include those generally depicted in Figure 1:

1. Parcels in designated wetland areas associated with Freund Marsh;
2. Those areas within the City limits, that are within the shoreline, however are under exclusive federal ownership and thus are not subject to RCW 90.58, including:
    a. Maylor Point adjacent to Oak Harbor and located generally south of the Oak Harbor Marina and south of Maritime environment on NASWI; and
    b. Shorelines lying north and east of the Maritime environment (e.g. areas north and east of the Whidbey Island Naval Exchange), including Crescent Harbor, Crescent Marsh, and Polnell Point.

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

d. Management Policies

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

7. Aquatic Environment

a. Purpose

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

b. Designation Criteria

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

c. Designated Areas

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

d. Management Policies

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

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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 Shoreline 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

The following provisions describe how this Master Program 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 Master Program and shoreline conditions, at a minimum on an eight-year schedule in accordance with RCW 90.58.080, to determine whether or not other actions are necessary to ensure no net loss of ecological functions, protect and enhance visual quality, and enhance residential and recreational uses and development on the City's shoreline. The update should focus on physical development, environmental impacts, changes in the natural environment, new scientific information, federal and state regulatory changes since the last periodic update was completed, and ensure consistency with existing local policies and regulations.
4. The "policies" listed in this Master Program 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 Master Program.
2. If provisions within this Master Program 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 Shoreline Administrator, shall apply unless specifically stated otherwise.
3. Shoreline uses, modifications, and conditions listed as "prohibited" shall not be eligible for consideration as a Shoreline Variance or Shoreline Conditional Use Permit. See Chapter **4** for Shoreline Use regulations and Chapter **6** for Exemptions, Variances, Conditional Uses, and Nonconforming Use Provisions.

2. Economic Development

a. Applicability

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

b. Policies

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

3. Archaeological and Historic Resources

a. Applicability

The following provisions apply to archaeological and historic resources that are either recorded at the Washington State Department of Archaeology & Historic Preservation (DAHP) and/or by local jurisdictions or have been inadvertently uncovered. Archaeological sites located both in and outside shoreline jurisdiction are subject to RCW 27.44 (Indian graves and records) and RCW 27.53 (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. Records of sites will follow RCW 42.56.300 however, every effort will be made to prevent an adverse impact to a known archaeological site.

b. Policies

1. Sites should be protected 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. Buildings 40 years old or older will be inventoried and records maintained by the City Historic Preservation Commission pursuant to OHMC Chapter 18.50.040.4(b).
2. When and/or where appropriate, make access to such sites available to parties of interest. Access to such sites must be designed and managed in a manner that gives maximum protection to the resource.

3. Opportunities for education related to archaeological, historical and cultural features should be provided when and/or where appropriate and incorporated into public and private management efforts, 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 preserved and/or restored for study, education and/or public enjoyment to the maximum possible extent. The City should reach out to local non-profit organizations to assist with interpretation and other intersections with the general public.

5. Provisions for historic, cultural and archaeological site preservation, restoration and education should be incorporated with open space or recreation areas in site development plans whenever compatible and possible.

6. Cooperation among involved private and public parties is encouraged to achieve this Program's Archaeological, Historical, and Cultural Element Goals and Objectives.

7. Private and public owners of historic sites are encouraged to provide public access and educational opportunities at levels consistent with long-term protection of both historic values and shoreline ecological functions. Site specific conditions may require public site access to be restricted at times, but educational means should be provided whenever possible.

8. Any proposed site development and/or associated site demolition work should be planned and carried out so as to avoid impacts to the resource. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.

9. Owners of property containing identified historic, cultural or archaeological sites are encouraged to make development plans known well in advance of application, so that appropriate agencies such as affected Tribes, as well as the Washington State Department of Archaeology & Historic Preservation, and others may have ample time to assess the site and make arrangements to preserve historical, cultural and archaeological values as applicable.

10. If development or demolition 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.

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 Shoreline 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 deliverable associated with the site assessment should follow the

Washington State Standards for Cultural Resources Reporting as updated. 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 preservationist shall be paid for by the applicant.

b. If the cultural resource site assessment identifies the presence of archaeological, historic, or cultural resources recommendations shall be prepared by a professional archaeologist or historic preservation professional, as part of the survey/assessment. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the applicant. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology & Historic Preservation, and affected Tribes. Comments received shall be incorporated into the conclusions and recommended conditions of the survey/assessment to the maximum extent practicable.

    i. A Cultural Resources survey/assessment shall contain the following minimum elements:

        (A) The purpose of the project; a defined area of potential effect (APE) that shall contain 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; depth and location of all ground disturbing activities including, but not limited to, utilities, paved areas, clearing, staging areas for equipment/material(s), and grading landscaping or new landscape features (i.e. fencing, walls, etc.); an examination of project on-site design alternatives; and an explanation of why the proposed activity requires a location on, or access across and/or through, an historic or archaeological resource; and,

        (B) A description of the historic/archaeological resources present, including any building or structure over 40 years of age affected by the proposal; and,

        (C) An analysis of the significance of the historic resource and an analysis of the potential adverse impacts as a result of the activity; and,

        (D) An analysis of how these impacts will be/have been avoided; or

        (E) A recommendation of appropriate mitigation measures if the resources cannot be avoided. Some mitigation measures may require a permit from DAHP. In the case of archaeological resources, mitigation measures may include, but are not limited to, the following:

            (1) recording the site with the State Department of Archaeology & Historic Preservation, or listing the site in the National Register of Historic Places, Washington Heritage Register, the Oak Harbor Register of Historic Places outlined in OHMC Chapter 18.50.050, or other program where applicable;

            (2) adaptive re-use of buildings or structures according to the U.S. Secretary of the Interior's Standards for Rehabilitation;

            (3) preservation in place;

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

(5) excavation and recovery of archaeological resources;

(6) inventorying prior to covering of archaeological resources with structures or development; and

(7) archaeological monitoring of construction excavation.

ii. The Shoreline Administrator shall consult with the Washington State Department of Archaeology & Historic Preservation, and affected Tribes prior to approval and acceptance of the survey/assessment.

iii. Based upon consultation with DAHP and the affected Tribe(s), the Shoreline Administrator may reject or request revision of the conclusions reached in a survey/assessment when the Shoreline 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 & Historic Preservation~~,~~ and affected Tribes. Survey and testing reports require 30 calendar days for review by DAHP and affected Tribes. Permits for impacting an archaeological site (excavating, monitoring, etc.) require a 90-day review period by DAHP 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:

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

ii. The date, time, place, and type of the hearing, if applicable, scheduled at the date of notice of the application;

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

iv. 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;

v. The identification of other permits not included in the application to the extent known by the City;

vi. 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;

vii. Any other information determined appropriate by the City;

viii. 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 Shoreline 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 require consultation with the Washington State

Department of Archaeology & Historic Preservation, and affected 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.

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 and the find reported as soon as possible to the Shoreline Administrator.

    b. The Shoreline Administrator shall then notify the Washington State Department of Archaeology & 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.b.(1) to the extent of damage to the resource. The site assessment shall be distributed to the Washington State Department of Archaeology & Historic Preservation, the affected Tribes for a 15-day review period. 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. If a private or publicly owned building or structure of historic significance is identified, public access shall be encouraged as appropriate for purposes of public education; provided that:

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

        ii. An access management plan is developed in accordance with site-and resource-specific conditions in consultation with the Washington State Department of Archaeology & Historic Preservation, affected Tribes and/or other agencies, as appropriate, to address the following:

            (A) Hours of operation;

            (B) entrance fees and/or permits;

            (C) interpretive and/or directional signage;

            (D) lighting;

            (E) access for pedestrians and persons with disabilities; and/or,

            (F) traffic and parking.

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 Nos. 1440 § 1-6, (2005); 1801 (2018); 1874 (2019) and codified under Title 20 of the Oak Harbor Municipal Code, which are herein incorporated into this Master Program, except as specifically modified or exempted in this Section.

2. Flood hazard areas located within the City of Oak Harbor's shoreline jurisdiction are regulated by Flood Damage Prevention Regulations, Ordinance Nos. 835 (1989); 1462

(2006); 1472 (2006); 1704 (2014); 1794 (2017) and codified under Chapter 17.20 of the Oak Harbor Municipal Code.

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

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

    a. The provisions of the Critical Areas Regulations shall not modify the extent of the shoreline jurisdiction as described in Chapter **1**, Section **C** of this Master Program. 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 Master Program, or from meeting the specific requirements identified in other sections of this Master Program, including requirements for no net loss.

    c. Provisions relating to "Public agency and utility exceptions" under OHMC 20.12.050, shall not apply within shoreline jurisdiction.

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

    e. Provisions in OHMC 20.12.080 relating to transferrable density calculation, shall not apply within the shoreline jurisdiction.

    f. Provisions in OHMC 20.12.085 relating to innovative development design, shall not apply within the shoreline jurisdiction.

    g. 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 Master Program, Chapter **6**, Section **G**, and in WAC 173-27-170.

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

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

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

k. Provisions in OHMC 20.24.020 relating to exemptions and allowed uses in wetlands, shall not apply within the shoreline jurisdiction.

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

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

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

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

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

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 **3**, 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 and does not result in a net loss of ecological function.

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

b. Policies

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

2. Critical areas within the City's shoreline jurisdiction should be managed and protected to ensure no net loss of ecological functions. When feasible, restore degraded ecological functions and ecosystem-wide processes.

3. Promote human uses and values that are compatible with other objectives of the Shoreline Management Act, such as public access, water-dependent uses, and aesthetic values, provided they do not significantly adversely impact ecological functions.

5. Environmental Impacts and Mitigation

a. Applicability

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

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.
5. All shoreline uses, new development and re-development are encouraged to incorporate best available science to address potential adverse effects of global climate change and sea level rise.

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 hazardous materials or petroleum products is prohibited.
6. All shoreline uses and activities shall utilize best management practices (BMPs) to control stormwater, pollution from stormwater, and provide flow control, when necessary, so that receiving water quality and shoreline properties are not adversely affected during both construction and operation. These BMPs are identified in the City's adopted stormwater manual (OHMC 12.30.310).
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 Shoreline Administrator may also require additional studies prepared by a qualified soils specialist. These designs shall seek to prevent maintenance problems, avoid adverse impacts to adjacent properties or shoreline features, and result in no net loss of shoreline ecological functions.
9. Identified significant short term, long term, or cumulative adverse environmental impacts lacking appropriate mitigation that is likely to achieve no net loss of ecological functions necessary to sustain shoreline processes shall be sufficient reason for permit denial.
10. New development and uses within the shoreline environment shall be designed to have minimal negative effects on existing hydrologic connections between wetlands and the marine nearshore environment or associated fresh water bodies. Development that would disrupt such existing hydrologic connections shall be required to provide mitigation according to the sequence specified in this section.

6. Public Access

a. Applicability

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

b. Policies

1. Provide and enhance shoreline access to Oak Harbor and Crescent Harbor through continued use and improvement of existing sites and infrastructure, installation and maintenance of identifiable signage for public access points, and purchase or retention of access easements.
2. Physical or visual public access to shorelines should be incorporated in all new developments when the Shoreline Administrator makes a finding that development would either generate a demand for one or more forms of access or would impair existing legal physical or visual public access opportunities or rights.

3. Public access priorities in Oak Harbor include enhancements and extensions of the Waterfront Trail from Scenic Heights to Maylor Point, improvements to existing parks, continued support of access and access improvements to open space areas on Navy lands, and enhanced public access associated with future public (e.g. Marina) or private development in the Maritime shoreline environment.
4. Developments, uses, and activities in the shoreline jurisdiction should be designed to avoid blocking or disrupting public visual and physical access to the water and the shoreline. New development should minimize conflicts with existing or planned public access projects and provide appropriate mitigation if impacts cannot be avoided.
5. Shoreline views from public property should be protected. Existing views and view corridors should be inventoried, including views of Oak Harbor, Crescent Harbor, Mt. Rainier, Mt. Baker, the Olympic Mountain range and Saratoga Passage.
6. Private views of the shoreline, although considered during the review process, are not expressly protected. Property owners concerned with the protection of views from private property are encouraged to obtain view easements, purchase intervening property and/or seek other similar private means of minimizing view obstruction.
7. Impacts to public access from new development should be mitigated through provision of on-site physical and visual public access, unless such access would create safety or security hazards, would negatively impact shoreline ecological function, or the Shoreline Administrator determines that alternative off-site access or improvements would better serve the public interest.
8. The level of public access should be commensurate with the degree of uniqueness or fragility of the shoreline.
9. Ensure that upland facilities associated with shoreline public access sites, such as parking and play areas, as well as the development of in-water and nearshore structures for public access, such as docks and swimming areas, are located and designed in ways that result in no net loss of ecological function.
10. Access should be provided for a range of users including pedestrians, bicyclists and boaters to the greatest extent feasible. Such access should conform to applicable provisions of the Americans with Disabilities Act.
11. Public access provisions should be required for all new public shoreline development and uses, unless such access is shown to be incompatible due to reasons of safety, security or impact to the shoreline.
12. Public access required on private property should be consistent with all relevant constitutional and legal limitations on public use of private property, including nexus and proportionality principles.
13. Integrate shoreline public access with existing and planned regional trails or routes, such as the Waterfront Trail, to provide improved non-motorized access and community connections.
14. Ensure public access and recreational uses (including upland 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.
15. Physical access for swimming and non-motorized boating, passive recreation (such as interpretive trails) and habitat enhancement should be important planning and management objectives for shoreline public access sites. These include, but are not

limited to, improvements to the swimming lagoon at Windjammer Park, interpretive trails in Freund Marsh and improvements for non-motorized boaters at both Windjammer Park and Flintstone Park.

c. Regulations

1. Except as provided in Regulations 2 through 4 below, public access shall be required to the extent allowed by law for all shoreline substantial developments and conditional uses when any of the following conditions are present:
    a. The project is publicly funded or occurs on public lands, provided that such access would not result in a net loss of ecological function;
    b. The proposed development would create or increase demand for public access to the shoreline;
    c. The project adversely impacts existing public access by creating a physical or visual obstruction (as determined by a view study in regulations 20 – 23 of this section) or discourages use of existing access;
    d. The development interferes with public use of waters of the state; or
    e. The proposed use is not water-dependent and is not a preferred use under the SMA. Preferred uses include single-family residences, ports, shoreline recreational uses, water-dependent industrial and commercial developments and other developments, such as marinas, that provide public access opportunities.
2. Public access shall not be required for single-family residential development of four (4) or fewer lots. Single-family residential development of five (5) units or more shall provide public access according to the standards of this section.
3. Additional public access shall not be required where public access is already provided by an existing public facility on or adjacent to the site, such as the Waterfront Trail, and the Shoreline Administrator makes a finding that the proposed development would not negatively impact existing visual or physical public access or create a demand for shoreline public access that could not be accommodated by the existing public access system and existing public recreational facilities in the immediate vicinity.
4. Public access shall not be required on-site where one or more of the following conditions apply:
    a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
    b. Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions;
    c. The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development or other constitutional or legal limitations preclude public access;
    d. Unacceptable environmental harm will result from the public access which cannot be mitigated; or
    e. Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.
5. To meet any of the conditions under Regulation 4 above, the applicant must first demonstrate and the Shoreline Administrator must determine that all reasonable alternatives have been exhausted, including but not limited to:

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

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

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

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

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

7. 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 6 above.

8. 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.

9. 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.

10. 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.

11. 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.

12. Public access easements shall be recorded through a conveyance recorded with the auditor or on the face of a plat as 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).

13. 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.

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

15. 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.

16. The City shall require the use of environmentally friendly materials and technology in such things as building materials and permeable surfacing alternatives, to the extent feasible when developing public access to the shoreline.

17. Minimum width of public access easement shall be at least 12 feet, unless the Shoreline 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.

18. 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. Permeable surfacing alternatives 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 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.

19. 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.

20. 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.

21. 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.

22. 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 21 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.

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

7. Shorelines of Statewide Significance

a. Applicability

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

b. Policies

In implementing the objectives for shorelines of statewide significance (RCW 90.58.020), the City will base decisions related to the preparation, administration and enforcement of this Master Program 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 Master Program and proposed amendments publicly available and solicit comments and opinions from groups and individuals representing state-wide interests when developing and amending the Master Program.

    b. Solicit comments and opinions from individuals with expertise in scientific fields relevant to shoreline management when developing or amending the Master Program.

2. Preserve the natural character of the shoreline.

    a. Designate and administer shoreline environments and use regulations to protect and restore the shoreline ecology and character.

b. Protect and restore diversity of vegetation and habitat resources, as well as wetland and riparian areas, associated with the shoreline.

c. Concentrate future high-intensity uses and development into areas where such uses already exist, rather than allow high-intensity uses and development to spread to less intensely developed areas.

3. Support actions that result in long-term benefits over short-term benefits.

   a. Restrict or prohibit uses and development that would irreversibly damage shoreline resources.

4. Protect the resources and ecology of the shoreline.

   a. Minimize development activity that will interfere with the natural functioning of the shoreline ecosystem, including stability, drainage, and water quality.

   b. All shoreline uses and development should be located, designed, constructed and managed to avoid disturbance of and minimize adverse impacts to wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.

   c. Preserve environmentally sensitive wetlands for use as open space or buffers and implement restoration of presently degraded wetland areas.

5. Increase public access to publicly owned areas of the shorelines.

   a. Implement a comprehensive wayfinding signage program that directs the public to publicly owned shoreline areas.

   b. Work with the U.S. Navy to preserve and enhance public access on federal property along Maylor Point and Crescent Bay.

6. Increase recreational opportunities for the public in the shoreline.

   a. Plan for and encourage development of facilities for recreational use of the shoreline.

8. Vegetation Conservation

a. Applicability

1. The following provisions apply to any activity, development, or use that result in the removal of or impact to shoreline vegetation, whether or not that activity requires a shoreline permit. Such activities include clearing, grading, grubbing, and trimming of vegetation. These provisions also apply to vegetation protection and enhancement activities.

2. Important functions of shoreline vegetation include, but are not limited to:

   a. Regulating microclimate in riparian and nearshore areas.

   b. Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macroinvertebrates, such as insects, worms and crayfish.

   c. Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.

   d. Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.

   e. Improving water quality through filtration and vegetative uptake of nutrients and pollutants.

f. Providing a source of large woody debris to moderate flows, help stabilize shorelines and increase habitat diversity for salmonids and other species.

g. Providing habitat elements for riparian-associated species, including downed wood, snags, migratory corridors, food, and cover.

3. See Chapter 7 for definitions of "significant vegetation removal," "ecological functions," "clearing," "grading," and "restore."

b. Policies

1. Conserve native vegetation. Where new developments and/or uses or redevelopments are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes. Vegetation conservation and restoration should be used to mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible.

2. Noxious and invasive weeds. Encourage management and control of noxious and invasive weeds. Control of such species should be done in a manner that retains onsite native vegetation, provides for erosion control, and protects water quality. Use of non-toxic or natural controls is preferred.

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

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

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

c. Regulations

1. Minimize clearing, grading and fill. Vegetation clearing, grading and fill within shoreline jurisdiction shall be limited to the minimum necessary to accommodate approved shoreline development and shall comply with mitigation sequencing as outlined in Section **3.B.5**, Environmental Impacts.

2. Vegetation retention, maintenance and replacement. Shoreline developments shall comply with the Landscape and Screening standards in OHMC Chapter 19.46. (Ordinance No. 1615 § 1, 2011), the additional standards contained within this subsection, and any other regulations specific to vegetation management that may be contained in other chapters of this Master Program. In addition, removal, topping, and damage to oak trees is also regulated under OHMC 20.16 – Garry Oak 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 Structures, Uses and Lots. In addition, all activities that include clearing of native vegetation or surface grading within shoreline setbacks shall include a landscaping plan for review and approval by the City. 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 not require a landscaping plan.

    a. The plan must demonstrate compliance with mitigation sequencing as outlined in Section **3.B.5**, all standards contained in this subsection, and all relevant Master Program standards.

    b. When required, landscaping plans shall be prepared by an architect, landscape architect, or other professional with demonstrated qualifications or experience 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 of ecological function. 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 Master Program.

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

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

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

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

c. Establishment of the VMZ shall not be construed as a requirement to obstruct visual access to the shoreline through planting of sight-obscuring trees. Normal pruning and maintenance of trees within the vegetation management zone to preserve views shall be allowed, except that topping of trees shall not be allowed. Mitigation plantings in the VMZ may accommodate the preservation of shoreline views.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. The City may modify these requirements based on a landscaping plan prepared by an architect, landscape architect, or other professional with demonstrated qualifications or experience that results in equal or greater ecological function.

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

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

12. Non-native vegetation. With the exception of hand removal or spot-spraying of invasive or noxious weeds, the determination of whether non-native vegetation removal may be allowed in shoreline jurisdiction must be evaluated in conformance with Section **3.B.5**, Environmental Impacts and any relevant requirements of OHMC 19.46. Such removal of noxious weeds and/or invasive species shall be incorporated in landscaping plans, as necessary, to prevent erosion and facilitate establishment of a stable community of native plants. Non-native vegetation removal outside of shoreline setbacks does not require mitigation, except as otherwise noted in this Section.

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

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

15. Freund Marsh East Ditch Buffer: A five to eight-foot existing vegetated buffer adjacent to the East Ditch. This buffer is under City ownership and will remain vegetated and undeveloped. An existing contiguous fence separates the buffer from the residential properties.

9. Critical Saltwater Habitat

a. Applicability

Kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association are classified as critical saltwater habitat under WAC 173-26-221(2)(c)(iii). 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 saltwater habitats should be protected in recognition of their importance to the marine ecosystem of the City of Oak Harbor and the State of Washington. SEPA analysis of project alternatives should be conducted for any project proposed within mapped Critical Saltwater Habitat. In compliance with WAC 173-26-221(2)(c)(iii)(B), space should be reserved for critical saltwater habitats including existing shellfish protection districts and critical habitats.
2. Water-dependent uses, including recreational facilities, marinas, and essential public facilities may be permitted in Critical Saltwater Habitat, provided the application demonstrates compliance with required mitigation sequencing and on-site or off-site mitigation is provided that results in no net loss of ecological function.
3. The composition of beach and bottom substrate should be protected from alteration by development and uses. Projects proposed within the shoreline jurisdiction in areas where Critical Saltwater Habitat exists should avoid altering beach and bottom substrate except for restoration projects or installation of pilings associated with uses approved under this SMP.

c. Regulations

1. Water-dependent development and uses, including marinas, docks, piers, mooring areas, and shoreline modifications, shall not intrude into or be built over Critical Saltwater Habitat unless it can be demonstrated that the project meets all of the following criteria:
    a. An overriding public need for the structure, development, or use can be clearly demonstrated, and an alternative location that would avoid the critical habitat is not feasible or would result in unreasonable and disproportionate cost.
    b. The project is consistent with the statewide interest in preservation of sensitive resources and species recovery.
    c. It can be demonstrated that the project, including required mitigation, will result in no net loss of ecological function associated with critical saltwater habitat.
2. Sand, gravel, and other fill materials shall not be placed or removed from Critical Saltwater Habitat, except when part of an approved habitat restoration or beach nourishment project.
3. New outfall structures, including stormwater and sewer outfall pipes, shall not be located in Critical Saltwater Habitat where the discharge from such structures may adversely affect saltwater habitat or species, unless the applicant demonstrates all of the following:
    a. No feasible alternative location for the outfall exists;
    b. The outfall can be placed below the surface of the beach or below the bed of the water body;

c. The outfall will discharge waterward of the intertidal zone (ie, below the extreme low tide line); and,

d. Any vegetated area disturbed will be revegetated with native species.

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

a. Applicability

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

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

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

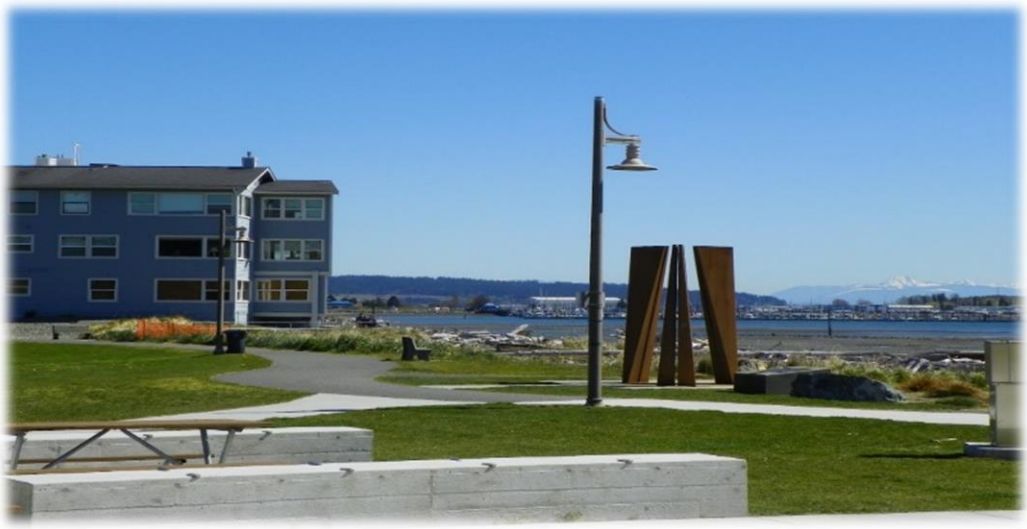
b. Policies

1. All shoreline uses and activities should be located, designed, constructed and maintained to mitigate adverse impacts to water quality, water quantity, or hydrology.
2. The City should require reasonable setbacks, buffers, and storm water facilities, and utilize low-impact development best management practices and permeable surfacing alternatives 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 adopted Stormwater Management Manual for Western Washington (Wa Department of Ecology 2012, as amended 2014), the City's currently adopted Comprehensive Stormwater Management Plan, and all applicable City stormwater regulations.
4. The City should provide general information to the public about the impacts of land and human activities on water quality, and encourage homeowners and property managers to use non-chemical weed and pest control solutions and natural fertilizers.

c. Regulations

1. All shoreline development, both during and after construction, shall minimize impacts related to surface runoff through control, treatment and release of surface water runoff such that there is no net loss of receiving water quality in the shoreline environment.
2. Shoreline development and uses shall adhere to all required setbacks, buffers and standards for stormwater facilities.

3. All shoreline development shall comply with the applicable requirements of the City's adopted Stormwater Management Manual and all applicable City stormwater regulations.
4. All shoreline development shall implement applicable Low Impact Development best management practices to the maximum extent practicable, pursuant to the standards contained in the adopted Stormwater Management Manual and the current NPDES permit.
5. The City requires sanitary sewer connection for all new development while existing on-site sewage systems (OSS) must remain in conformance with the requirements of OHMC 14.03.



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 Master Program also apply to the uses and types of development identified in this chapter. Shoreline uses are allowed only if permitted by the underlying zoning. A use that occurs on both uplands and overwater must meet the requirements of both the upland and aquatic environment designation. Refer to specific use policies and regulations in Section **D** below.

B. Shoreline Use Table

Table 1 – Shoreline Use

SHORELINE USES	MARITIME	URBAN MIXED USE	RESIDENTIAL	RESIDENTIAL BLUFF CONSERVANCY	URBAN PUBLIC FACILITY	CONSERVANCY	AQUATIC
Agriculture							
Primary (e.g. farm or livestock operation)	X	X	X	X	X	X	X
Accessory (e.g. garden or pea patch in park)	P	P	P	P	P	P	X
Aquaculture[1]							

SHORELINE USES	MARITIME	URBAN MIXED USE	RESIDENTIAL	RESIDENTIAL BLUFF CONSERVANCY	URBAN PUBLIC FACILITY	CONSERVANCY	AQUATIC
Boating Facilities							
Marinas (public or private)	P	X[2]	X	X	X/C[3]	X	[4]
Private joint-use piers	P	C	X	X	X	X	[4]
Private exclusive use piers	X	P	X	X	X	X	[4]
Public piers	P	C	X	X	X/P[5]	X	[4]
Boat launch	P	X	X	X	P	C	[4]
Commercial[6]							
Water-dependent	P	P	X	X	C	X	C
Water-related, water enjoyment	P	P	X	X	C	X	C
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[7]	P	P	P	P	P	P	P
RV Park	X	X	X	X	P	X	X
Non-water-oriented (as a primary use)	X	X	X	X	X	X	X
Non-water-oriented (as an accessory use)	P	P	P	P	P	C	X
Residential Development							
Single-family	X	P	P	P	X	X	X
Multi-family	X	P	X	X	X	X	X
Transportation Facilities							
New roads related to permitted shoreline activities	P	P	P	C	P	C	X
Expansion of existing circulation systems and driveways	P	P	P	C	P	C	X[8]
Ferry terminals	P	X	X	X	C	X	P
Trails	P	P	P	P	P	P	C[9]
Utilities							
Solid waste disposal or transfer sites (excluding storage of recyclable materials)	X	X	X	X	X	X	X
Wastewater treatment plant	C	C	X	X	C	C	X[10]
Transmission lines and other primary facilities	C	C	C	C	C	C	C
Utilities (Accessory to permitted development)	P	P	P	P	P	C	C
Other Uses and Activities							
Restoration activities	P	P	P	P	P	P	P

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

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

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

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

[4] See adjacent upland environment.

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

[6] Home occupations are allowed as an accessory use to residential development pursuant to the requirements of Oak Harbor Municipal Code, Chapter 19.34. Accessory commercial uses such as concession stands are allowed in the Maritime and Urban Public Facility environment as a permitted use, but are limited to water-oriented commercial uses in the Aquatic environment, e.g. boat rental, fueling, boat sales, etc.

[7] For purposes of this use table, water-oriented recreational uses shall not include boating facilities (including marinas) or RV parks, which are regulated separately.

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

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

[10] 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	RESIDENTIAL (Freund Marsh residential sub. environment)[12, 13]	RESIDENTIAL BLUFF CONSERVANCY	URBAN PUBLIC FACILITY	CONSERVANCY	AQUATIC
Maximum Height[1]	35 feet, 55 feet for water-dependent structures	35 feet (CBD-1 and CBD-2), 55 feet (CBD)	35 feet	35 feet	35 feet	25 feet	N/A
Shoreline Setback[2,9,11]	50 feet [3]	50 feet [4]	50 feet[5]/20 feet[14]	50 feet[6]	75 feet	100 feet	N/A
Maximum Total Impervious Surface Coverage (Standard Applies to Entire Lot or Portion Thereof in Shoreline Jurisdiction)	80%	80%	40%	30%	40%/ 80%[7]	10%	N/A
Maximum Impervious Surface Coverage – Setback Zone 1 (VMZ)[8]	20%[3]	0%	0%	0%	0%	0%	N/A
Maximum Impervious Surface Coverage – Setback Zone 2[8]	40%[3]	20%	20%	0%[9]	20%	0%[9]	N/A
Minimum Lot Frontage and Width	N/A	N/A	60 feet	60 feet	N/A	N/A[10]	N/A
Minimum Lot Size	N/A	N/A	7,200 SF	7,200 SF	N/A	N/A[10]	N/A

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

[2] Water-dependent structures associated with an 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 activity be allowed within the minimum setback. Additionally, for development along marine shorelines designated as fish and wildlife habitat conservation areas under OHMC 20.25, the Shoreline Administrator may require a special study to evaluate potential impacts. If supported by such a study, the Shoreline Administrator may increase the shoreline

setback to protect sensitive environmental resources, though the total setback shall not exceed one hundred feet (100).

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

[4] New residential structures in the Urban Mixed Use environment shall adhere to this setback requirement unless existing development within one hundred feet (100) 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 OHWM on either side of the subject property. However, in no case shall the minimum setback be reduced to less than 40 feet. At least 12 feet of the setback shall be dedicated to public access and recreational use (i.e. the Waterfront Trail).

[5] New structures in the Residential environment shall adhere to this setback requirement unless existing development within 100 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 OHWM 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 Vegetation Management Zone and a 5-foot area for maintaining the structure, entrances, etc.

[6] All new or expanded development in the 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 1801, 2018 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 (typically 100 years), as demonstrated by the geotechnical analysis. Please see additional geotechnical report requirements in Chapter **5**, Section **C.1.*c*** and critical area report requirements in OHMC 20.28. In no case shall primary structures be located closer than 50 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 50 feet of a steep slope area or top of bluff or within the setback recommended by a geotechnical analysis, the more restrictive standard shall apply.

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

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

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

[10] No further subdivision is allowed in the Conservancy environment.

[11] Setbacks shall be measured from the ordinary high water mark (OHWM).

[12] See residential regulations numbers 11 and 12 for Freund marsh East Ditch 20-foot setback, and setback allowances and limitations.

[13] See vegetation conservation regulation number 15 for Freund Marsh East Ditch buffer description.

[14] Freund Marsh East Ditch setback is measured from the property line nearest the marsh of properties within this designation.

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 appropriate stormwater best management practices and encourage sustainable building practices through programs such as the Leadership in Energy and Environmental Design (LEED) and Built Green programs, for new development within the shoreline jurisdiction.
4. Proposed shoreline uses should not infringe upon the rights of others or upon the rights of private ownership.
5. Encourage shoreline uses which enhance their specific areas or employ innovative features for purposes consistent with this program.
6. Encourage restoration of shoreline areas that have been degraded or diminished in ecological value and function as a result of past activities or catastrophic events.
7. Forestry and mining uses and activities are prohibited from the shoreline jurisdiction.

2. Agriculture

a. Applicability

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

b. Policies

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

c. Regulations

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

3. Aquaculture

a. Applicability

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

b. Policies

1. Non-commercial aquaculture by a public agency or tribal government for recovery of a native population is preferred and should be allowed in all environments.
2. Limit all other aquaculture uses and development to the Maritime and Aquatic environments as a conditional use.
3. Ensure aquaculture uses and developments are located, designed, and operated in a manner that is compatible with existing uses and compatible with all standards in this Master Program, including mitigation sequencing and no net loss.
4. Aquaculture facilities should be designed and located such that they do not spread disease to native aquatic life, establish nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.
5. The City should actively seek substantive comment on any shoreline permit application for aquaculture from all appropriate Federal, State and local agencies; affected Tribes; and the general public regarding potential adverse impacts. Comments from residents and property owners directly affected by a proposal should be considered and evaluated, especially in regard to use compatibility and aesthetics.

c. Regulations

1. Shellfish seeding/culturing shall be a permitted use in all environments when conducted for native population recovery in accordance with a government or Tribal approved plan. All other aquaculture developments and activities, including fish pens and commercial shellfish seeding/culturing, shall require a conditional use permit and are limited to the Maritime and Aquatic environments.
2. Aquaculture facilities shall be located and designed to avoid:
    a. Loss of ecological functions;
    b. Impacts to eelgrass and macroalgae;
    c. Significant conflict with navigation and water-dependent uses;
    d. The spreading of disease;
    e. Introduction of non-native species; and,
    f. Impacts to shoreline aesthetic qualities.
3. All unavoidable impacts remaining after application of mitigation sequencing must be mitigated to achieve no net loss.
4. Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible operation of the use.
5. New aquatic species that are not previously cultivated in Washington State shall not be introduced into City waters without prior written approval of the Washington State Department of Fish and Wildlife and the Washington Department of Health.
6. No processing of any aquaculture product, except for the sorting or culling of the cultured organisms and the washing or removal of surface materials after harvest, shall occur in or over the water unless specifically approved by permit. All other processing facilities shall be located on land.
7. Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (RCW 90.48). No garbage, wastes or debris shall be allowed to accumulate at the site of any aquaculture operation.
8. Fish net pens and rafts shall only be allowed in the Maritime environment and Aquatic areas directly offshore from the Maritime environment, subject to the following additional regulations:
    a. All net pens and rafts shall meet all federal and state permitting requirements.
    b. Fish net pens shall occupy no more than 2 surface acres of water area, excluding booming and anchoring requirements. Anchors that minimize disturbance to substrate, such as helical anchors, shall be employed where feasible. Such operations shall not use chemicals or antibiotics.
9. All new commercial geoduck aquaculture requires a conditional use permit. Project applications and permits must comply with WAC 173-26-241(3)(b)(i) & (ii).

4. Boating Facilities and Marinas

a. Applicability

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

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

Activity generated by marinas varies with their size and range of services offered. Marinas generate boat and vehicular traffic and related noise. Construction and operation of marinas affect water quality and fish and shellfish habitats by introducing pollutants (fuel, oil, heavy metals, human wastes, erosion and siltation). Circulation and sand movement may be impeded and affect beaches or alter aquatic habitats. Marinas with several associated uses may require additional land area and larger parking areas. Activities including but not limited to dredging, landfill, bulkheads, utilities, roads and commercial development associated with marina development are subject to the policies and regulations for those categories.

b. Policies

1. Boating facilities should be located and designed to ensure no net loss of ecological functions or other significant adverse impacts, and should, where feasible, enhance degraded and/or scarce shoreline features.
2. Boating facilities should not unduly obstruct navigable waters and should consider adverse effects to recreational opportunities such as fishing, pleasure boating, swimming, beach walking, picnicking and shoreline viewing.
3. Boating facilities that minimize the amount of shoreline modification, in-water structure, and overwater cover are preferred.
4. Marinas should be designed to accommodate public access features, including facilities such as walkways, viewpoints, restrooms, and fishing piers.
5. Accessory uses at boating facilities should be limited to water-oriented uses, uses that provide physical and/or visual shoreline access for substantial numbers of the general public, or uses directly supportive of recreational boating activities. Non-water-dependent accessory uses should be located outside of shoreline jurisdiction or outside of the shoreline setback whenever possible.
6. Boating facilities should be located, designed, constructed and operated so that other appropriate water-dependent uses are not adversely affected and to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; and impacts to public visual access to the shoreline.

7. New boating facilities should be located only at sites where suitable environmental conditions, shoreline configuration, access, and neighboring uses are present.
8. Boating facilities should protect public health, safety, and welfare.
9. Floating on-water residences should be permitted in marinas only when adequate measures are in place to protect water quality.

c. Regulations

1. Location Standards.
    a. New boating facilities shall minimize dredging and make use of the natural site configuration to the greatest extent feasible to avoid impacts to shoreline ecological functions.
    b. Boating facilities shall be located and designed with the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft from floods or destructive storms.
    c. Boating facilities shall be located only where adequate utility services are available, or where they can be provided concurrent with the development.
    d. Boat launches shall be sited so that they do not significantly damage fish, shellfish, water quality, wildlife habitats, or existing hydraulic processes and shall not occur in areas with native emergent vegetation. Removal of native upland vegetation shall be minimized to the greatest extent feasible.
    e. Boat launches shall be designed to avoid or minimize excavation waterward of the OHWM and to minimize impacts to tidal currents and littoral drift.
    f. Marinas should not be located in embayments with poor water circulation, which can be susceptible to localized water quality degradation.
2. Facility Design.
    a. All boating facilities shall be designed to avoid and minimize impacts. All unavoidable impacts must be mitigated such that no net loss of shoreline ecological functions is achieved.
    b. The use of persistent bioaccumulative toxins (PBT) as identified in WAC 173-333-310 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 are preferred over establishment of new marinas;
        ii Marinas and public launch ramps are preferred over development of individual docks and piers for private, non-commercial vessels; and
        iii Use of boat launch ramps and dry storage are 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 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 petroleum products 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 Chapter **5**, Section **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 limited to the minimum size necessary to accommodate the anticipated demand. Specifically, the amount of overwater cover, the size and number of in-water structures, the waterward length of the facility, and the extent of any necessary associated shoreline stabilization or modification shall be minimized.

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

j. Overwater components (piers, docks) of all boating facilities, except marinas, shall allow transmission of light through the deck surface consistent with regulations of Chapter **5.** Section **C.4.*c***.

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

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

i. Open grid designs with minimum coverage of substrate.

ii. Seasonal ramps that can be removed and stored upland.

iii. Structures with segmented pads and flexible connections that leave space for natural beach substrate and can adapt to changes in shoreline profile.

iv. Designs other than above.

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

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

3. Site Design and Operation.

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

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

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

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

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

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

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

5. Commercial

a. Applicability

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

b. Policies

1. Give priority to those commercial developments that are dependent on shoreline locations or that allow a substantial number of people to actively or passively enjoy the shoreline; preference should first be given to water-dependent uses, then to water-related and water-enjoyment uses.

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

3. New commercial development over the water should occur only in areas where commercial development already exists, unless a specific identified demand exists for a water-dependent commercial good or service.
4. New and expanded commercial developments should be designed and located to protect and enhance public views of the water from upland properties and from public roads and walkways.
5. New and expanded commercial development should be permitted only where adequate parking area is or can be made available.

c. Regulations

1. New primary non-water-oriented commercial uses shall not be allowed unless:
    a. There is no direct access to navigable waterways, for example those areas landward of SE Bayshore Drive or SE Pioneer Way, or
    b. The use part of a mixed-use project that includes water-dependent uses and the use provides a significant public benefit with respect to SMA objectives, such as providing public access and ecological restoration, or
    c. Navigability is severely limited at the proposed site, such as properties south of SE Bayshore Drive, between Windjammer Park and Flintstone Park, and the commercial use is part of a mixed-use project that includes a residential component and provides a significant public benefit with respect to SMA objectives, such as providing public access and ecological restoration.
2. Shoreline permit applications for commercial and mixed-use development shall include a detailed statement describing the type of commercial use(s) proposed, how they relate to the water or shoreline, and whether they are water-dependent, water-related, water enjoyment, or non-water-oriented uses. Such statements shall include at least the following:
    a. Nature of the commercial activity.
    b. Need for shoreline or over-water location.
    c. Proposed measures to enhance the relationship of the activity to the shoreline (e.g. outdoor view dining area)
    d. Proposed provisions for public physical or visual access to and/or along the shoreline.
3. Over-water construction of commercial uses is prohibited, except as follows:
    a. Commercial docks and boat fueling stations.
    b. The development of docks, piers, marinas, boat launch ramps, fueling stations or similar shoreline boating facilities intended for general public use.
    c. Minor commercial uses that are accessory and clearly incidental to an allowed use may be provided on publicly owned docks and piers (e.g. boat rental, boater convenience store, boat services, etc).
    d. Bulkheads or landfills required by a water-dependent or public recreational use, which are necessary for that use.
4. All commercial developments which are non-water-dependent, other than those that are part of a mixed use project with a residential component, shall be subject to the following requirements:

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

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

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

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

6. Nonconforming commercial structures that are modified, replaced, repaired or enlarged are subject to the requirements in Chapter **6**, Section **J** (Nonconforming Structures, Uses and Lots).

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

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

6. Industrial and Port Facilities

a. Applicability

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

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

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

b. Policies

1. Water-dependent and water-related industrial development should only be allowed in areas designated Maritime. All other industrial uses should be prohibited.

2. Prohibit non-water-dependent industrial and port developments over water.

3. Require new industrial and port developments to provide physical and visual access to shorelines wherever possible, consistent with constitutional and statutory limitations, and provided such access does not interfere with industrial operations or endanger public health and safety.

4. Industrial development should not displace existing visual or physical public access.

5. Encourage cooperative use of docks, storage, parking and other accessory facilities among private or public entities in shoreline industrial and port areas.

6. Industrial uses and redevelopment are encouraged to locate where environmental cleanup and restoration can be accomplished.

c. Regulations

1. Only water-dependent industry and water-related industry shall be permitted in shoreline jurisdiction. The Maritime shoreline environment is the only environment where these uses shall be permitted.

2. Over-water construction of non-water-dependent industrial uses is prohibited. This provision is not intended to preclude the development of docks, piers or boating facilities that are necessary for the operation of the water-dependent or water-related use.

3. Industrial and port facilities shall be located, designed, constructed and operated so as to minimize impacts to shoreline resources and not interfere with adjacent property uses, 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 flammable 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 flammable liquids below ground shall be permitted, and the tank shall be located not closer to the property line than the greatest dimension (diameter, length or height of the tank).

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

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

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

    l. Emission of dangerous radioactivity shall be prohibited.

4. Provide for necessary shielding or other measures to prevent on-site mechanical or electrical equipment from interfering with the use of electrical apparatus off-site.
5. Exterior lighting shall be shielded to prevent nuisance glare and prevent trespass of light onto adjacent properties or water bodies to the maximum extent practicable.
6. Arc welding, acetylene torch cutting or similar processes shall be performed so as not to be seen from any point beyond the property.
7. Noxious odors shall be eliminated to the extent feasible.
8. A new or expanded shoreline industrial development shall provide public access when required by Chapter **3**, Section **B.6.*c*** and meet all standards identified therein.

7. Parking

a. Applicability

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

b. Policies

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

c. Regulations

1. Parking as a primary use is prohibited in Shoreline jurisdiction. Parking may be provided as part of a scenic vista.
2. New and reconstructed parking areas shall utilize all practicable Low Impact Development (LID) best management practices identified in the adopted Stormwater Management 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 Management Manual to prevent it from contaminating water bodies.
3. Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and adequately screened or in cases when an alternate orientation would have less adverse impact on the shoreline.
4. Exterior parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shoreline and abutting properties pursuant to OHMC 19.46.030(5) (Ordinance No. 1615 § 1, 2011). All landscaping must be maintained in a neat and orderly manner. In no event shall such landscape areas be used for the storage of materials or vehicles.

5. Security lighting associated with parking facilities shall be beamed, hooded or directed so as not to cause nuisance glare on adjoining properties. Full cut-off fixtures are recommended.

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 Master Program, such as "Boating Facilities," "Private Overwater Structures," and "Residential Development," are subject to the regulations established for those uses in addition to the standards for recreation established in this section.

b. Policies

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

c. Regulations

1. Recreational uses and developments shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. The City

may request necessary studies by qualified professionals to determine compliance with this standard.

2. Water-dependent recreational activities such as swimming, boating, and fishing, and water-enjoyment activities that benefit from waterfront scenery such as picnicking, hiking and bicycling shall be emphasized in planning public and private (excluding residential) noncommercial recreation sites in the shoreline corridor.
3. All recreational developments shall make adequate provisions for:
    a. Non-motorized and pedestrian access;
    b. The prevention of trespass onto adjacent properties, including but not limited to landscaping and fencing;
    c. Protection and restoration of environmentally sensitive areas and shoreline processes and functions;
    d. Signs indicating the public's right of access to shoreline areas, installed and maintained in conspicuous locations at the point of access and the entrance; and
    e. Buffering of such development from adjacent private property or natural area.
4. In approving shoreline recreational developments, the City may apply conditions to project dimensions, use intensity, parking provisions, or landscaping to ensure that the development will maintain, enhance or restore desirable shoreline functions or scenic qualities.
5. Swimming areas shall be separated from boat launch areas.
6. The construction of piers, moorages, floats and launching facilities waterward of the OHWM shall be governed by the regulations relating to Boating Facilities (Chapter **4**, Section **D**.**4**) and Piers, Docks, Floats, and Mooring Buoys (Chapter **5**, Section **C.4**) of this SMP.
7. Fragile and unique shoreline areas with valuable ecological functions, such as wildlife habitats, shall be used only for non-intensive recreation activities that do not involve the construction of structures.
8. All structures associated with a recreational use, except water-dependent structures, such as docks and boardwalks, and appurtenances that provide access to the water for that use, shall maintain a standard setback from the OHWM per Chapter **4**, Section **C**, Table 2. Further setback reduction shall require restoration or enhancement of the shoreline buffer, as required by the Shoreline Administrator.
9. A new or expanded shoreline recreational development shall provide public access when required by Chapter **3**, Section **B.6.*c*** and meet all requirements identified therein.
10. Applications for new recreational development within the shoreline jurisdiction shall include a parking and landscaping plan. Landscaping plans shall comply with OHMC Chapter 19.46. Safe pedestrian walkways shall be provided between parking areas and recreational facilities.
11. Use of recreational off-road vehicles is prohibited within designated shoreline setbacks and below the Ordinary High Water Mark, except by public agencies for maintenance, operations and emergency services.

9. Residential Development

a. Applicability

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

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

b. Policies

1. Residential development is not a water-dependent use and should not be allowed to locate over water, except in the case of existing floating on-water residences moored at marinas.
2. Residential structures should be designed and sited in such a manner as to not detract from the scenic and aesthetic qualities of the shoreline.
3. Residential development should be discouraged in portions of the shoreline jurisdiction where bulkheading or other forms of hard shoreline stabilization would be necessary at the time of construction or in the foreseeable future to protect the residence.
4. Residential development should be designed so as to preserve existing shoreline vegetation, control erosion and protect water quality using stormwater management best management practices in conformance with the adopted Stormwater Management Manual, where possible.
5. Development should, at a minimum, achieve no net loss of ecological functions necessary to sustain shoreline natural resources, even for exempt development.

c. Regulations

1. Residential development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. The City may request necessary studies by qualified professionals to determine compliance with this standard.
2. Structures or other development accessory to residential uses are permitted in shoreline jurisdiction, if allowed under all other applicable standards in this Master Program and subject to the provisions of the City's zoning code. Accessory uses and appurtenant structures not specifically addressed in the Master Program 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. Floating on-water residences shall be prohibited in all shoreline environment designations, except the Maritime environment. Existing floating on-water residences legally established and moored within a marina within the City of Oak Harbor prior to

July 1, 2014 are considered a conforming use and should be accommodated through reasonable permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

5. A floating home permitted or legally established prior to January 1, 2011 is considered a conforming preferred use. Conforming preferred use means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable. Floating homes should be accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.
6. All additions to residential structures must comply with all standards in this SMP, including required shoreline setbacks established in Table 2.
7. Nonconforming residential structures that are modified, replaced, repaired or enlarged are subject to the requirements in Chapter **6**, Section **J** (Nonconforming Structures, Uses and Lots).
8. 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.
9. 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 practicable, in accordance with the City's adopted Surface Water Design Manual and the current NPDES permit.
10. 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.
11. Freund Marsh residential setback is 20 feet measured from the property line nearest the Marsh. Setback limitations: car and RV covers should not be allowed, but existing established uses can continue. A 30% overall impervious surface limit within the 20-foot setback for each property, would apply to all the listed allowances with the exception of gardens.
12. Freund Marsh residential setback allowances: decking, patios, hot tubs, garden sheds (150 square foot maximum limit), and gardens.

10. Transportation

a. Applicability

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

b. Policies

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

c. Regulations

1. New road construction in the shoreline jurisdiction shall be allowed only when demonstrated through an alternatives analysis that an upland location is neither feasible nor practical. New access drives directly servicing shoreline uses shall not require an alternatives analysis.
2. Transportation facility development shall result in no net loss of shoreline ecological functions and shall be designed to minimize the need for landfill, vegetation removal, bank stabilization, and grading. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial.
3. Graded areas and slopes altered during construction shall be stabilized and, where appropriate, planted with native vegetation.
4. Expansion of existing roadways within the shoreline jurisdiction shall be allowed only when the proponent demonstrates that:
    a. No alternative route is feasible;
    b. Site grading, removal of vegetation, bank stabilization, and use of fill has been minimized;
    c. The roadway is constructed and maintained to cause the least possible adverse impact on the land and water environment; and
    d. The roadway is found to be in the public interest.
5. Transportation and primary utility facilities shall be required to make joint use of rights-of-way, and to consolidate crossings of water bodies to minimize adverse impacts to the shoreline.
6. All debris and other waste materials from roadway construction shall be disposed of in such a way as to prevent their entry into any water body.
7. Road designs must provide safe pedestrian and non-motorized vehicular crossings where public access to shorelines is intended.

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

11. Utilities (Primary)

a. Applicability

Utilities in this Master Program 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. With the exception of on-site, accessory solid waste and recycling containers, new solid waste disposal and recycling activities and facilities should be prohibited in shoreline areas.

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

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 Master Program, in acquiring rights for the proposed route.

3. Wherever primary utility facilities and corridors must be placed in a shoreline area, they should be located so as to protect scenic views. Whenever possible, such facilities should be placed underground or designed to minimize impacts on the aesthetic qualities of the shoreline area.

c. Regulations

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

2. 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.

3. Utility development shall, through coordination with local government agencies, provide for compatible, multiple-use of sites and rights-of-way. Such uses include shoreline access points, trail systems and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, endanger public health and safety or create a significant and disproportionate liability for the owner.
4. 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.
5. Solid waste disposal sites and facilities are prohibited in the shoreline environment.
6. Where major facilities must be placed in a shoreline area, the location and design shall be chosen to avoid and minimize impacts to scenic views, where feasible.
7. 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.
8. The City shall hold public meeting(s) 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.
9. 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.
10. 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, small cell facilities, 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.

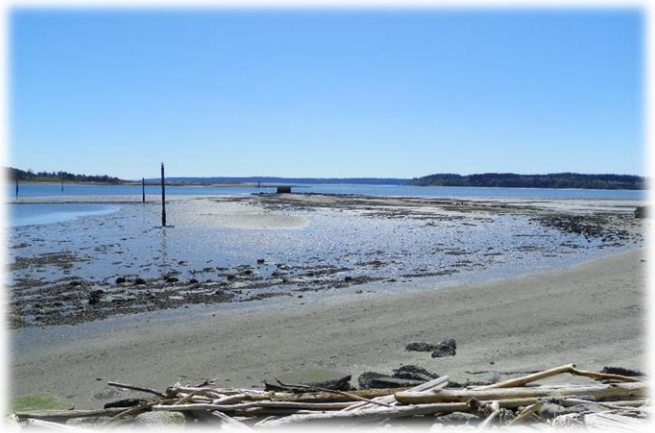
b. Policies

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

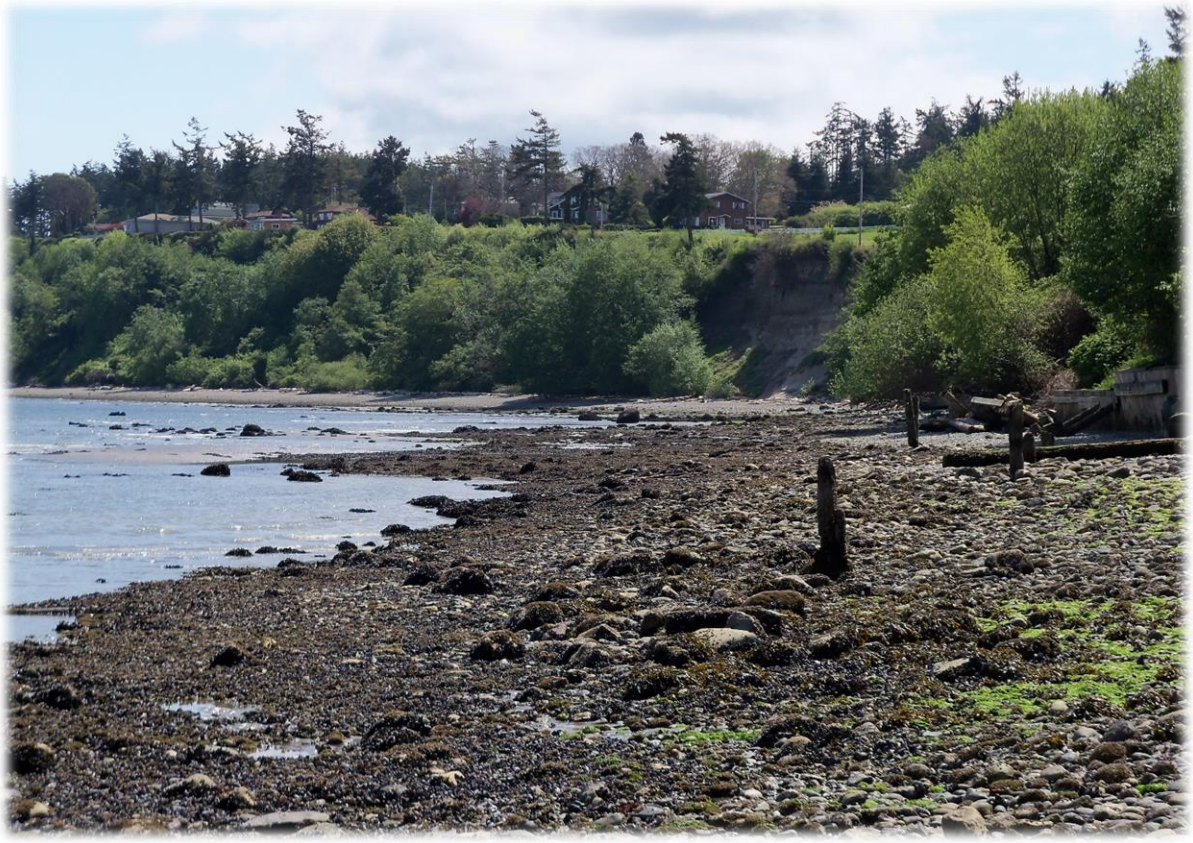
2. Utility facilities and right-of-way should be located outside of the shoreline area to the maximum extent possible. When utility lines require a shoreline location, they should be placed underground, where feasible.
3. Utility facilities should be designed and located in a manner which preserves the natural landscape and shoreline ecology and minimizes conflicts with present and planned land uses.

c. Regulations

1. Utility developments shall, through coordination with local government agencies and utility purveyors, provide for compatible, multiple use of utility sites and rights-of-way. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, or endanger public health and safety.
2. In shoreline areas, accessory utilities servicing new development that exceeds the thresholds identified in Chapter **6**, Section **J**, Nonconforming Structures, Uses and Lots, shall be placed underground unless demonstrated to be infeasible. Further, such lines shall utilize existing rights-of-way, and existing corridors whenever possible. Existing above ground lines shall be moved underground when properties are redeveloped or in conjunction with major system upgrades or replacements.
3. Utility facilities shall be located and designed to avoid destruction of, or damage to, important wildlife areas, and other unique and fragile areas. Utility facility development shall result in no net loss of shoreline ecological functions. Mitigation shall be provided as necessary to meet this requirement. Failure to meet this standard will result in permit denial.
4. Clearing for the installation or maintenance of utilities shall be kept to a minimum, and upon project completion, any disturbed area shall be restored, to the greatest extent feasible, to pre-project conditions, including replanting with native species, or other species as approved by the City. If the previous condition is identified as being undesirable for shoreline function, then landscaping and other improvements shall be undertaken.
5. The location and construction of outfalls shall comply with all appropriate federal, state, county and city regulations.



CHAPTER 5: SHORELINE MODIFICATION PROVISIONS



A. Introduction

Shoreline modification activities are, 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

Table 3 – Shoreline Modifications

SHORELINE USES	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	
Soil Bio-engineering, other non-structural	P	P	P	P	P	P	
Structural Stabilization	P	P	P	C	P	C	[1]
Breakwaters, jetties, and groins	C	C	X	X	C	X	
Clearing and Grading	P	P	P	C	P	C	
Dredging	P	C	C	C	P/C[2]	C	
Fill							
Fill upland of OHWM	P	P	P	P	P	C	
Fill waterward of OHWM[3]	C	C	C	C	C	C	
Overwater Structures							
Recreational float (not associated with a pier or dock)	P	X	X	X	X/P[4]	X	
Overwater boathouse	P	X	X	X	X	X	
Piers and docks (including pier/float combinations)[5]	P	P[6,7]	X	X	X/P[4]	X	
Moorage ball and buoy	P	P	C	C	P	C	
Marina	P	X[8]	X	X	C	X	
Boat ramp	P	X	X	X	P	C	
Launching rails	P	X	X	X	X	X	
Boat lifts	P	X	X	X	X	X	
Boat lift canopies	P	X	X	X	X	X	
Covered moorage and boat houses	P	X	X	X	X	X	

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

[1] See adjacent upland environment.

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

[3] Fill 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. 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.

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

[5] All floating docks outside marinas shall comply with the provisions of Chapter **5**, Section **C.4.*c.***1.f regarding grounding.

[6] Pier, docks, and floats for multifamily or commercial uses in the Urban Mixed Use environment shall be approved by a substantial development 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 a single upland residential unit, or will provide access to more than one upland property; or,

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.

[7] Private, exclusive use docks and piers for single-family residences are considered to be permitted uses in the Urban Mixed Use environment and shall not be required to provide public access or be joint-use structures. Such piers or docks must comply with applicable policies and regulations of the SMP.

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

C. Policies and Regulations

1. Shoreline Stabilization (Including Bulkheads)

a. Applicability

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

b. Policies

1. Shoreline stabilization should be located, designed, and maintained to protect and maintain shoreline ecological functions, ongoing shoreline processes, and the integrity of shoreline features. Ongoing shoreline processes and the probable effects of proposed shoreline stabilization on other properties and shoreline features should be considered. Shoreline stabilization should not be developed for the purpose of filling shorelines.
2. Structural shoreline stabilization measures should only be used when more natural, flexible, non-structural methods such as placing the development farther from the OHWM, planting vegetation, or installing on-site drainage improvements, beach

enhancement and bioengineering have been determined infeasible. Alternatives for shoreline stabilization should be considered in the following priority order:

a. No action (allow the shoreline to retreat naturally), increase buffers, and relocate structures.

b. Flexible defense works constructed of natural materials including soft shore protection, bioengineering, including beach nourishment, protective berms, or vegetative stabilization.

c. Rigid works constructed of artificial materials such as riprap or concrete.

3. Structures should be located and designed to avoid the need for future shoreline stabilization based on a structural life expectancy of typically 100 years. Land subdivisions should be designed to assure that future development of the created lots will not require shoreline stabilization for development to occur.

4. New or enlarged structural shoreline stabilization should only be permitted where demonstrated to be necessary to protect a primary structure, including a residence that is in imminent danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.

5. Shoreline stabilization should not be permitted when it interferes with public access to shorelines of the state, nor with other appropriate shoreline uses including, navigation or recreation.

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

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

c. Regulations

1. General

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

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

c. Structural stabilization may be authorized only where the proponent can demonstrate that an existing primary structure or use is in imminent danger from shoreline erosion and that non-structural stabilization methods are not feasible or would not provide adequate protection, as determined by a geotechnical analysis. Other components of a geotechnical analysis are found in Chapter 7. Please see specific requirements for new or enlarged stabilization, as well as stabilization replacement and repair in this Subsection.

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

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

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

g. The following is a summary of the key requirements found in Chapter **5**, Section **C.1.*b.***2 through **C.1.*b.***7:

Table 4 – Key Shoreline Stabilization Measures

Shoreline Stabilization Measures	Requirements
Structural and nonstructural methods.	a. Nonstructural methods are preferred and the need for structural stabilization measures must be demonstrated before approval.
New or enlargement of hard shoreline structural measures (enlargement includes additions and increases in size, such as height, width, length, or depth, to existing shoreline stabilization measures.	a. Allowed when existing primary structure is 10 ft. or less from OHWM. b. 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. c. Requires mitigation, including plantings.
Major repair or replacement of hard shoreline structural measures.	a. 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, b. 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. c. Allowed when existing primary structure is 10 ft. or less from the OHWM. d. When existing primary structure is more than 10 ft. from the OHWM, requires a written narrative prepared by a qualified professional that provides a demonstration of need.
Minor repair of hard shoreline stabilization measure.	a. Does not meet threshold of new, enlarged, major repair or replacement measurement. b. No geotechnical report or needs assessment required.
New, enlarged, repair or replacement of soft shoreline stabilization measure.	a. Allowed when existing primary structure is 10 ft. or less from OHWM (provided that need can be demonstrated through a written narrative prepared by a qualified professional) or for repair of replacement. b. For primary structure greater than 10 ft. from the OHWM, new or enlarged requires a written narrative prepared by a qualified professional 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 173-27-040(2)(g), but not 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 new detached dwelling unit, the applicant must 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, the applicant must demonstrate that any on-site drainage issues have been directed away from the shoreline edge prior to considering structural stabilization.

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

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

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

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

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

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

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

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

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

4. Replacement or Major Repair of Hard Structural Shoreline Stabilization

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

      iii. Minimize or eliminate juvenile salmon predator habitat.

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

      i. Goals and objectives of the shoreline stabilization plan;

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

iii. A 5-year maintenance and monitoring plan, consisting of one (1) site visit per year by a qualified professional, with annual progress reports submitted to the Shoreline Administrator 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. In the event the Shoreline Administrator determines that a professional review of a geotechnical report, shoreline stabilization plan, monitoring and maintenance program, or other document submitted by an applicant to satisfy the requirements of this Master Program is required, the Shoreline Administrator may establish a fee sufficient to reimburse the City's expenses for such review.

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

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

a. Soft structural shoreline stabilization measures shall be used to the maximum extent feasible, limiting hard structural shoreline stabilization measures to those portions of the site where necessary to connect with existing hard shoreline stabilization measures on adjacent properties. The length of hard structural shoreline stabilization connections to adjacent properties shall be minimized to the maximum extent feasible and shall extend into the subject property from adjacent properties no more than the minimum amount necessary.

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

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

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

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

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

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

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

ii. Plant native riparian vegetation as follows:

(A) 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.

(B) 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.

(C) Plant materials must be native.

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

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

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

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

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

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

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

l. See Chapter **5**, Section, **C.1.*c.***11 below concerning additional design standards for hard structural stabilization and Chapter **5**, Section, **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 Chapter **5**, Section, **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 Chapter **5**, Section, **C.1.*c.***10., the following design standards shall be incorporated:

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

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

14. Expansion of SMA Jurisdiction from Shift in OHWM. If a shoreline stabilization measure constructed as part of any action required by this Chapter or intended to improve ecological functions results in a shift of the OHWM landward of the pre-modification location, thus expanding the shoreline jurisdiction onto any property other than the subject property, then as part of the shoreline permit process found in Chapter 6:

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

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

2. Dredging and Disposal

a. Applicability

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

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

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

b. Policies

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

c. Regulations

1. Dredging and disposal of dredge material shall avoid, and minimize significant ecological impact; impacts that cannot be avoided shall be mitigated to achieve no net loss of ecological processes and functions.
2. New development siting and design shall avoid, where feasible, and minimize the need for dredging.
3. Dredging may be permitted as follows:
    a. When necessary to support a water-dependent use;
    b. For expansion or alteration of public utility facilities;
    c. As part of mitigation actions, environmental restoration and habitat enhancement projects;
    d. When technical information demonstrates water circulation, littoral drift, aquatic life and water quality will not be substantially impaired;
    e. When other solutions would result in greater environmental impact;
    f. As part of an approved habitat improvement project;
    g. If it improves water quality; and
    h. When applicable permits of other local, state and federal agencies have been obtained.
4. Maintenance dredging associated with a water-dependent use, including existing navigation channels, shall be restricted to maintaining the previously dredged and/or existing authorized location, depth and width.
5. Dredging for the primary purpose of obtaining fill or construction material is prohibited, except for projects associated with a significant MTCA or CERCLA restoration effort approved by a shoreline CUP. When dredging is allowed for fill materials for a restoration project, placement of fill must be waterward of the OHWM.
6. Proposals for dredging and dredge disposal shall include details on all feasible mitigation measures to protect aquatic habitats. 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 Master Program 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 usually considered in locations where the water is shallow and where rooted vegetation often occurs. In their natural condition, these same areas provide valuable habitat for fish and wildlife feeding, breeding, and shelter. Biologically, the shallow vegetated areas tend to be highly productive portions of the shoreline. For these reasons, governmental agencies and scientific experts have generally sought to prohibit or restrict fill.

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

Fill occurring on dry land landward of the OHWM which does not exceed a cost of seven thousand forty-seven (7,047) dollars or 250 cubic yards of material (per WAC 173-27-040(2)(g)), does not require a shoreline substantial development permit, as noted elsewhere in this Master Program. This development, however, must comply with all other applicable policies and regulations as defined in this Master Program.

b. Policies

1. Fills should be permitted in all shoreline environments only when tied to a specific development proposal that is permitted by the master program, and when they are located, designed and constructed to protect shoreline ecological functions and ecosystem-wide processes.
2. Where permitted, fill coverage should be the minimum necessary to provide for the proposed use.
3. In evaluating fill projects, factors such as current and potential public use of the shoreline and water surface area, water flow and drainage, water quality and habitat should be considered and protected to the maximum extent feasible.
4. Fills waterward of the OHWM should be restricted to the minimum necessary to support water-dependent uses, public access, cleanup and disposal of contaminated sediments as part of an interagency clean-up plan, disposal of dredged sediments in accordance with DNR rules, expansion or alteration of transportation facilities of statewide significance when no other alternatives are feasible, and for mitigation actions, environmental restoration and enhancement projects, and only when other solutions would result in greater environmental impact.
5. Shoreline fills should be designed and located so that there will be no significant damage to existing ecological systems or result in hazard to adjacent life, property, or natural resource systems.

c. Regulations

1. Fill proposals must demonstrate, at a minimum, that they will result in no net loss of shoreline ecological functions.
2. Fill waterward of the OHWM proposed as part of a soft shoreline stabilization design associated with an approved shoreline use or as part of an approved mitigation or restoration project shall be permitted in all shoreline environments. All other proposed

fill waterward of the OHWM shall require a conditional use permit and shall be restricted to the minimum necessary to:

a. Support water-dependent uses,

b. Provide public access,

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

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

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

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

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

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

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

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

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

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

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

a. Applicability

The purpose of this section is to provide policies and regulations for the location and design of private docks and piers, floats, and moorage buoys. Overwater structures is a general term for a structure or group of structures that provides boat moorage or other uses. An overwater structure, commonly known as a dock, may be made up of piers (which are structures on fixed piles) and floats (which float on the water's surface and are typically attached to piles so that they may rise and fall with changes in the water's elevation). Design standards for overwater structures, mooring balls, and mooring buoys apply to private docks, as well as moorage structures within a marina, except as noted in the specific policies and regulations below. Please also see Chapter 4, Section **D.4.**, Boating Facilities for use policies and regulations that apply to public and community facilities.

b. Policies

1. Construction of overwater structures should be limited to joint-use facilities in the Urban Public Facility environments and marina facilities in the Maritime environment. Private, exclusive use piers for single-family residences may be allowed in the Urban Mixed Use environment.

2. 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 piers or docks because they generally have less ecological impact. Locate and design ball and buoy installation to avoid or minimize adverse impacts on ecological functions.

3. Piers should be preferred over floating docks where significant littoral drift does not occur and where scenic values will not be impaired.
4. Because opportunities for private overwater structures are limited and confined to less suitable and more environmentally sensitive areas of the shoreline, these features should be carefully regulated through specific standards, outlined in Regulations 1-11 in Subsection c below.
5. Public overwater structures and marina development on public lands requires greater flexibility to account for more diverse opportunities, evolving public needs, and compatibility with the evolving requirements of federal and state agencies for these facilities, including the Department of Natural Resources, which is the lessor for the marina.
6. Regardless of the level of specificity and flexibility for different types of overwater structures (e.g. private, joint use, public and marina) provided in the standards in this Master Program, construction and operation of all overwater structures should demonstrate adherence to mitigation sequencing and no net loss.
7. Piers, docks, floats, mooring balls, and mooring buoys outside of marinas should not allow moorage of houseboats or floating homes.
8. 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.
9. 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.
10. 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.
11. Moorage should be constructed of materials that will not adversely affect water quality or aquatic plants and animals in the long-term and have been approved by applicable state agencies.

c. Regulations

1. General

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

    b. Commercial, public and community moorage facilities, other than those serving four or fewer single-family residences, shall be subject to all requirements contained in Chapter **4**, Section, **D.4.**, 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 Master Program.

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

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

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

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

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

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

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

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

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

2. Setbacks

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

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

3. General Standards

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

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

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

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

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

i. Boathouses, or other walled moorage.

ii. Skirting on any structure.

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

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

4. New Pier or Dock Dimensional Standards. New piers or docks may be permitted as indicated in Table 3, subject to the following dimensional regulations:

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

b. The maximum width of any new dock or pier, including ells, shall not exceed 4 feet, unless the dock or pier provides public access or a water-dependent commercial, marina, industrial or port use requires a wider structure.

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

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

a. Float width shall not exceed 8 feet and float length shall not exceed 30 feet for a single-family dock float and joint use dock floats to 60 feet, unless the float provides public access, or a water-dependent commercial, industrial or port use requires a wider structure.

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

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

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

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

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

a. To allow transmission of light to the water, dock and pier decking shall incorporate open grating as follows: to result in open area equal to 24% or greater of the total

surface area of the dock or pier. This can be achieved by installing grating with 60% open area on at least 40% of the pier or by grating a larger percentage of the pier with grating with openings of less than 60%.

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

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

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

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

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

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

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

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

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

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

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

maintenance and monitoring plan. The monitoring plan shall include the following performance standards:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Skirting is prohibited on overwater structures.

j. Artificial night lighting on and from overwater structures must be minimized by focusing the light on the dock surface. Shading should minimize illumination of the surrounding environment and reduce glare on the water's surface.

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 Master Program. If cumulative minor repairs of an existing pier or dock over a three year period 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 Chapter **5**, Section, **C.4.*c.***4. above shall be considered a replacement. Replacement docks and

piers shall be required to meet all dimensional, design, and mitigation standards associated with a new pier or dock.

10. Boat Lifts, Covered Moorage and Boat Canopies.
    a. Covered moorage with a solid roof and structural elements is not permitted outside of marinas and water-dependent commercial, industrial or port facilities in the Maritime shoreline environment.
    b. Boat lifts and boat lift canopies are permitted where allowed in Chapter **5**, Section **B**, Table 3.
    c. Boat lift canopies shall be made of translucent material.
    d. Boat lifts cannot be placed in documented Pacific herring, surf smelt and/or sand lance habitat. WAC 220-660
11. Mooring Balls and Buoys. Mooring balls and buoys shall be permitted subject to the following standards.
    a. Land based retrieval lines from mooring balls and buoys shall be prohibited.
    b. Mooring balls and buoys shall be located no closer than 100 feet from navigation channels, another mooring ball or buoy, overwater structure or other fixed navigational obstruction, unless there is a written agreement allowing for the encroachment with the parties affected, including the subtidal property owner.
    c. Balls and buoys shall be marked with the responsible party or agency's name, address and telephone number.
    d. Balls and buoys shall comply with the requirements of all applicable regulatory agencies (e.g. WAC 332-30-148).
    e. Mooring balls and buoys shall use neutral buoyancy rope, mid-line float, helical anchors, or other state-approved designs that have minimal adverse effects on aquatic ecosystem and fish.
    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 Master Program.
        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 commercial and recreational uses.
2. Install, maintain and rebuild boat launches in such a manner as to minimize adverse impacts on natural and physical shoreline resources.

c. Regulations

1. Boat launches shall be limited to public or water-dependent commercial, industrial and marina facilities in those locations where they are allowed pursuant to Chapter **5**, Section B, Table 3.
2. Boat launches shall be subject to the requirements contained in Chapter **4**, Section, **D.4.**, 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 City's Shoreline Restoration Plan of this Master Program.
4. The City should develop processing guidelines that will streamline the review of restoration-only projects.
5. Allow for the use of tax incentive programs, mitigation banking, grants, land swaps, or other programs, as they are developed, to encourage restoration and enhancement of shoreline ecological functions and to protect habitat for fish, wildlife and plants.

c. Regulations

1. Purpose - Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.
2. Covered Activities – The following actions are allowed under this section, provided they first meet the purpose stated in Chapter **5**, Section, **C.6.*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 Shoreline Restoration Plan.

7. Breakwaters, Jetties, and Groins

a. Applicability

Breakwaters, jetties, and groins are generally intended to protect harbors, moorages and navigation activity from wave and wind action by creating stillwater areas along shore. A secondary purpose is to protect shorelines from wave-caused erosion.

b. Policies

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

c. Regulations

1. Breakwaters, jetties, and groins may only be permitted where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose. Except for those structures installed to protect or restore ecological functions, breakwaters, jetties, and groins must obtain a Shoreline Conditional Use Permit in those environments where they are allowed.
2. Design and construction of breakwater, jetties, and groins shall address impacts to ecological functions and critical areas. Mitigation sequencing and appropriate mitigation measures shall be required.

3. Design Standards.

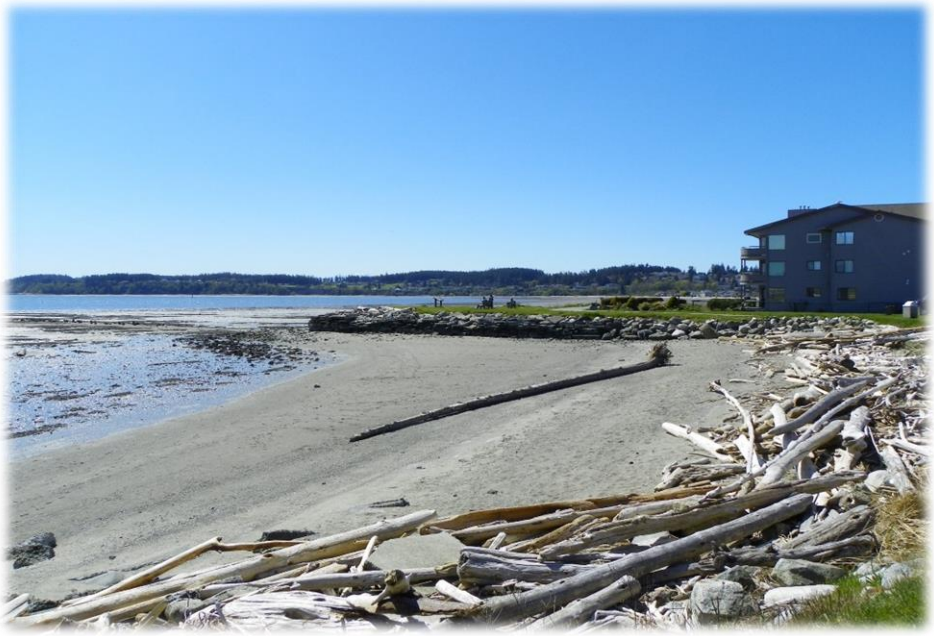
   a. All breakwaters, jetties or groins must be designed and constructed under the supervision of a civil engineer or a similarly qualified professional. As part of the application, the engineer or the other professional designing the breakwater, jetty or groin must certify that it is the smallest feasible structure to meet the requirements of this Chapter and accomplish its purpose and that the design will result in the minimum feasible adverse impacts upon the environment, nearby waterfront properties and navigation.

   b. Breakwaters shall be designed and constructed to minimize alterations to the movement of sand, circulation of water, and biological resources.

   c. Applications for construction of rigid breakwaters must demonstrate that installation of a floating breakwater or open-pile design would either not be feasible at the proposed location or would not provide adequate protection from wave action.

   d. Breakwater designs shall minimize alterations to sand and gravel transport along the shoreline, unless such impediment can be demonstrated to be beneficial.

CHAPTER 6: ADMINISTRATION



A. Purpose and Applicability

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

B. Shoreline Administrator

1. The City's Development Services Director, or designee, is hereby vested with:

a. Overall responsibility for administering the Shoreline Management Act and this Master Program;

b. Authority to approve, approve with conditions, or deny shoreline permit decisions in accordance with the policies and provisions of this Master Program; and

c. Authority to grant statements of exemption from shoreline substantial development permits in accordance with the policies and provisions of this Master Program.

2. The duties and responsibilities of the Shoreline Administrator shall include:

a. Preparing and using forms deemed essential for the administration of this Master Program.

b. Advising interested citizens and applicants of the goals, policies, regulations, and procedures of this Master Program.

c. Making administrative decisions and interpretations of the policies and regulations of this Master Program and the Shoreline Management Act.

d. Collecting applicable fees, as established by the City in OHMC 3.63 and 3.64.

e. Determining that all applications and necessary information and materials are provided.

f. Conducting field inspections, as necessary.

g. Reviewing, insofar as possible, all provided and related information deemed necessary for review of 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, conditional use permit applications, and shoreline variances; reviewing other staff and agency comments; making written findings and conclusions; and approving, approving with conditions, or denying such exemptions and permits.

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

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

m. Submitting Master Program amendment applications and written recommendations and findings on such applications to the Planning Commission for recommendation to the City Council consistent with OHMC 18.20.270.

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, Planning Commission and City Council as required for effective and equitable implementation of this program and the Act.

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

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

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

C. Review Criteria for All Development

1. No authorization to undertake use of or development on shorelines of the state shall be granted by the City 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 natural grade level (see OHMC 19.08.115) 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, at a minimum, the following information:

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

2. The name, address and phone number of the applicant's representative if other than the applicant.

3. The name, address and phone number of the property owner, if other than the applicant.

4. Location of the property. This shall, at a minimum, include the property address and identification of the section, township and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.

5. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.

6. A general description of the property as it now exists including its physical characteristics and improvements and structures.

7. A general description of the vicinity of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development and physical characteristics.

8. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:

a. The boundary of the parcel(s) of land upon which the development is proposed.

b. The ordinary high water mark of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location, provided that, for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark, the mark shall be located precisely, and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

c. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

d. A delineation of all wetland areas that will be altered or used as a part of the development.

e. A general indication of the character of vegetation found on the site.

f. The dimensions and locations of all existing and proposed structures and improvements including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.

g. Where applicable, a landscaping plan for the project consistent with the requirements of OHMC 19.46.100 and this Master Program.

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 are a Review Process II application and shall be processed and subject to the applicable regulations of OHMC Chapter 18.20.240. Shoreline variances and conditional use permits are classified as Review Process III applications and shall be subject to the requirements of OHMC Chapter 18.20.250. The Shoreline Administrator may refer a substantial development permit 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 OHMC Chapter 18.20.370, 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 173-27-110(2)(e).

4. Application review. The Shoreline 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 WAC; and (2) this Master Program.

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 Master Program; (2) the policies and procedures of the Shoreline Management Act and related sections of the WAC; (3) written and oral comments from interested persons, and (4) reports from the Shoreline Administrator.

6. Master Program amendments. The Planning Commission shall review proposed amendments to this Master Program and make a recommendation to the City Council. Amendments are processed consistent with OHMC 18.20.270 and 19.85. Decisions shall be based upon: (1) this Master Program; (2) the policies and procedures of the Shoreline Management Act and related

sections of the WAC; (3) written and oral comments from interested persons, and (4) reports from the Shoreline Administrator.

7. Filing with Department of Ecology. After all local permit administrative appeal periods are complete, the City will mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both Conditional Use Permits and/or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.

a. The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable State Environmental Policy Act documents.

b. Consistent with RCW 90.58.140(6), the state's Shorelines Hearings Board twenty-one day appeal period starts with the date of filing, which is defined below:

1. For projects that only require a Substantial Development Permit: the date that the Department of Ecology receives the City decision.
2. For a Conditional Use Permit or Variance: the date that the Department of Ecology's decision on the Conditional Use or Variance is transmitted to the applicant and City.
3. For Substantial Development Permits simultaneously mailed with a Conditional Use Permit or Variance to the Department of Ecology: the date that Ecology's decision on the Conditional Use Permit or Variance is transmitted to the applicant and 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.

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 Shoreline Administrator may authorize a single extension before the end of either of these time periods, with prior notice to parties of record and the Department of Ecology, for up to one (1) year based on reasonable factors.

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

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

F. Substantial Development Permits, Exemptions and Exceptions

1. Permits Required.

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

b. A substantial development shall not be undertaken within the jurisdiction of the SMA, Chapter 90.58 RCW, and this 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 City.

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 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 City.

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, or the beginning of the use or activity.

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

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

b. An exemption from the substantial development permit process is not an exemption from compliance with the Shoreline Management Act or this 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 Master Program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to this Master Program or is an unlisted use, must obtain a conditional use permit (see Section H 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 Master Program, such development or use can only be authorized by approval of a variance (see Section G 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 Master Program.

3. List of Exemptions. The following list outlines common exemptions that shall not be considered substantial developments for the purpose of this Master Program. This list of exceptions is further articulated and supplemented by provisions of WAC 173-27-040, as amended.

a. Any development of which the total cost or fair market value, whichever is higher, is below the threshold established by the Shoreline Management Act and any amendments to the Act, if such development does not materially interfere with the normal public use of the water or shoreline. The Substantial Development dollar threshold, as of September 2017, is $7,047 or as hereafter amended. Under current law, the dollar threshold will be recalculated every five (5) years by the Office of Financial Management (OFM). OFM will post updated dollar thresholds in the Washington State Register. See RCW 90.58.030(3)(e). The Legislature may change the dollar threshold at any time.

b. Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements. "Normal maintenance" shall be defined by the Act.

c. Construction of a normal protective bulkhead common to single family residences; provided that such bulkheads are located at or near, and parallel to the ordinary high water mark for the sole purpose of protecting an existing single family residence and appurtenant structures from loss or damage by erosion and is in compliance with the requirements established in WAC 173-27-040(2)(c). A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land.

d. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the Act or this Master Program. Emergency construction does not include development of new permanent protective structures where none previously existed.

e. Construction or modification of navigational aids such as channel markers and anchor buoys.

f. Construction by an owner, lessee, or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five (35) feet above average grade level and meets all requirements of the City of Oak Harbor and State agency(s) with jurisdiction. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill waterward of the ordinary high water mark or in any wetland (WAC 127-27-040(2)). Construction authorized under this exemption shall be located landward of the ordinary high water mark and shall be subject to required setbacks.

g. Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exemption applies if the fair market value of the dock does not exceed the threshold established by WAC 173-27-040(2)(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;

i. Any project with certification from the Governor pursuant to RCW 80.50.

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

k. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020.

l. Watershed restoration projects as defined in WAC 173-27-040(2)(o).

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

n. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.

o. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands.

p. The external or internal retrofitting of an existing structure with exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

4. Whenever a development falls within the exemption criteria outlined above and the development is subject to a U.S. Army Corps of Engineers Section 10 or Section 404 Permit, the City's Shoreline Administrator shall prepare a Statement of Exemption per the requirements of WAC 173-27-050 and transmit a copy to both the applicant and the Washington State Department of Ecology. Exempt development as defined herein shall not require a substantial development permit, but may require a conditional use permit, variance and/or a Statement of Exemption.

5. Before determining that a proposal is exempt, the City's Shoreline Administrator may conduct a site inspection to ensure that the proposal meets the exemption criteria. The exemption granted may be conditioned to ensure that the activity is consistent with the Master Program and the Shoreline Management Act.

6. List of Exceptions. Developments not required to obtain shoreline permits or local reviews. Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

a. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to RCW 70.105D, or to the Washington Department of Ecology when it conducts a remedial action under RCW 70.105D.

b. Boatyard improvements to meet NPDES Phase II permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for stormwater treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system stormwater general permit.

c. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

d. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

e. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to RCW 80.50.

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 Shoreline 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:

1. 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.
2. 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.
3. 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.
4. That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.
5. That the variance requested is the minimum necessary to afford relief.
6. 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:

1. That the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes all reasonable use of the property.
2. That the proposal is consistent with the criteria established under Chapter 6, Subsection **G.3.*a***. 1-3 above.
3. 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 this Master Program and this Chapter, the City 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, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the

expiration date and notice of the proposed extension is given to parties of record on the 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, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

4. The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in RCW 90.58.140 subsections (B) and (C) do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

5. Revisions to permits may be authorized after original permit authorization has expired, provided that the requested revisions meet all the criteria set forth in WAC 173-27-100. This procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

6. The City shall notify the Department of Ecology in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended and as described above shall require a new permit application.

7. Special procedures for Washington State Department of Transportation (WSDOT) projects.

a. Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, a target of 90 days review time for projects within the City has been established.

b. Pursuant to RCW 90.58.140(5)(c)(i) WSDOT projects within the City that address significant public safety risks may begin twenty-one (21) days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

J. Nonconforming Structures, Uses and Lots

1. Nonconforming structures.

a. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers, area, bulk, height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction would not be allowed for new structures, unless a shoreline variance permit is obtained;

b. 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.

c. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

1. No reasonable alternative conforming use is practical; and

2. The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

3. In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the Master Program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

d. A nonconforming structure which is moved horizontally must be brought, as closely as practicable, into conformance with the Master Program and the Act.

e. Modification or addition to a nonconforming structure shall not increase the building footprint lying within the adopted shoreline setback area.

f. If a nonconforming structure is modified and the cost of the proposed development exceeds sixty (60) percent of the market value as determined by the Island County Assessor, it shall be required to meet all applicable standards in the SMP.

g. If a nonconforming structure other than a single family home is 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 two years of the date the damage occurred.

h. Single family homes that are 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 of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance.

i. Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040(2)(g) upon approval of a conditional use permit.

2. Nonconforming uses.

a. 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 with approval of a conditional use permit. Beyond this one-time expansion, minor expansions of up to five (5) percent of the existing floor area may be permitted once per calendar year. In no case shall a non-conforming use be allowed to expand to occupy additional parcels or additional lot area created by boundary line adjustment or lot combination, nor shall a non-conforming use be allowed to expand into an adopted shoreline setback area. In the event that the non-conforming use is located completely or partially within an adopted shoreline setback area, future expansion may not occur waterward of the existing primary structure.

b. 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.

c. A nonconforming use that is discontinued for a period of twelve (12) continuous months or for twelve (12) months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless re-establishment of the use is authorized

through a conditional use permit which must be applied for within the two-year period. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations. A use authorized pursuant to subsection 1.c of this section shall be considered a conforming use for purposes of this section.

3. Nonconforming lot.

a. 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 City 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. Washington State Hearings Board regulations are provided in RCW 90.58.180 and WAC Chapter 461-08. 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 Master Program in achieving no net loss of shoreline ecological functions with respect to both permitting and exemptions.

3. As part of the required Master Program update, an evaluation report assessing the effectiveness of the Master Program in achieving no net loss shall be prepared and considered in determining whether policies and regulations are adequate in achieving this requirement.

4. The Master Program 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 WAC Chapter 173-26. Any amendments shall also be subject to the procedures in OHMC 19.85.

2. A Master Program amendment shall be submitted to the Department of Ecology for its review and formal action. Submittal requirements are established in WAC 173-26-110 and may be in digital format.

3. Amendments or revisions to the Master Program, as provided by law, become effective fourteen (14) days from the Department of Ecology's written notice of final action.

4. The City of Oak Harbor has authority to adopting a moratorium control or other interim control on development under RCW 90.58.590.

O. Severability

If any provisions of this Master Program, or its application to any person or legal entity or parcel of land or circumstance, are held invalid, the remainder of the Master Program, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected.

P. Conflict of Provisions

Should a conflict occur between the provisions of this Master Program or between this Master Program and the laws, regulations, codes or rules promulgated by any other authority having jurisdiction within the City, the requirement that most supports the purposes and provisions of the Shoreline Management Act, as detailed in RCW 90.58.020 shall apply, as determined by the City, except when constrained by federal or state law.

CHAPTER 7: DEFINITIONS

Accepted arboricultural standards -Those pruning standards approved in the publication "Pruning Standards" published by the International Society of Arboriculture, as the same now exists and may be revised from time to time.

Accessory use or accessory structure - A use incidental and subordinate to the principal use and located on the same lot or in the same building as the principal use.

Act - The Shoreline Management Act (Chapter 90.58 RCW and WAC Chapter 173-27).

Agriculture - The cultivation of the soil, production of crops, and/or raising of livestock, including incidental preparation of these products for human use. Agriculture means agricultural uses, practices and activities. In all cases, the use of agriculture related terms shall be consistent with the specific meanings provided in WAC 173-26-020.

Agriculture, Accessory – The cultivation of soil or production of crops in a manner incidental and subordinate to the principal use of the property. Examples include private residential gardens, community gardens, and or pea patches associated with a public park.

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

Anadromous fish - Fish that spawn and rear in freshwater and mature in the marine environment.

Applicant - A person who files an application for a permit and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, or the authorized agent of such a person.

Appurtenance - A structure or development which is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and also of the perimeter of any wetland. (On a statewide basis, normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed two hundred fifty cubic yards (250) [except to construct a conventional drainfield] and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark) (see WAC 173-27-040(2)(g)).

Aquaculture – The culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals. Aquaculture does not include the harvest of wild geoduck associated with the state-managed wildstock geoduck fishery.

Aquifer - A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Aquifer recharge areas - Areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.

Archaeological - Having to do with the scientific study of material remains of past human life and activities.

Archaeological Object – An object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains, and technological by-products.

Archaeological Resource/Site – A geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

Archaeology – A systematic, scientific study of the humankind's past through material remains.

Area of known historic/archaeological resources – that area lying within 500 feet of an historic or prehistoric property or location identified by the Washington State Department of Archaeology and Historic Preservation's GIS layer of archaeological historic sites (City of Oak Harbor Data sharing MOU 2010-44).

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. See WAC 173-22-030(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 mark. 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 Master Program is approved.

BMPs - see Best Management Practices.

Beach - The gently-sloping zone of unconsolidated sediment along the shore that is moved by waves, wind and tidal currents. Width is measured cross-shore from the break in slope between the upper beach and the low-tide terrace and the waterward extent of the backshore.

Beach enhancement/restoration - The alteration of terrestrial and tidal shorelines or submerged shorelines for the purposes of stabilization, recreational enhancement, or aquatic habitat creation or restoration.

Beach feeding - A process by which beach material is deposited at one or several locations in the updrift portion of a driftway. The material is then naturally transported by a wave's down drift to stabilize or restore eroding beaches or berms.

Benthic organism - Organisms that live in or on the bottom of a body of water.

Berm - A constructed barrier of compacted earth, rock, or gravel. In a stormwater facility, a berm may serve as a vertical divider typically built up from the bottom.

Best Available Science - The current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925.

Best Management Practices (BMPs) - BMPs are schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices, that when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State.

Bioengineering - The combination of biological, mechanical, and ecological concepts (and methods) to control erosion and stabilize soil through the use of vegetation or in combination with construction materials.

Biofiltration system - The process of reducing pollutant concentrations in water by filtering the polluted water through biological materials.

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 - Lifts or boat lifts raise watercraft out of the water for launching or storing. They may be attached to the substrate, a pier or dock, bulkhead or float or be located upland.

Boat lift canopy - Canopies are covers that protect watercraft from the sun and rain.

Boat rail or railway - Railways are rails attached to the substrate used for launching and retrieving watercraft, usually with a cradle and winch system.

Boathouse - A structure designed for storage of vessels located over water or on shorelands. Boathouses should not be confused with "houseboats".

Boating Facility - A public moorage structure (including marinas) or a private moorage structure serving more than four residences.

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

Breakwater - An off-shore structure generally built parallel to the shore that may or may not be connected to land. Its primary purpose is to protect a harbor, moorage, or navigational activity from wave and wind action by creating a still-water area along the shore. A secondary purpose is to protect the shoreline (e.g., beaches and bluffs) from wave-caused erosion.

Buffer - An area that is contiguous to and protects a critical area, which is required for the continued maintenance, functioning, and/or structural stability of a critical area. The critical functions of a riparian buffer (those associated with an aquatic system) include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, interception of fine sediments, overflow during high water events, protection from disturbance by humans and domestic animals, maintenance of wildlife habitat, and room for variation of aquatic system boundaries over time due to hydrologic or climatic effects. The critical functions of terrestrial buffers include protection of slope stability, attenuation of surface water flows from storm water runoff and precipitation, and erosion control.
Bulkhead - 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") which provides funds to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills and other emergency releases of pollutants and contaminants into the environment.

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 by manual, mechanical or chemical methods.

Commercial use - An activity with goods, merchandise or services for sale or involving a rental fee.

Comprehensive Plan - Comprehensive plan means the document, including maps adopted by the City Council that outlines the City's goals and policies relating to management of growth, and prepared in accordance with RCW 36.70A. The term also includes adopted subarea plans prepared in accordance with RCW 36.70A.

Conditional Use - A use which, because of special requirements, unusual character, size or shape, infrequent occurrence or possible detrimental effect on surrounding property and for other similar reasons, may be allowed in certain zones only after review by the hearing examiner and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity or zone. "Conditional use" shall also mean any use, development, or substantial development classified as a conditional use or is not classified within the Master Program. See 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 - Slips and mooring floats that are covered by a single roof with no dividing walls and is attached to the dock itself or the substrate of the water body.

Critical areas - Any of the following areas or ecosystems: critical aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, frequently flooded areas and wetlands. Fish and wildlife habitat conservation areas" does not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company as defined in 36.70A.030(6).

Cumulative Impact - The combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.

Date of Filing – The date of filing a Substantial Development Permit refers to the date of actual receipt by the Department of Ecology of the City's decision (RCW 90.58.140(6)(a)). The date of filing for a shoreline Variance or Conditional Use means the date the decision of the Department of Ecology is transmitted to the City (RCW 90.58.140(6)(b)).

Degradation - The breakdown of complex organic or other chemical compounds into simpler substances, usually less harmful than the original compound, as with the degradation of a persistent pesticide. (Geological) Wearing down by erosion.

Developable area - A site or portion of a site that may be utilized as the location of development, in accordance with the rules of this Master Program and the OHMC.

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 overlying lands subject to RCW 90.58 at any state of water level (RCW 90.58.030(3)(a)). Development does not include dismantling or removing structures if there is no other associated development or re-development.

Director - The Director of the City of Oak Harbor Department of Development Services, or other city staff granted the authority to act on behalf of the director.

Dock - A basin for moorage of boats, including a basin formed between the extension of two piers or the area between a bank or quay and a pier. Docking facilities may include wharves, moorage or docks or any place or structure connected with the shore or upon shore lands providing for the securing of a boat or vessel.

Dredge Material - The minerals and associated material removed by dredging, or material excavated from waters of the United States or ocean waters. The term dredged material refers to material, which has

been dredged from a water body (previously called dredge spoil), while the term sediment refers to material in a water body prior to the dredging process.

Dredging - The removal of earth, sand, gravel, silt, or debris from the bottom of a stream, river, lake, bay, or other water body and associated wetlands. Dredging is normally done for specific purposes or uses such as constructing and maintaining canals, navigation channels, turning basins, harbors and marinas, for installing submarine pipelines or cable crossings, or for dike or drainage system repair and maintenance. Dredging may also be used to mine for aggregates such as sand and gravel.

Drift cell – A particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift and also accretion shore forms created by such drift. See WAC 173-26-020.

Drip line - A line projected to the ground delineating the outermost extent of a tree's foliage in all directions.

Dwelling unit – A building or portion thereof providing complete housekeeping facilities for one family. The term "dwelling" does not include motel, tourist court, rooming house, or tourist home.

Ecological Functions - The work performed or the role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

Ecosystem-wide Processes - The suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

Effective date – The effective date of a substantial development, shoreline conditional use, and shoreline variance permit shall be the date of filing (RCW 90.58.140(6)).

Ell – Extensions of piers, often in a U-shape or L shape, that provide additional watercraft moorage.

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(2)(d)).

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

Enhancement - The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention or wildlife habitat. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres.

Erosion - The wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Also, the detachment and movement of soil or rock

fragments by water, wind, ice, or gravity. The following terms are used to describe different types of water erosion:

> "Geologic erosion" is the normal or natural erosion caused by geological processes acting over long geologic periods and resulting in the wearing away of mountains, building up of floodplains, coastal plains, etc. Synonymous with natural erosion.
>
> "Natural erosion" is the wearing away of the earth's surface by water, ice, or other natural agents under natural environmental conditions of climate, vegetation, etc., undisturbed by humans. Synonymous with geological erosion.

Erosion hazard areas – Areas containing soils which, according to the US Department of Agriculture Natural Resources Conservation Service Soil Survey Program, may experience significant erosion. Erosion hazard areas also include coastal erosion-prone areas and channel migration zones.

Excavation - Excavation is the removal of material such as earth, sand, gravel, rock, or asphalt from a parcel, tract, or lot of land.

Exemption - Certain specific developments are exempt from the definition of substantial developments and are therefore exempt from the substantial development permit process of the SMA. An activity that is exempt from the substantial development provisions of the SMA must still be carried out in compliance with policies and standards of the Act and the local master program. Conditional use and/or variance permits may also still be required even though the activity does not need a substantial development permit. Exemptions shall be construed narrowly. (WAC 173-27-040)

Fair market value - The open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

Feasible - For the purpose of this Master Program, 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 these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the City 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 wetlands, 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.

Fish and Wildlife habitat conservation areas – Areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. These areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of, and are maintained by, a port district or an irrigation district or company.

Float - Recreational floats are platforms that float on the water's surface. They are anchored offshore and are used for swimming and fishing. Some floats have components such as slides and trampolines.

Floating Dock - A floating structure that is moored, anchored, or otherwise secured in the water, but which is not connected to the shoreline.

Floating home - Any floating structure that is designed, or has been substantially and structurally remodeled or redesigned, to serve primarily as a residence. Floating homes include house boats, house barges, or any floating structures that serve primarily as a residence and do not qualify as a vessel. A floating structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, nor normally is capable of self propulsion and use as a means of transportation is a floating home, not a vessel. A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use, see RCW 90.58.270(5)(ii).

Floating on-water residence - Any floating structure other than a floating home, and:

A. That is designed or used primarily as a residence on the water and has detachable utilities; and

B. Whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

A floating on-water residence permitted or legally established prior to July 1, 2014, must be considered a conforming use, see RCW 90.58.270(6)(a).

Floodplain - Synonymous with 100-year floodplain and means that land area susceptible to inundation 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.

Floodway - The area, as identified in a this Master Program, that either: (i) has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of the channel of a river or stream and those portions of the adjoining floodplains that are reasonably required to carry and discharge the base flood flow. The portions of the adjoining floodplains which are considered to be "reasonably required" is defined by flood hazard regulations.

Forage fish - Small fish that consume plankton, which are consumed by other fish higher in the food chain, such as salmon.

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

Geologically hazardous areas - Areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to siting commercial, residential, or industrial development consistent with public health or safety concerns.

Geotechnical Report or Geotechnical Analysis - A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

Grading – The movement or redistribution of the soil, sand, rock, gravel, sediment or other material on a site in a manner that alters the natural contour of the land.

Groin - A wall-like structure extending seaward from, and usually perpendicular to, the shore into the intertidal zone. Its purpose is to build or preserve an accretion beach on its updrift by trapping littoral drift. A groin is relatively narrow in width but varies greatly in length. A groin is sometimes built in a series as a system and may be permeable or impermeable, high or low, and fixed or adjustable.

Ground water - Water in a saturated zone or stratum beneath the surface of land or a surface water body.
Growth Management Act – RCW Chapters 36.70A and 36.70B, as amended.

Habitat - The specific area or environment in which a particular type of plant or animal lives. An organism's habitat must provide all of the basic requirements for life and should be protected from harmful biological, chemical, and physical alterations.

Hazardous substances - Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

Hearing Examiner - A quasi-judicial hearing officer empowered to hear appeals from orders or determinations made by an administrative official charged with the enforcement of this Master Program and to vary or modify certain provisions of this Master Program and the OHMC relating to the use, construction or alteration of buildings or structures or the use of land, so that the spirit of this Master Program and the OHMC 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.

Helical anchor - An anchoring mechanism consisting of bearing plates arranged in a spiral pattern and welded to a central shaft and driven into the substrate to anchor a floating structure, such as a dock or mooring buoy.

Historic condition - A condition of the land, including flora, fauna, soil, topography, and hydrology, that existed before the area and vicinity were developed or altered by human activity.

Historic Preservation – The protection, rehabilitation, restoration, identification, scientific excavation, and reconstruction of districts, sites, buildings, structures, and objects significant in American and Washington state history, architecture, archaeology, or culture.

Historic preservation professional – means those individuals who hold a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

A. At least two years full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or,

B. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

Historic Site – Those sites that are eligible or listed on the Washington Heritage Register, National Register of Historic Places or any locally developed historic registry formally adopted by the Oak Harbor City Council. A "site" is a place where a significant event or pattern of events occurred. It may be the location of prehistoric or historic occupation or activities that may be marked by physical remains; or it may be the symbolic focus of a significant event or pattern of events that may not have been actively occupied. A site may be the location of ruined or now nonextant building or structure if the location itself possesses historic, cultural or archaeological significance.
HPA - Hydraulic Project Approval - The permit issued by the Washington State Department of Fish and Wildlife pursuant to the State Hydraulic Code RCW 77.55.

Impervious surface - A non-vegetated surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development. A non-vegetated surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of stormwater.

Infiltration - The downward movement of water from the surface of subsoil.

In-kind compensation - Replacement of critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

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

Landfill - the creation of, or addition to, a dry upland area (landward of the OHWM) by the addition of rock, soil, gravels and earth or other material. Does not include solid or hazardous waste.

Landscaping - Any combination of living plants, such as trees, shrubs, vines, ground covers, flowers or grass; natural features such as rock, stone, bark chips or shavings; and structural features, including but not limited to fountains, reflecting pools, outdoor art work, screen walls, fences, or benches.

Landslide hazard areas - Areas at risk of mass movement due to a combination of geologic, topographic, and hydrologic factors, including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.

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

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. A public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

Marine - Tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries, and inlets associated therewith.

Mature forested wetland - A wetland with at least 30 percent of the surface area covered by woody vegetation greater than 20 feet in height, which is at least partially rooted within the wetland, where the largest trees are at least 80 years old or are greater than 21 inches in diameter at breast height.

May - "May" means the action is acceptable, provided it conforms to the provisions of this Master Program.

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

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

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

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

D. Minimizing or eliminating a hazard by restoring or stabilizing the hazard area through engineered or other methods.

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

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

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

Monitoring - The collection of data by various methods for the purposes of understanding natural systems and features, evaluating the impacts of development proposals on such systems, and assessing the performance of mitigation measures imposed as conditions of development.

Moorage – “Moorage facility" means a marina, open water moorage and anchorage area, pier, dock, mooring buoy, or any other similar fixed moorage site.

Mooring buoy - A floating object anchored to the bottom of a water body that provides tie up capabilities for vessels.

Multifamily dwelling (or residence) - A building designed to house two or more families living independently of each other and having one yard in common.

Must - “Must” means a mandate; the action is required.

Native growth protection area (NGPA) - An area where native vegetation is preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants and animal habitat.

Native vegetation – Vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site.

Nonconforming development or structure – An existing development or structure that was lawfully constructed when it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the Master Program.

Nonconforming Lot – A lot that met dimensional requirements of the applicable Master Program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the Master Program.

Nonconforming Use – An existing shoreline use that was lawfully established prior to the effective date of the Act or the applicable Master Program, but which does not conform to present use regulations due to subsequent changes to the Master Program.

No Net Loss - Over time, the existing condition of shoreline ecological functions should remain the same as the Master Program is implemented. Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from new development. Both protection and restoration are needed to achieve no net loss.

Normal maintenance - Normal maintenance or repair of existing structures or developments includes damage by accident, fire or elements. (WAC 173-27-040(2)(b)). See also Normal repair.

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

Normal repair - To restore a development to a state comparable to its original condition, including but not limited to size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to the shoreline resources or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement

does not cause substantial adverse effects to the shoreline resources or environment. (WAC 173-27-040(2)(b)). See also Normal maintenance.

Oak tree - A Garry Oak (Quercus garryana, also known as Oregon White Oak) tree more than six feet tall. "Oak tree" shall not apply to any tree grown or held for sale in a licensed nursery, nor to the first removal or transplanting of a tree pursuant to the operation of a licensed nursery business.

Off-site compensation - To replace critical areas away from the site on which a critical area has been impacted.

On-site compensation - To replace critical areas at or adjacent to the site on which a critical area has been impacted.

Ordinary High Water Mark (OHWM) - That mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. See RCW 90.58.030(2)(c) and WAC 173-22-030(5).

Overwater structure - Any device or structure projecting over the ordinary high water mark, including, but not limited to piers, docks, floats, and moorage.

Permeability - The capacity of a porous rock, sediment, or soil for transmitting a fluid; a measure of the relativity ease of fluid flow under unequal pressure. This most commonly relates to groundwater flow through a bluff or bluff sediments.

Permeable pavement - Pervious concrete, porous asphalt, permeable pavers or other forms of pervious or porous paving material intended to allow passage of water through the pavement section. It often includes an aggregate base that provides structural support and acts as a stormwater reservoir.

Permeable soils - Soil materials with a sufficiently rapid infiltration rate so as to greatly reduce or eliminate surface and stormwater runoff. These soils are generally classified as SCS hydrologic soil types A and B.

Permit (or Shoreline Permit) - Any substantial development, variance or conditional use permit, or revision, or any combination thereof, authorized by the Act.

Persistent bioaccumulative toxin – A chemical or chemical group that meets or exceeds the criteria for persistence, bioaccumulation and toxicity criteria established in WAC 173-333-320.

Person - Any individual, public or municipal corporation, firm, association, organization, cooperative, joint venture, partnership, agency of the state or local government unit, however designated.

Pervious surface - A surface material that allows stormwater to infiltrate into the ground. Examples include lawn, landscape, pasture, native vegetation areas, and permeable pavements.

Pesticide - A general term used to describe any substance, usually chemical, used to destroy or control organisms; includes herbicides, insecticides, algicides, fungicides, and others. Many of these substances are manufactured and are not naturally found in the environment. Others, such as pyrethrum, are natural toxins that are extracted from plants and animals.

Pier - Piers and docks adjoin the shoreline, extend over the water, and serve as a landing or moorage place for commercial, industrial and pleasure watercraft. Piers are built on fixed platforms and sit above the water.

Porous soil types - Soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices, or other openings which allow the passing of water. High permeable soils in Oak Harbor include: Hoypus gravelly loamy sand, Snakelum Course sandy loam, Keystone loamy sand and Norma loam. Moderate permeable soils include: Coastal Beach, Made Land, Whidbey gravelly sandy loam, Townsend sand loam, and Swantown gravelly sandy loam.

Potable water - Water that is safe and palatable for human consumption.

Practical alternative - An alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and has less impacts to critical areas.

Primary association area - The area used on a regular basis by, that is in close association with, or is necessary for the proper functioning of the habitat of a species protected under the critical areas regulations of this title. “Regular basis” means that the habitat area is normally, or usually, known to contain the species, or it is likely to contain the species based on its known habitat requirements. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

Priority habitat - Habitat type or elements with unique or significant value to one or more species as classified by the State Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element, as identified in WAC 173-26-020(30).

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.

1. Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 220-610-010), threatened (WAC 220-200-100(1)), or sensitive (WAC 220-200-100(2)). 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 220.

2. 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.

3. 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.

4. Criterion 4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered. (WAC 173-26-020(31))

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

Professional Archaeologist – means a person with qualifications meeting the federal Department of the Interior's standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal Department of the Interior's standards for a professional archaeologist. During this four-year period, the professional archaeologist is responsible for all findings. The four-year period is not subject to renewal.

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. See 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. See 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.

1. 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.

2. A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

3. 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.

4. A qualified professional for vegetation mitigation plan must have academic and field experience that makes them competent in the subject area. This includes, but is not limited to, a landscape architect or biologist with direct experience preparing shoreline habitat enhancement and mitigation plans.

RCW - Revised Code of Washington.

RCW 90.58 - The Shoreline Management Act of 1971.

Recharge - The addition of water to the zone of saturation (i.e., an aquifer).

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 platform that floats on the water's surface. They are anchored off-shore and that is generally used for recreational purposes such as fishing, swimming and diving.

Repair or maintenance - An activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

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

Restoration - "Restore," 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 - Pertaining to the banks of streams, wetlands, lakes, or tidewater.

Riparian habitat - Areas adjacent to aquatic systems that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other.

Riprap - A facing layer, or protective mound of rocks or stones placed to prevent erosion, or sloughing of a structure or embankment due to surface and stormwater runoff.

Runoff - Water originating from rainfall and other precipitation that is found in drainage facilities, rivers, streams, springs, seeps, ponds, lakes and wetlands as well as shallow groundwater. As applied in this Master Program, it also means the portion of rainfall or other precipitation that becomes surface flow and interflow.

Salmonids - Members of the Salmonidae family of fishes, including regionally important species such as salmon, steelhead, and trout.

Sediment - Fragmented material that originates from weathering and erosion of rocks or unconsolidated deposits, and is transported by, suspended in, or deposited by water.

Seeps - Spots where water oozes from the earth, often forming the source of a small stream.

Seismic hazard areas - Areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, debris flows, lahars, or tsunamis.

SEPA - Washington State Environmental Policy Act, RCW 43.21C.

Setback - A required open space, specified in the City's Master Program, 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 Development Services Director or his/her designee, charged with the responsibility of administering the shoreline master program.

Shoreline environment designations - The categories of shorelines established by the City's Master Program 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 the City's authority under the SMA.

Shoreline Management Act - RCW 90.58, 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 for a described area and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

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

Shoreline Permit - A substantial development, conditional use, revision, or variance permit or any combination thereof authorized under RCW 90.58.

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 shorelands, together with the lands underlying them, except those areas excluded under RCW 90.58.030(2)(e).

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. Master Program 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 – The total of all shorelines and shorelines of statewide significance within the state.

Should - "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this Master Program, against taking the action.

Sign - Any letters, figures, design, symbol, trademark or device intended to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine or merchandise whatsoever. Sources of light used primarily to illuminate a sign, or a building, or ground surrounding the building, shall not be considered signs themselves; provided, however, that sources of light used primarily to attract attention to the sign itself or as a decorative feature of the display shall be considered as part of the sign. Lighted canopies, with the exception of the signed portion, shall not be considered signs themselves. Excluded from the definition are official traffic signs or signals, sheriff's notices, court notices or official public notices and the flag of a government or noncommercial institution, and signs not visible from the street or sidewalk.

Significant portion of its range - That portion of a species range likely to be essential to the long-term survival of the population in Washington.

Significant tree - A healthy evergreen or deciduous tree 12 inches or more in diameter measured four feet above existing grade.

Significant Vegetation Removal - The removal or alteration of trees, shrubs, or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes 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 not 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.

Soft shoreline stabilization - The use of environmentally friendly stabilization techniques used to protect property and uses from shoreline erosion.

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

Soil bioengineering - An applied science that combines structure, biological and ecological concepts to construct living structures that stabilizes the soil to control erosion, sedimentation and flooding using live plant materials as a main structural component.

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

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

Species, endangered - Any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.

Species of local importance - Those species of local concern designated by the city of Oak Harbor due to their population status or their sensitivity to habitat alteration, or that are game species.

Species, sensitive – Any fish or wildlife species that is vulnerable or declining and is likely to become endangered or threatened in a significant portion of its range within the state without cooperative management or removal of threats.

Species, threatened - Any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

Steep slope - Naturally occurring slopes of 40 percent gradient or steeper within a vertical elevation change of at least 10 feet. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief. For the purpose of this definition:

The toe of a slope is a distinct topographic break in slope that separates slopes inclined at less than 40 percent from slopes 40 percent or steeper. Where no distinct break exists, the toe of a steep slope is the lowermost limit of the area where the ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet; and the top of a slope is a distinct topographic break in slope that separates slopes inclined at less than 40 percent from slopes 40 percent or steeper. Where no distinct break exists, the top of a steep slope is the uppermost limit of the area where the ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

Stream - An area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

Substantial development - Any development of which the total cost or fair market value exceeds seven thousand forty-seven dollars, or as revised by the Office of Financial Management, or any development which materially interferes with the normal public use of the water or shorelines of the state.

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

Topping, tree - The severing of the main stem of a tree in order to reduce its overall height; provided, that no more than 40 percent of the live crown shall be removed.

Trimming, tree - The pruning or removal of limbs; provided, that the main stem is not severed and no more than 40 percent of the live crown is removed.

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

Unstable slope - A naturally occurring slope with a gradient between 15 and 39 percent (dividing the vertical rise by the horizontal extent), with a total vertical relief greater than 10 feet, where springs or ground water seepage is present on the slope. Existing slopes modified with engineering oversight or in accordance with standard construction industry techniques are not considered unstable slopes.

Upland - Generally described as the dry land area above and landward of the ordinary high water mark.

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

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

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

Variance - A means by which an adjustment is made in the application of the specific regulations of this Master Program 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, vicinity or environment designation and which adjustment remedies disparity in privileges. A variance is a form of special exception.

Vessel - A floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency.

WAC - Washington Administrative Code.

Water-dependent use - A use or a portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

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 uses are those uses that are not water-dependent, water-related, or water-enjoyment.

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 uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

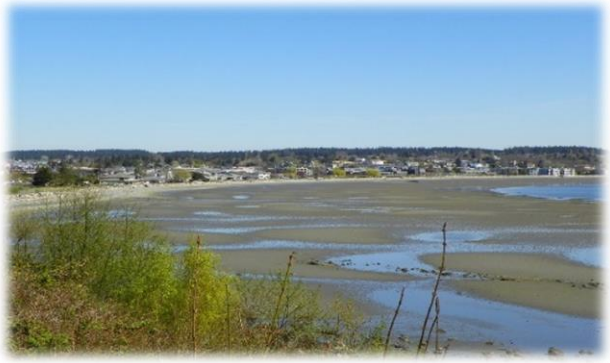
Water quality - The physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. The term "water quantity" refers only to development and uses regulated under this Master Program and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through RCW 90.03.340.

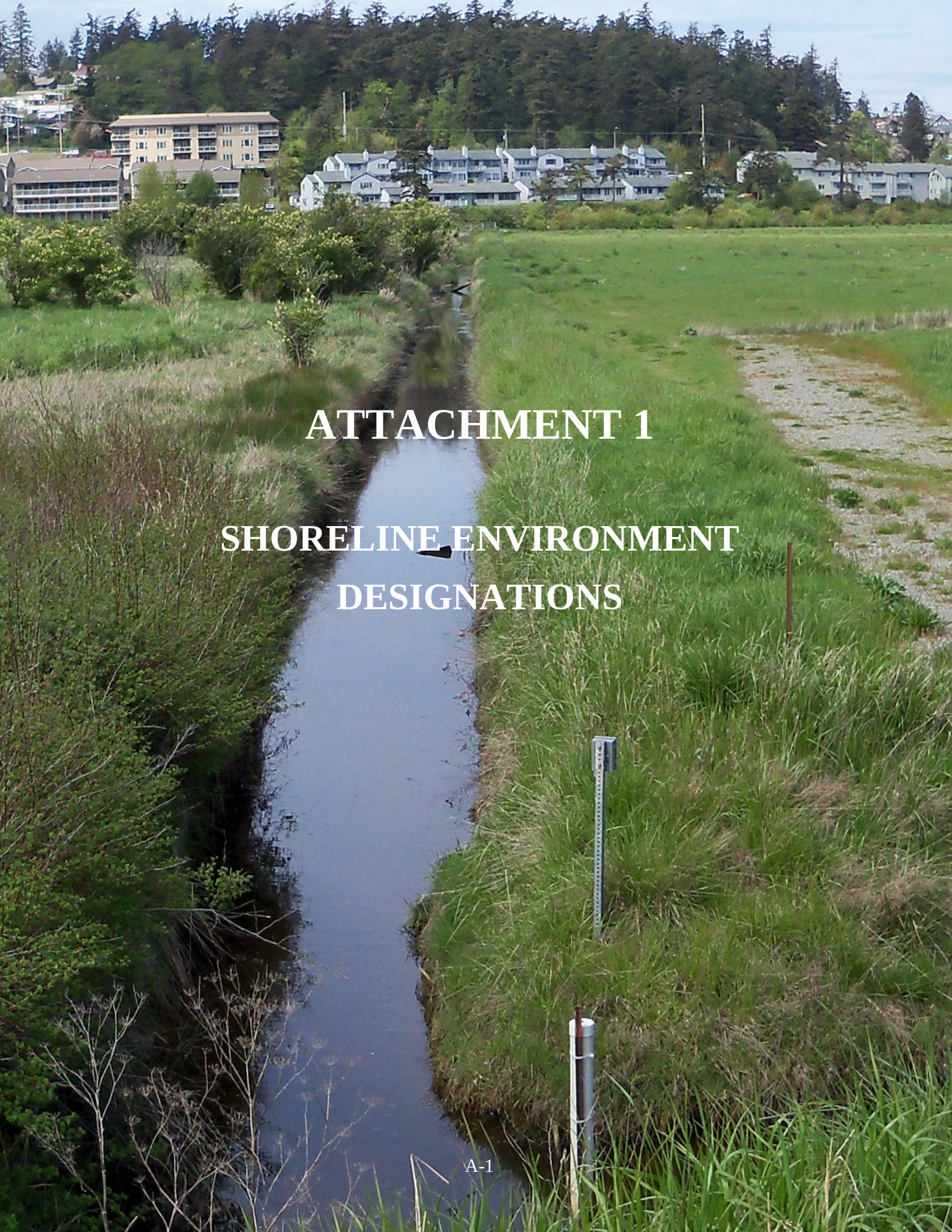
Watershed restoration plan - A plan developed or sponsored by the Department of Fish and Wildlife, the Department of Ecology, the Department of Natural Resources, the Department of Transportation, and/or a federally recognized Indian tribe acting within or pursuant to its authority, a city, a county 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 RCW 43.21C, the State Environmental Policy Act.

Wetlands - "Wetlands" or "wetland areas" means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

Wetland mitigation bank - A site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing advance mitigation to compensate for future, permitted impacts to similar resources.

Wetland mosaic - An area with a concentration of multiple small wetlands, in which each patch of wetland is less than one acre; on average, patches are less than 100 feet from each other; and areas delineated as vegetated wetland are more than 50 percent of the total area of the entire mosaic, including uplands and open water. (Ord. 1440 § 1, 2005).





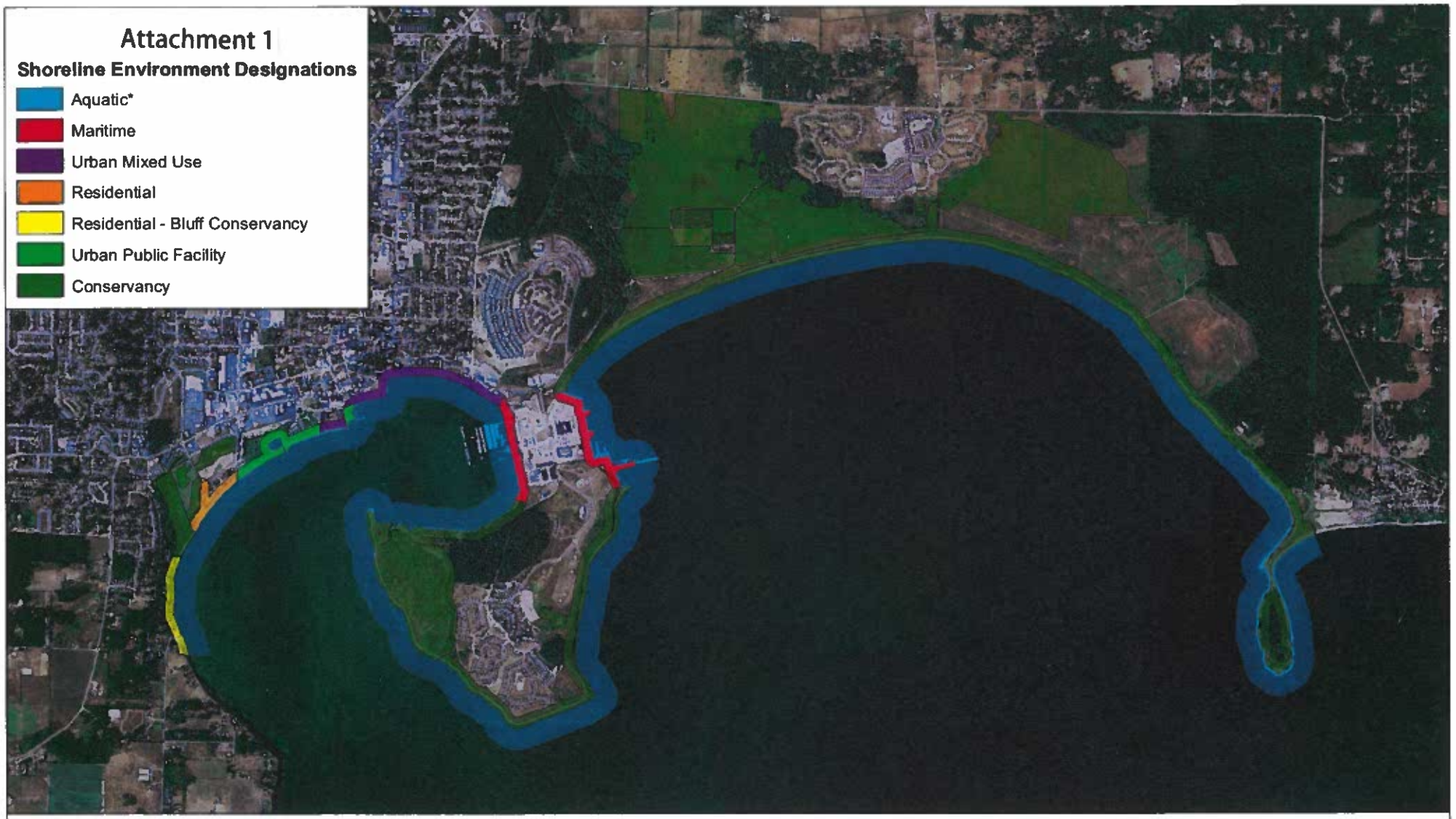
ATTACHMENT 1

SHORELINE ENVIRONMENT DESIGNATIONS

Attachment 1

Shoreline Environment Designations

- Aquatic*
- Maritime
- Urban Mixed Use
- Residential
- Residential - Bluff Conservancy
- Urban Public Facility
- Conservancy



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Feet

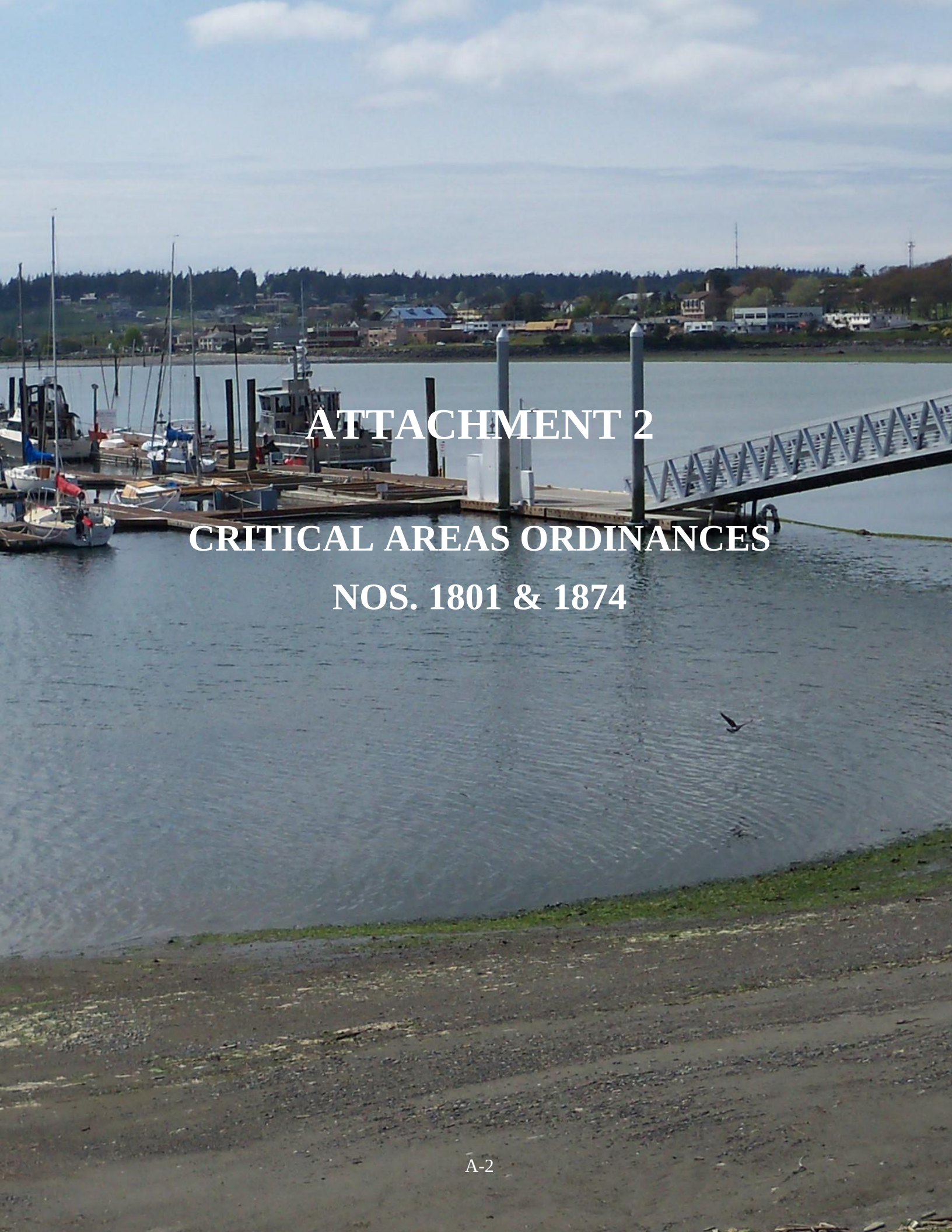
*The Aquatic shoreline environment designation extends to the City's in-water jurisdiction line.

Data represented on this map were collected at different accuracy levels by various sources, including the City of Oak Harbor, Island County, NASWI, WA DNR Shorezone data and WDFW. Shoreline jurisdiction and wetland boundaries are approximate and have not been formerly delineated or surveyed and are intended for planning analysis only. Additional site-specific evaluation may be needed to confirm/verify information shown on this map. No warranties of any sort, including, but not limited to accuracy, fitness or merchantability, accompany this map.

Map Date: September 2012

City of Oak Harbor

AHBL



ATTACHMENT 2

CRITICAL AREAS ORDINANCES

NOS. 1801 & 1874

Chapter 20.02
CRITICAL AREAS DEFINITIONS

Sections:

20.02.010 Purpose.

For purposes of the city's critical areas regulations, Chapter 20.12 OHMC, General Critical Areas Regulations; Chapter 20.16 OHMC, Garry Oak Tree Protection; Chapter 20.24 OHMC, Wetlands; Chapter 20.25 OHMC, Fish and Wildlife Habitat Conservation Areas; Chapter 20.28 OHMC, Geologically Hazardous Areas; Chapter 20.32 OHMC, Critical Aquifer Recharge Areas; and Chapter 20.34 OHMC, Frequently Flooded Areas, and to clarify the intent and meaning of certain words or terms, the following list of definitions is provided. All other words used in these chapters carry their customary meanings. Words in the present tense include the past tense and words in the singular include the plural, and vice versa. (Ord. 1801 § 1, 2018; Ord. 1440 § 1, 2005).

20.02.020 Definitions.

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

(2) "Anadromous fish" means fish that spawn and rear in freshwater and mature in the marine environment.

(3) "Applicant" means a person who files an application for a critical areas permit and who is either the owner of the land on which that proposed activity would be located, a contract purchaser, or the authorized agent of such a person.

(4) "Aquifer" means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(5) "Aquifer recharge areas" means areas that, due to the presence of certain soils, geology, and surface water, act to recharge ground water by percolation.

(6) "Best available science" means current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 365-195-925. Examples of best available science are included in "Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas," published by the Washington State Department of Commerce.

(7) "Best management practices (BMPs)" means the schedules of activities, prohibitions of practices, maintenance procedures, and structural and/or managerial practices that, when used singly or in combination, prevent or reduce the release of pollutants and other adverse impacts to waters of Washington State.

(8) “Bog” means a low nutrient, acidic wetland with organic soils, which is sensitive to disturbance and impossible to recreate through compensatory mitigation.
(9) “Buffer” or “buffer zone” means the zone contiguous with a sensitive area that is required for the continued maintenance, function, and structural stability of a critical area. The critical functions of a riparian buffer (those associated with an aquatic system) include shading, input of organic debris and coarse sediments, uptake of nutrients, stabilization of banks, interception of fine sediments, overflow during high water events, protection from disturbance by humans and domestic animals, maintenance of wildlife habitat, and room for variation of aquatic system boundaries over time due to hydrologic or climatic effects. The critical functions of terrestrial buffers include protection of slope stability, attenuation of surface water flows from storm water runoff and precipitation, and erosion control. Wetland buffers do not include unvegetated and developed areas such as roads, buildings, and parking lots that do not provide functional value or structural stability to critical areas and therefore shall not be considered as an ecologically significant part of the buffer.
(10) “Critical aquifer recharge area” means as defined in OHMC 20.32.010.
(11) “Critical areas” include, at a minimum, areas which include wetlands, areas with a critical recharging effect on aquifers used for potable water, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, including unstable slopes, and associated areas and ecosystems.
(12) “Cumulative impacts or effects” means the combined, incremental effects of human activity on ecological or critical areas functions and values. Cumulative impacts result when the effects of an action are added to or interact with the effects of other actions in a particular place and within a particular time. It is the combination of these effects, and any resulting environmental degradation, that should be the focus of cumulative impact analysis and changes to policies and permitting decisions.
(13) “Developable area” means a site or portion of a site that may be utilized as the location of development, in accordance with the rules of this title.
(14) “Development” means a land use consisting of the construction or exterior alteration of structures; grading, dredging, drilling, or dumping; filling; removal of sand, gravel, or minerals; bulk heading; driving of pilings; or any project of a temporary or permanent nature which modifies structures, land, or shorelines and which does not fall within the allowable exemptions contained in the Oak Harbor Municipal Code.
(15) “Director” means the director of the city of Oak Harbor department of development services, or other city staff granted the authority to act on behalf of the director.
(16) “Drip line” means a line projected to the ground delineating the outermost extent of a tree’s foliage in all directions.
(17) “Fish and wildlife habitat conservation” means land management for maintaining populations of species in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term.
(18) “Fish and wildlife habitat conservation areas” means areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem,

and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. These areas do not include such artificial features or constraints as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. The city of Oak Harbor may also designate locally important habitats and species.

(19) "Forage fish" means small fish that consume plankton, which are consumed by other fish higher in the food chain, such as salmon.

(20) "Functions and values" means the beneficial roles served by critical areas including, but not limited to, water quality protection and enhancement; fish and wildlife habitat; food chain support; flood storage, conveyance and attenuation; ground water recharge and discharge; erosion control; wave attenuation; protection from hazards; historical, archaeological, and aesthetic value protection; educational opportunities; and recreation.

(21) "Geologically hazardous areas" means as defined in OHMC 20.28.010.

(22) "Ground water" means water in a saturated zone or stratum beneath the surface of land or a surface water body.

(23) "Growth Management Act" means Chapters 36.70A and 36.70B RCW, as amended.

(24) "Habitat conservation areas" means areas designated as fish and wildlife habitat conservation areas.

(25) "Hard surface" means an impervious surface, a permeable pavement, or a vegetated roof.

(26) "Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical, or biological properties described in WAC 173-303-090 or 173-303-100.

(27) "High intensity land use" means land uses which typically will have a high impact to the functions and values of a wetland. Such uses include: commercial, industrial, institutional, residential (density greater than one dwelling per acre), high intensity recreation (golf courses, ball fields), and hobby farms.

(28) "Historic condition" means a condition of the land, including flora, fauna, soil, topography, and hydrology, that existed before the area and vicinity were developed or altered by human activity.

(29) "Impervious surface" means a nonvegetated surface area that either prevents or retards the entry of water into the soil mantle, as under natural conditions prior to development. A nonvegetated surface area that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled macadam or other surfaces which similarly impede the natural infiltration of storm water. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces for the

purposes of determining whether the thresholds for application of minimum requirements are exceeded. Open, uncovered retention/detention facilities shall be considered impervious surfaces for purposes of runoff modeling.

(30) "Infiltration" means the downward movement of water from the surface to the subsoil.

(31) "In-kind compensation" means to replace critical areas with substitute areas whose characteristics and functions closely approximate those destroyed or degraded by a regulated activity.

(32) "Isolated wetlands" means those wetlands that are outside of and not contiguous to any 100-year floodplain of a lake, river, or stream and have no contiguous hydric soil or hydrophytic vegetation between the wetland and any surface water, including other wetlands.

(33) "Landslide hazard areas" means areas that are potentially subject to risk of mass movement due to a combination of geologic, topographic, and hydrologic factors, including: bedrock, soil, slope gradient, slope aspect, geologic structure, ground water, or other factors.

(34) "Low intensity land use" means land uses which typically will have a low impact to the functions and values of a wetland. Such uses include: low intensity open space (hiking, bird watching), unpaved trails, and utility corridors with no maintenance road.

(35) "Mature forested wetland" means a wetland with at least 30 percent of the surface area covered by woody vegetation greater than 20 feet in height, which is at least partially rooted within the wetland, where the largest trees are at least 80 years old or are greater than 21 inches in diameter at breast height.

(36) "Mitigation" means, in the following order of preference:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;

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

(d) Minimizing or eliminating a hazard by restoring or stabilizing the hazard area through engineered or other methods;

(e) Reducing or eliminating the impact over time by preservation and maintenance operations;

(f) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

(g) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

(37) "Moderate intensity land use" means land uses which typically will have a moderate impact to the functions and values of a wetland. Such uses include: residential (density less than one dwelling unit per acre), moderate intensity open space (parks with biking, jogging, etc.), paved trails, building of logging roads, utility corridors including access/maintenance road.

(38) "Monitoring" means the collection of data by various methods for the purposes of understanding natural systems and features, evaluating the impacts of development

proposals on such systems, and assessing the performance of required mitigation measures imposed as conditions of development.

(39) "Native growth protection area (NGPA)" means an area where native vegetation is preserved for the purpose of preventing harm to property and the environment, including, but not limited to, controlling surface water runoff and erosion, maintaining slope stability, buffering, and protecting plants and animal habitat.

(40) "Native vegetation" means vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas fir, western hemlock, western red cedar, alder, big-leaf maple, and vine maple; shrubs such as willow, elderberry, salmonberry and salal; and herbaceous plants such as sword fern, foam flower, and fireweed.

(41) "Oak tree" means a Garry oak (Quercus garryana, also known as Oregon white oak) tree more than six feet tall. "Oak tree" shall not apply to any tree grown or held for sale in a licensed nursery, nor to the first removal or transplanting of a tree pursuant to the operation of a licensed nursery business.

(42) "Off-site compensation" means to replace critical areas away from the site on which a critical area has been impacted.

(43) "On-site compensation" means to replace critical areas at or adjacent to the site on which a critical area has been impacted.

(44) "Ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil destruction on terrestrial vegetation, or the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding area.

The ordinary high water mark will be found by examining the bed and banks of a stream and ascertaining where the presence and action of waters are so common and usual, and so long maintained in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute. In any area where neither can be found, the channel bank shall be substituted. In braided channels and alluvial fans, the ordinary high water mark or substitute shall be measured so as to include the entire stream feature.

(45) "Permeability" means the capacity of an aquifer or confining bed to transmit water. It is a property of the aquifer or confining bed and is independent of the force causing movement.

(46) "Person" means any individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, agency of the state or local government unit, however designated.

(47) "Pesticide" means a general term used to describe any substance, usually chemical, used to destroy or control organisms; includes herbicides, insecticides, algicides, fungicides, and others. Many of these substances are manufactured and are not naturally found in the environment. Others, such as pyrethrum, are natural toxins that are extracted from plants and animals.

(48) “Porous soil types” means soils, as identified by the National Resources Conservation Service, U.S. Department of Agriculture, that contain voids, pores, interstices, or other openings which allow the passing of water. High permeable soils in Oak Harbor include: Hoypus gravelly loamy sand, Snakelum coarse sandy loam, Keystone loamy sand and Norma loam. Moderate permeable soils include: Coastal Beach, Made Land, Whidbey gravelly sandy loam, Townsend sand loam, and Swantown gravelly sandy loam.

(49) “Potable water” means water that is safe and palatable for human consumption.

(50) “Practical alternative” means an alternative that is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes, and has less impacts to critical areas.

(51) “Primary association area” means the area used on a regular basis by, that is in close association with, or is necessary for the proper functioning of the habitat of a species protected under the critical areas regulations of this title. “Regular basis” means that the habitat area is normally, or usually, known to contain the species, or it is likely to contain the species based on its known habitat requirements. Regular basis is species and population dependent. Species that exist in low numbers may be present infrequently yet rely on certain habitat types.

(52) “Priority habitat” means habitat type or elements with unique or significant value to one or more species as classified by the State Department of Fish and Wildlife. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element, as identified in WAC 173-26-020.

(53) “Project area” means all areas within 50 feet of the area proposed to be disturbed, altered, or used by the proposed activity or the construction of any proposed structures. When the action binds the land, such as a subdivision, short subdivision, binding site plan, planned unit development, or rezone, the project area shall include the entire parcel, at a minimum.

(54) “Qualified professional” means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or a related field, and have at least five years of related work experience.

(a) A qualified professional for habitats or wetlands must have a degree in biology and professional experience related to the subject species.

(b) A qualified professional for a geological hazard must be a professional engineer or geologist, licensed in the state of Washington.

(c) A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.

(55) “Recharge” means the addition of water to the zone of saturation.

(56) “Repair or maintenance” means an activity that restores the character, scope, size, and design of a serviceable area, structure, or land use to its previously authorized and undamaged condition. Activities that change the character, size, or scope of a project beyond the original design and drain, dredge, fill, flood, or otherwise alter critical areas are not included in this definition.

(57) “Riparian habitat” means areas adjacent to aquatic systems that contain elements of both aquatic and terrestrial ecosystems that mutually influence each other.
(58) “Salmonids” means members of the Salmonidae family of fishes, including regionally important species such as salmon, steelhead, and trout.
(59) “Seeps” means spots where water oozes from the earth, often forming the source of a small stream.
(60) “Seismic hazard areas” means areas that are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, or soil liquefaction.
(61) “SEPA” means Washington State Environmental Policy Act, Chapter 43.21C RCW.
(62) “Significant portion of its range” means that portion of a species range likely to be essential to the long-term survival of the population in Washington.
(63) “Significant tree” means a healthy evergreen or deciduous tree 12 inches or more in diameter measured four feet above existing grade.
(64) “Soil survey” means the most recent soil survey for the local area or county by the National Resources Conservation Service, U.S. Department of Agriculture.
(65) “Species” means any group of animals classified as a species or subspecies as commonly accepted by the scientific community.
(66) “Species, endangered” means any fish or wildlife species that is threatened with extinction throughout all or a significant portion of its range and is listed by the state or federal government as an endangered species.
(67) “Species of local importance” means those species of local concern designated by the city of Oak Harbor due to their population status or their sensitivity to habitat alteration, or that are game species.
(68) “Species, priority” means any fish or wildlife species requiring protective measures and/or management actions to ensure their survival. A species identified and mapped as priority species by the Washington Department of Fish and Wildlife (WDFW) fits one or more of the following criteria:
    (a) Criterion 1 – State-Listed and Candidate Species. State-listed species are 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 candidate species are fish and wildlife species that will be reviewed by WDFW 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 species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to aggregate. Examples include heron rookeries, seabird concentrations, marine mammal haulouts, shellfish beds, and fish spawning and rearing areas.
    (c) Criterion 3 – Species of Recreational, Commercial, and/or Tribal Importance. Native and nonnative fish and wildlife species of recreational or commercial importance, and recognized species used for tribal ceremonial and subsistence purposes, whose biological or ecological characteristics make them vulnerable to decline in Washington or that are dependent on habitats that are highly vulnerable or are in limited availability.

(69) “Species, threatened” means any fish or wildlife species that is likely to become an endangered species within the foreseeable future throughout a significant portion of its range without cooperative management or removal of threats, and is listed by the state or federal government as a threatened species.

(70) “Steep slope” means slopes of 40 percent gradient or steeper within a vertical elevation change of at least 10 feet. A slope is delineated by establishing its toe and top and is measured by averaging the inclination over at least 10 feet of vertical relief. For the purpose of this definition:

The toe of a slope is a distinct topographic break in slope that separates slopes inclined at less than 40 percent from slopes 40 percent or steeper. Where no distinct break exists, the toe of a steep slope is the lowermost limit of the area where the ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet; and the top of a slope is a distinct topographic break in slope that separates slopes inclined at less than 40 percent from slopes 40 percent or steeper. Where no distinct break exists, the top of a steep slope is the uppermost limit of the area where the ground surface drops 10 feet or more vertically within a horizontal distance of 25 feet.

(71) “Stormwater Management Manual” or “manual” means the Washington State Department of Ecology 2012 Stormwater Management Manual for Western Washington, as amended in December 2014.

(72) “Stream” means an area where open surface water produces a defined channel or bed, not including irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses, unless they are used by salmonids or are used to convey a watercourse naturally occurring prior to construction. A channel or bed need not contain water year-round, provided there is evidence of at least intermittent flow during years of normal rainfall.

(73) “Topping, tree” means the severing of the main stem of a tree in order to reduce its overall height; provided, that no more than 40 percent of the live crown shall be removed.

(74) “Trimming, tree” means the pruning or removal of limbs; provided, that the main stem is not severed and no more than 40 percent of the live crown is removed.

(75) “Unavoidable” means adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

(76) “Unstable slope” means a naturally occurring slope with a gradient between 15 and 39 percent (dividing the vertical rise by the horizontal extent), with a total vertical relief greater than 10 feet, where springs or ground water seepage is present on the slope. Existing slopes modified with engineering oversight or in accordance with standard construction industry techniques are not considered unstable slopes.

(77) “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation 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 nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm

ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(78) "Wetland creation" means the manipulation of the physical, chemical, or biological characteristics of a site to develop a wetland or an upland or deepwater site where a wetland did not previously exist.

(79) "Wetland enhancement" means the manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present.

(80) "Wetland mitigation bank" means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing advance mitigation to compensate for future, permitted impacts to similar resources.

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

(82) "Wetland preservation" means removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland.

(83) "Wetland reestablishment" means the manipulation of the physical, chemical or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland.

(84) "Wetland rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland.

(85) "Wetland restoration" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. (Ord. 1801 § 2, 2018; Ord. 1784 § 75, 2016; Ord. 1440 § 1, 2005).

Chapter 20.12
GENERAL CRITICAL AREAS REGULATIONS

Sections:

20.12.010 Purpose.

(1) The purpose of the critical areas regulations in this chapter is to designate and classify ecologically sensitive and hazardous areas and to protect them and their functions and values, while also allowing for reasonable use of private property.

(2) Critical areas regulations in this chapter implement the goals, policies, guidelines, and requirements of the city comprehensive plan and the Growth Management Act as they relate to critical areas.

(3) The city finds that critical areas provide a variety of valuable and beneficial biological and physical functions that benefit the city and its residents, and/or may pose a threat to human safety or to public and private property. The beneficial functions and values provided by critical areas include, but are not limited to, water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation of flood waters, ground water recharge and discharge, erosion control, wave attenuation, protection from hazards, historical, archaeological, and aesthetic value protection, and recreation. These beneficial functions and values are not listed in order of priority. (Ord. 1440 § 2, 2005).

20.12.020 Relationship to other regulations.

(1) These critical areas regulations shall apply as an overlay and in addition to zoning and other regulations adopted by the city.

(2) Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.

(3) These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA), as locally adopted. Any conditions required pursuant to critical areas regulations in this chapter shall be included in the SEPA review and threshold determination and shall constitute compliance with SEPA with respect to critical areas.

(4) The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of critical areas regulations in this chapter.

(5) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be

required. The applicant is responsible for complying with these requirements, apart from the process established in this chapter. (Ord. 1440 § 2, 2005).

20.12.030 Jurisdiction.

(1) The city shall regulate all uses, activities, and developments within, adjacent to, or likely to affect one or more critical areas, consistent with the best available science and the provisions herein.

(2) Critical areas regulated by this chapter include:

(a) Wetlands, as designated in Chapter 20.24 OHMC;

(b) Fish and wildlife habitat conservation areas, as designated in Chapter 20.25 OHMC;

(i) Garry oak tree protection in conformance with WAC 365-190-130(4)(b), as designated in Chapter 20.16 OHMC;

(c) Geologically hazardous areas, as designated in Chapter 20.28 OHMC;

(d) Critical aquifer recharge areas, as designated in Chapter 20.32 OHMC; and

(e) Frequently flooded areas, as designated in Chapter 20.34 OHMC.

(3) All areas within the city meeting the definition of one or more critical areas, regardless of any formal identification, are hereby designated critical areas and are subject to the provisions of critical areas regulations in this chapter.

(4) The approximate location and extent of critical areas within the city are shown on the adopted critical area maps. The adopted maps do not include the location of all critical areas; therefore, it is the actual presence of critical areas that triggers the requirements of this chapter, whether or not the critical area is identified on the adopted maps. (Ord. 1801 § 3, 2018; Ord. 1440 § 2, 2005).

20.12.040 Exempt activities.

The following developments, activities, and associated uses shall be exempt from the provisions of this chapter and Chapter 20.16 OHMC, Garry Oak Tree Protection; Chapter 20.24 OHMC, Wetlands; Chapter 20.25 OHMC, Fish and Wildlife Habitat Conservation Areas; Chapter 20.28 OHMC, Geologically Hazardous Areas; and Chapter 20.32 OHMC, Critical Aquifer Recharge Areas:

(1) Emergencies. Those activities necessary to prevent an immediate threat to public health, safety, or welfare, or that pose an immediate risk of damage to private property and that require remedial or preventive action in a timeframe too short to allow for compliance with the requirements of this chapter. After the emergency, the person or agency undertaking the action shall report any impacts to the critical area to the director. The director may require submittal of a critical areas report to guide restoration or mitigation for these impacts. Final approval of the report, restoration and mitigation shall be in accordance with provisions of this chapter.

(2) Operation, maintenance, repair, modification, addition to, or replacement of existing structures, infrastructure improvements, utilities, public or private roads, dikes, levees, or drainage systems, if the activity does not further alter or increase the impact to, or encroach further within, a critical area or buffer and there is no increased risk to life or property as a result of the action. Operation and maintenance include vegetation management performed in accordance with best management practices; provided, that

such management actions are part of regular and ongoing maintenance, do not expand further into the critical area, are not the result of an expansion of a structure or utility, and do not directly impact species or habitat protected under Chapter 20.25 OHMC.

(3) Educational and research activities that do not degrade the functions and values of a critical area or buffer. (Ord. 1801 § 4, 2018; Ord. 1440 § 2, 2005).

20.12.050 Public agency and utility exceptions.

(1) If the application of critical areas regulations in this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a public agency and utility exception shall be made to the city and shall include a critical area identification form; critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act. The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with review criteria in subsection (4) of this section.

(3) Hearing Examiner Review. The hearing examiner shall review the application and director's recommendation, and conduct a public hearing pursuant to the provisions of Chapter 18.40 OHMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all of the public agency and utility exception criteria in subsection (4) of this section.

(4) Public Agency and Utility Review Criteria. The criteria for review and approval of public agency and utility exceptions are the following:

(a) There is no other practical alternative to the proposed development with less impact on critical areas and their buffers, including minimizing removal of native vegetation and significant trees;

(b) The application of this chapter would unreasonably restrict the ability to provide services to the public;

(c) The proposal does not pose a threat to the public health, safety, or welfare on or off the development proposal site;

(d) The proposal protects and mitigates impacts to the functions and values of the critical area to the greatest extent feasible, consistent with the best available science; and

(e) The proposal is consistent with other applicable regulations and standards.

(5) The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application. (Ord. 1801 § 5, 2018; Ord. 1440 § 2, 2005).

20.12.060 Reasonable use.

(1) If the application of critical areas regulations in this chapter would deny all reasonable economic use of the subject property, the city shall determine if compensation is an

appropriate action, or the property owner may apply for an exception pursuant to this section.

(2) Exception Request and Review Process. An application for a reasonable use exception shall be made to the city and shall include a critical area identification form; critical areas report, including mitigation plan, if necessary; and any other related project documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act. The director shall prepare a recommendation to the hearing examiner based on review of the submitted information, a site inspection, and the proposal's ability to comply with reasonable use exception criteria in subsection (4) of this section.

(3) Hearing Examiner Review. The hearing examiner shall review the application and conduct a public hearing pursuant to the provisions of Chapter 18.40 OHMC. The hearing examiner shall approve, approve with conditions, or deny the request based on the proposal's ability to comply with all the reasonable use exception review criteria in subsection (4) of this section.

(4) Reasonable Use Review Criteria. Criteria for review and approval of reasonable use exceptions follow:

  (a) The application of the normal standards of this chapter would deny all reasonable economic use of the property;

  (b) No other reasonable economic use of the property has less impact on the critical area, allowing for a building footprint of up to 1,500 square feet for single-family residential development and up to 4,000 square feet for multifamily and nonresidential development. The actual floor area of buildings may be larger. Associated hard surface for driveways, parking and other purposes shall be the minimum necessary to meet the usual and customary needs of the land use;

  (c) The proposal protects and mitigates impacts to the functions and values of the critical area to the greatest extent feasible, consistent with the best available science, allowing for reductions in critical area buffers and setbacks of up to 50 percent, with mitigation;

  (d) The inability of the applicant to derive reasonable economic use of the property is not the result of subdivision or other actions by the applicant after the effective date of the ordinance codified in this chapter, or its predecessor;

  (e) The proposal does not pose a threat to the public health, safety, or welfare on or off the development proposal site; and

  (f) The proposal is consistent with other applicable regulations and standards.

(5) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and to provide sufficient information on which any decision has to be made on the application.

(6) Variance Available. If the applicant is not satisfied with relief provided by this section, the applicant may apply for a variance, under the standards of OHMC 20.12.120.

(Ord. 1801 §§ 6, 7, 2018; Ord. 1440 § 2, 2005).

20.12.070 Critical area identification form and report.

(1) Submittal. Prior to the city's consideration of any proposed activity not found to be exempt under OHMC 20.12.040, the applicant shall submit to the director a complete critical area identification form on forms provided by the city.

(2) Review Process. The director shall review the critical area identification form and, as needed, conduct a site inspection and review other information available pertaining to the site and the proposal and make a determination as to whether any critical areas may be affected by the proposal. If the director finds that no critical areas are present on or adjacent to the project area or that the proposal will not impact a critical area in a manner contrary to the purpose, intent and requirements of critical areas regulations in this chapter, the director shall rule that the critical area review is complete and note on the identification form that no further review is required. If the director finds that a critical area may be affected by the proposal, the director shall notify the applicant that a critical areas report must be submitted prior to further review of the project, and indicate each of the critical area types that should be addressed in the report. A determination regarding the absence of one or more critical areas by the director is not an expert certification regarding the presence of critical areas and is subject to possible reconsideration and reopening if new information is received.

(3) Critical Areas Report. Detailed requirements for critical areas reports are identified in the chapters for specific types of critical areas. Preparation of critical areas reports and their review by the city, which may include referral to independent qualified professionals, shall be at the applicant's expense. (Ord. 1440 § 2, 2005).

20.12.080 Density calculation.

(1) Where development is partly prohibited due to the presence of critical areas, as defined in this title, an applicant may be permitted to transfer the density attributable to the undevelopable area of the property to another noncritical portion of the same site or property subject to the limitations of this section. Up to 100 percent of the density that could be achieved on the unbuildable portion of the site can be transferred to the noncritical area portion of the property, subject to:

(a) The density limitation of the underlying zoning district;

(b) The minimum lot size of the underlying zoning district may be reduced by up to 25 percent; and

(c) Applicable setbacks may be reduced to 15 feet, and the lot coverage standards of underlying zoning regulations may be increased to 60 percent. (Ord. 1440 § 2, 2005).

20.12.085 Innovative development design.

A development permit applicant may request approval of an innovative development design, which addresses wetland, fish and wildlife habitat conservation areas or buffer treatment in a manner that deviates from the standards in OHMC 20.24.030 or 20.25.040.

(1) An innovative development design will be considered in conjunction with a project permit application or building permit approval. An applicant may include the innovative development design proposal in a preapplication review as established in OHMC 18.20.310. Preliminary comments may be provided during the preapplication;

however, a final decision on the proposal will only be issued with the project or building permit approval, whichever occurs first.

(2) The applicant shall demonstrate in a critical areas report, pursuant to OHMC 20.24.040, wetlands, or OHMC 20.25.050, fish and wildlife habitat conservation areas, how the innovative development design complies with the following requirements:
   (a) The innovative development design will achieve protection equivalent to or better than the treatment of the functions and values of the critical areas that would be obtained by applying the standard prescriptive measures contained in this title;
   (b) Applicants for innovative development design are encouraged to consider measures prescribed in guidance, such as watershed conservation plans or other similar conservation plans, and low impact development stormwater strategies which address wetlands, fish and wildlife habitat conservation areas or buffer protection consistent with this title; and
   (c) The innovative development design will not be materially detrimental to the public health, safety, or welfare or injurious to other properties or improvements located outside of the subject property. (Ord. 1874 § 1, 2019).

20.12.090 Mitigation sequencing.

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for in the following sequential order of preference:

(1) Avoiding the impact altogether by not taking a certain action or parts of an action;
(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
(3) Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment;
(4) Minimizing or eliminating a hazard by restoring or stabilizing the hazard area through engineered or other methods;
(5) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations;
(6) Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
(7) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation may include a combination of the above measures. (Ord. 1801 §§ 8, 9, 2018; Ord. 1440 § 2, 2005).

20.12.100 Mitigation plan requirements.

When mitigation is required, the applicant shall submit for approval by the city a mitigation plan as part of the critical areas report. The mitigation plan shall include:

(1) A written report identifying environmental goals and objectives of the compensation proposed, including:
    (a) A description of the anticipated impacts to the critical areas and the mitigating actions proposed, including the site selection criteria; mitigation goals and objectives, in relation to the functions and values of the impacted critical area; and dates for beginning and completion of mitigation activities.
    (b) A review of the best available science supporting the proposed mitigation and a description of the report author's experience to date in restoring or creating the type of critical area proposed; and
    (c) An analysis of the likelihood of success of the compensation project.
(2) Measurable specific criteria for evaluating whether or not the goals and objectives of the mitigation project have been successfully attained and whether or not the requirements of critical areas regulations in this chapter have been met.
(3) Details of the mitigation proposed, such as:
    (a) The proposed construction method, sequence, timing, and duration;
    (b) Grading and excavation details;
    (c) Erosion and sediment control features;
    (d) A planting plan specifying plant species, quantities, locations, size, spacing, and density; and
    (e) Measures to protect and maintain plants until established.

These written specifications shall be accompanied by detailed site diagrams, scaled cross-sectional drawings, topographic maps showing slope percentage and final grade elevations, and any other drawings appropriate to show construction techniques or anticipated final outcome.

(4) A program for monitoring construction of the mitigation project and for assessing the completed project against its goals and objectives. A protocol shall be included outlining the schedule for site monitoring (for example, monitoring shall occur in years one, three, five, seven and 10 after site construction), and how monitoring data will be evaluated to determine if performance standards are being met. A monitoring report shall be submitted to document milestones, successes, problems, and contingency actions of the compensation project. The mitigation project shall be monitored for a period necessary to establish that performance standards have been met, but not for a period less than five years in the case of mitigation for buffer alterations and for not less than 10 years for mitigation of wetland alterations. If performance standards are being met after these minimum periods, requirements for additional monitoring may be waived, if the director determines they are unnecessary.
(5) Identification of potential courses of action, and any corrective measures to be taken if monitoring or evaluation indicates project performance standards are not being met.
(6) Financial guarantees to ensure that the mitigation plan is fully implemented and meeting performance standards. Guarantees shall be in the form of a surety bond, performance bond, assignment of savings account, or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the city. Guarantees shall remain in effect for a minimum of five years until the city determines, in writing, that the standards bonded for have been met, to ensure that the required mitigation has been fully implemented and demonstrated to function.

Depletion, failure, or collection of bond funds shall not discharge the obligation of an applicant or violator to complete required mitigation, maintenance, monitoring, or restoration. (Ord. 1440 § 2, 2005).

20.12.110 Determination.

(1) Upon review of a critical areas report, if the director determines that a proposed activity complies with OHMC 20.12.090, 20.12.100 and requirements related to specific types of critical areas, the director shall prepare a written notice of determination and identify any required conditions of approval, which shall be attached to the underlying permit or approval. This determination shall be final concurrent with the final decision to approve, condition, or deny the development proposal or other activity involved.

(2) If the director determines that a proposed activity does not adequately mitigate its impacts on critical areas, the director shall prepare written notice of the determination that includes findings of noncompliance. No proposed activity or permit shall be approved or issued if it is determined that the proposed activity does not comply with this chapter. Following notice of noncompliance, the applicant may request consideration of a revised critical areas report. If the revision is found to be substantial and relevant to the critical areas review, the director may reopen the review and make a new determination based on the revised report.

(3) Any decision to approve, condition, or deny a development proposal or other activity based on the requirements of this chapter may be appealed according to, and as part of, the appeal procedure for the permit or approval involved. (Ord. 1440 § 2, 2005).

20.12.120 Variances.

(1) Variances from the standards of critical areas regulations in this chapter may be authorized by the city in accordance with the procedures set forth in Chapter 19.66 OHMC. The hearing examiner shall review the request and make a written finding that the request meets or fails to meet the variance criteria.

(2) Variance Criteria. A variance may be granted only if the applicant demonstrates that the requested action conforms to all of the criteria set forth as follows:

(a) Special conditions and circumstances exist that are peculiar to the land or lot that are not applicable to other lands in the same district;

(b) The special conditions and circumstances do not result from the actions of the applicant;

(c) A literal interpretation of the provisions of critical areas regulations in this chapter would deprive the applicant of reasonable economic uses and privileges permitted to other properties in the vicinity and zone of the subject property under the terms of this chapter, and the variance requested is the minimum necessary to provide the applicant with such rights;

(d) Granting the variance requested will not confer on the applicant any special privilege that is denied by critical areas regulations in this chapter to other lands, structures, or buildings under similar circumstances;

(e) The granting of the variance is consistent with the general purpose and intent of critical areas regulations in this chapter, and with mitigation will not further degrade

the functions or values of the associated critical areas or otherwise be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the subject property;

(f) The decision to grant the variance includes the best available science and gives special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish habitat; and

(g) The granting of the variance is consistent with the general purpose and intent of the city comprehensive plan and adopted development regulations.

(3) Conditions May Be Required. In granting any variance, the city may prescribe such conditions and safeguards as are necessary to secure adequate protection of critical areas from adverse impacts, and to ensure conformity with this chapter.

(4) Time Limit. The city shall prescribe a time limit within which the action for which the variance is required shall be begun, completed, or both. Failure to begin or complete such action within the established time limit shall void the variance.

(5) Burden of Proof. The burden of proof shall be on the applicant to bring forth evidence in support of the application and upon which any decision has to be made on the application. (Ord. 1801 § 10, 2018; Ord. 1440 § 2, 2005).

20.12.130 Enforcement and penalties.

(1) Inspections. Reasonable access to the site shall be provided to the city, state, and federal agency review staff for the purpose of inspections during any proposal review, restoration, emergency action, or monitoring period. The director shall present proper credentials and make a reasonable effort to contact any property owner before entering onto private property.

(2) When a critical area or its buffer has been altered in violation of this chapter, all ongoing development work shall stop and the critical area or buffer shall be restored. The city shall have the authority to issue a stop work order to cease all ongoing development work and order restoration, rehabilitation, or replacement measures at the owner's or other responsible party's expense to compensate for violation of provisions of this chapter. All development work shall remain stopped until a restoration plan is prepared and approved by the city. Such a plan shall be prepared by a qualified professional using the best available science and shall describe how the actions proposed meet the minimum requirements described in subsection (3) of this section. The director shall, at the violator's expense, seek expert advice in determining the adequacy of the plan. Inadequate plans shall be returned to the applicant or violator for revision and resubmittal.

(3) Minimum Performance Standards for Restoration.

(a) For alterations to critical aquifer recharge areas, wetlands, and habitat conservation areas, restoration shall return the affected environment to the historic conditions or the conditions existing at the time of the initiation of the project; if that is infeasible, restoration shall replace, enhance, or provide substitute resources or environments meeting the criteria for mitigation in OHMC 20.12.090 and 20.12.100.

(b) For alterations to flood and geological hazards, the following minimum performance standards shall be met for restoration:

(i) The hazard shall be reduced to a level equal to, or less than, the predevelopment hazard;
(ii) Any risk to public safety or other critical areas resulting from the alteration shall be eliminated or minimized; and
(iii) To the extent feasible, the hazard area and buffers shall be replanted with native vegetation sufficient to minimize the hazard.

(c) Restoration of oak trees shall be through a replacement ratio of at least five trees for every tree removed, topped or killed in violation of Chapter 20.16 OHMC. Replacement trees must be of a genetic stock from the Puget Sound/Georgia Strait ecoregion, unless such trees are not reasonably available. At least two trees must survive at least five years after planting and must grow to a height of at least eight feet.

(4) Penalties. Any person convicted of violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day or portion of a day during which a violation of this chapter is committed or continued shall constitute a separate offense. Any development carried out contrary to the provisions of this chapter shall constitute a public nuisance and may be enjoined as provided by the statutes of the state of Washington. The city may levy civil penalties against any person, party, firm, corporation, or other legal entity for violation of any of the provisions of this chapter. The civil penalty shall be assessed at a maximum rate of $1,000 per day per violation. (Ord. 1801 § 11, 2018; Ord. 1717 § 42, 2015; Ord. 1440 § 2, 2005).

20.12.140 Signs and fencing.

(1) Temporary Markers. The outer perimeter of buffers and the clearing limits identified by an approved permit or authorization shall be marked in the field with temporary "clearing limits" fencing in such a way as to ensure that no unauthorized intrusion will occur. The marking is subject to inspection by the director prior to the commencement of permitted activities. This temporary marking shall be maintained throughout construction and shall not be removed until permanent signs, if required, are in place.

(2) Permanent Signs. As a condition of any permit or authorization issued pursuant to critical areas regulations in this chapter, the director may require signs identifying postproject buffers and critical areas as "critical areas." If the buffers or critical areas have predominantly native vegetation or are so restored by the project, signs may use the term "native growth protection areas." Signs shall be made of an enamel-coated metal face and attached to a metal post or other nontreated material of equal durability. Signs must be posted at an interval of one per lot or every 50 feet, whichever is less, and must be maintained by the property owner in perpetuity. Signs shall be worded as follows or with alternative language approved by the director:

Critical Area (or Native Growth Protection Area, as appropriate)

Do Not Disturb

Contact City of Oak Harbor Regarding Uses, Restrictions, and Opportunities for Stewardship

(3) Fencing. If the director determines fencing is necessary to protect the functions and values of the critical area, the director shall condition any permit or authorization issued pursuant to critical areas regulations in this chapter to require the applicant to install a permanent fence at the edge of the wetland buffer (e.g., split-rail fence).
   (a) Fencing installed as part of a proposed activity shall be designed so as to not interfere with species migration, including fish runs, and shall be constructed in a manner that minimizes impacts to the wetland and associated habitat.
   (Ord. 1801 § 12, 2018; Ord. 1440 § 2, 2005).

20.12.150 Building setbacks.

Unless otherwise provided, buildings and other structures shall be set back a distance of 10 feet from the edges of all critical area buffers or from the edges of all critical areas, if no buffers are required. The following may be allowed in the building setback area:

(1) Landscaping;
(2) Uncovered decks;
(3) Building overhangs, if such overhangs do not extend more than 18 inches into the setback area; and
(4) Impervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to water quality regulations. (Ord. 1440 § 2, 2005).

Chapter 20.16[1]
GARRY OAK TREE PROTECTION

Sections:

20.16.010 Harm prohibited.

(1) No person shall remove, top, damage, destroy, break, injure, mutilate or kill any Garry oak tree or permit any animal under his control to do so, or allow ivy or other invasive vines to takeover any Garry oak tree, or to permit any toxic chemicals to seep, drain or empty onto or about any Garry oak tree, except as allowed by this chapter.
(2) During building or construction operations, suitable protective measures listed below shall be erected around Garry oak trees which may be subject to injury.
   (a) Establish a critical root zone (CRZ) for the tree which at a minimum is a circular area around the tree trunk with a radius of one foot for every one inch in diameter measured at four and one-half feet above grade.
   (b) Install an access deterring fence with a minimum height of three feet around the CRZ that will remain in place till final inspections have been completed.
   (c) Post highly visible and legible signs of caution, warning, or do not disturb, which are not less than 12 inches by 12 inches, of the restrictions around the tree on the fence or restricted area to help convey the importance of CRZ to workers on site.

(d) No roots greater than four inches in diameter shall be cut, even if such roots are outside the CRZ.
(e) Make all necessary cuts to tree roots cleanly with sharp tools.
(f) Construction debris or stockpile construction material shall be done outside the CRZ and away from the tree as practically possible.
(g) The soil composition in and around the CRZ shall not be disturbed or altered during project construction.
(h) Change in soil grades around the CRZ and tree shall be gradual.
(i) Washing equipment, vehicle maintenance and other potential soil contamination activities shall be done away from the CRZ and the tree as practically possible.
(j) All measures to avoid damage to tree trunks and branches should be taken during construction activities.

(3) If the protective measures listed above cannot be met due to site specific conditions, or if it is determined that the measures may not meet the intent of protecting the Garry oak tree, the applicant will be required to provide a tree protection plan prepared by a certified arborist.

(4) No hard surface area shall be allowed within the drip line of a Garry oak tree to the maximum extent possible. An administrative variance may allow hard surface on up to 25 percent of the area within the drip line when there is no practical alternative. (Ord. 1839 § 1, 2018; Ord. 1784 § 76, 2016; Ord. 1441 § 1, 2005).

20.16.020 Permits for removal, topping and trimming.

Permits for removal or trimming of a Garry oak tree may be granted by the director when the following conditions are determined to exist:

(1) Removal or Topping. A permit for removal or topping may be granted when it is determined by the director that the Garry oak tree is so diseased or damaged that it presents a danger to the public or adjacent property and trimming is inadequate to ameliorate the danger. Wherever feasible, dead Garry oak trees shall be left as snags, for their habitat value.

(2) Trimming. A permit for trimming shall be granted when it is determined:
(a) That trimming is needed for safety or public welfare or to remove diseased or dead branches; or
(b) That branches hang over an existing building or interfere with utility lines or right-of-way access.

(3) The director shall respond to a request for a permit within 10 days of application. No fee shall be charged for a permit. Appeal of a decision by the director shall be to the hearing examiner and shall be made in writing within 10 days of the decision. (Ord. 1839 § 1, 2018; Ord. 1441 § 1, 2005).

20.16.030 Variances.

In order to ameliorate the impact of this chapter, the following variances may be allowed under the zoning code:

(1) Setbacks. A variance may be granted to allow intrusion of a building into a setback yard by 10 feet to preserve a Garry oak tree located elsewhere on the property.

(2) Parking. Parking requirements may be reduced by two vehicles per Garry oak tree preserved on the property.
(3) Landscaping. A credit of one and one-half square feet for landscaping requirements under the city zoning code shall be given for every square foot of area devoted to a Garry oak tree use. (Ord. 1839 § 1, 2018; Ord. 1441 § 1, 2005).

Chapter 20.24
WETLANDS

Sections:

20.24.005 Purpose.

(1) Recognize and protect the beneficial functions performed by many wetlands, which include, but are not limited to, providing food, breeding, nesting and/or rearing habitat for fish and wildlife; recharging and discharging ground water; contributing to stream flow during low flow periods; stabilizing stream banks and shorelines; storing storm and flood waters to reduce flooding and erosion; and improving water quality through biofiltration, absorption, and retention and transformation of sediments, nutrients, and toxicants.
(2) Regulate land use to avoid adverse effects on wetlands and maintain the functions and values of wetlands throughout the city of Oak Harbor.
(3) Establish review procedures for development proposals in and adjacent to wetlands.
    (a) Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required. (Ord. 1801 § 14, 2018).

20.24.010 Identification and rating.

(1) Identification and Delineation. Wetlands shall be identified and delineated by a qualified wetland professional in accordance with the currently approved federal manual and regional supplements, using the criteria in the definition of wetland in OHMC 20.02.020. Wetland delineations are valid for five years; after such date the city shall determine if a revision or additional assessment is necessary.
(2) Rating. Wetlands shall be rated according to the Washington Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and

approved by Ecology), which contains the definitions and methods for determining if the criteria below are met.

(a) Category I wetlands include:
  (i) Relatively undisturbed estuarine wetlands larger than one acre;
  (ii) Wetlands of high conservation value that are identified by scientists of the Washington Department of Natural Resources Natural Heritage Program;
  (iii) Mature and old-growth forested wetlands larger than one acre;
  (iv) Wetlands in coastal lagoons; or
  (v) Wetlands that perform many functions well (scoring 23 or more points). These wetlands:
    (A) Represent unique or rare wetland types;
    (B) Are more sensitive to disturbance than most wetlands;
    (C) Are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or
    (D) Provide a high level of functions.

(b) Category II wetlands include:
  (i) Estuarine wetlands smaller than one acre, or disturbed estuarine wetlands larger than one acre;
  (ii) Wetlands with a moderately high level of functions (scoring between 20 and 22 points);

(c) Category III wetlands:
  (i) Are wetlands with a moderate level of functions (scoring between 16 and 19 points); and
  (ii) Can often be adequately replaced with a well-planned mitigation project. Wetlands scoring between 16 and 19 points generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

(d) Category IV wetlands have the lowest levels of functions (scoring fewer than 16 points) and are often heavily disturbed. These are wetlands that should be replaceable, or in some cases improvable. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and should be protected to some degree.

(3) Illegal Modifications. Wetland rating categories shall not change due to illegal modifications made by the applicant or with the applicant's knowledge. (Ord. 1801 § 15, 2018; Ord. 1440 § 3, 2005).

20.24.015 Regulated activities.

(1) For any regulated activity, a critical areas report, in accordance with OHMC 20.24.040, may be required to support the requested activity.

(2) The following activities are regulated if they occur in a regulated wetland or its buffer:
  (a) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
  (b) The dumping of, discharging of, or filling with any material.
  (c) The draining, flooding, or disturbing of the water level or water table.

(d) Pile driving.
(e) The placing of obstructions.
(f) The construction, reconstruction, demolition, or expansion of any structure.
(g) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
(h) "Class IV – General Forest Practices" under the authority of the "1992 Washington State Forest Practices Act Rules and Regulations," WAC 222-12-030, or as thereafter amended.
(i) Activities that result in a significant change of water temperature, a significant change of physical or chemical characteristics of the water entering the wetland, or respective buffer sources, including quantity and hydroperiod, or the introduction of pollutants, including pesticides and herbicides.

(3) Subdivisions. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:
(a) Land that is located wholly within a wetland or its buffers may not be subdivided.
(b) Land that is located partially within a wetland or its buffer may be subdivided; provided, that an accessible and contiguous portion of each new lot:
(i) Is located outside of the wetland and its buffer, and
(ii) Meets the minimum lot size requirements of Chapter 19.20 OHMC.
(Ord. 1801 § 16, 2018).

20.24.020 Exemptions and allowed uses in wetlands.

(1) The following wetlands may be exempt from the requirement to avoid impacts and they may be filled if the impacts are fully mitigated based on the remaining actions in OHMC 20.24.050. In order to verify the following conditions, a critical area report for wetlands, in accordance with OHMC 20.24.040 must be submitted. These exemptions are in addition to the exemptions established in OHMC 20.12.040.
(a) All isolated Category IV wetlands less than 4,000 square feet that:
(i) Are not associated with riparian areas or their buffers;
(ii) Are not associated with shorelines of the state or their associated buffers;
(iii) Are not part of a wetland mosaic;
(iv) Do not score six or more points for habitat function based on the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by Ecology);
(v) Do not contain a priority habitat or a priority area for a priority species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in Chapter 20.25 OHMC; and
(b) Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer provisions contained in this chapter.

(2) Activities Allowed in Wetlands. The activities listed below are allowed in wetlands. These activities do not require submission of a critical areas report, except where such

activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

(a) Those activities and uses conducted pursuant to the Washington State Forest Practices Act and its rules and regulations, WAC 222-12-030, where state law specifically exempts local authority, except those developments requiring local approval for Class 4 – General Forest Practice Permits (conversions) as defined in Chapter 76.09 RCW and Chapter 222-12 WAC.

(b) Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland.

(c) Drilling for utilities/utility corridors under a wetland, with entrance/exit portals located completely outside of the wetland buffer; provided, that the drilling does not interrupt the ground water connection to the wetland of percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column will be disturbed.

(d) Enhancement of a wetland through the removal of nonnative invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments.

(e) Storm water management facilities. A wetland or its buffer can be physically or hydrologically altered to meet the requirements of an LID, runoff treatment or flow control BMP if all of the following criteria are met:

(i) The wetland is classified as a Category IV or a Category III wetland with a habitat score of three to five points; and

(ii) There will be “no net loss” of functions and values of the wetland; and

(iii) The wetland does not contain a breeding population of any native amphibian species; and

(iv) The hydrologic functions of the wetland can be improved; and

(v) The wetland lies in the natural routing of the runoff, and the discharge follows the natural routing; and

(vi) All regulations regarding storm water and wetland management are followed, including, but not limited to, local and state wetland and storm water codes, manuals, and permits; and

(vii) Modifications that alter the structure of a wetland or its soils will require permits. Existing functions and values that are lost would have to be compensated/replaced.

(3) Storm water LID BMPs required as part of new and redevelopment projects can be considered within wetlands and their buffers. However, these areas may contain features that render LID BMPs infeasible. A site-specific characterization is required to determine if an LID BMP is feasible at the project site. (Ord. 1801 § 17, 2018; Ord. 1440 § 3, 2005).

20.24.030 Wetland buffers.

Wetland buffers shall be established to protect the integrity, functions and values of the wetland.

(1) Measurement of Wetland Buffers. All buffers shall be measured perpendicular from the wetland boundary as surveyed in the field.

(2) Buffer Standards. When a buffer lacks adequate vegetation to protect the wetland functions and values, the director may increase the standard buffer, require buffer planting or other enhancements, and/or deny a proposal for buffer reduction or buffer averaging. Buffers may not include areas that are functionally and effectively disconnected from the wetland by an existing public or private road as determined by the director. Functionally and effectively disconnected means that the road blocks the protective measures provided by a buffer or it disrupts the life cycle of wildlife documented to be using the area.

(3) The following buffer widths have been established in accordance with best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by Ecology). The adjacent land use intensity is assumed to be high.

(a) Standard buffer widths are identified in Table 20.24.030(a)(i).

(b) An applicant may be administratively allowed a 25 percent decrease in the width of buffers identified in Table 20.24.030(a)(i) if all impact minimizing measures identified in Table 20.24.030(a)(ii) are implemented, where applicable, to a specific proposal.

Table 20.24.030(a)(i)

Wetland Category	Standard Buffer Width (in feet)		
	3 – 5	6 – 7	8 – 9
Category I: Based on total score	100	150	300
Category I: Wetlands of high conservation value	250		300
Category I: Interdunal	300 (buffer width not based on habitat scores)		
Category I: Forested	100	150	300
Category I: Estuarine and coastal lagoons	200 (buffer width not based on habitat scores)		
Category II: Based on score	100	150	300
Category II: Interdunal wetlands	150 (buffer width not based on habitat scores)		

Table 20.24.030(a)(i)

Wetland Category	Standard Buffer Width (in feet)		
	3 – 5	6 – 7	8 – 9
Category II: Estuarine and coastal lagoons	150 (buffer width not based on habitat scores)		
Category III: (all)	80	150	300
Category IV: (all)	50		

Table 20.24.030(a)(ii)

Disturbance	Required Measures to Minimize Impacts
Lights	• Direct lights away from wetland
Noise	• Locate activity that generates noise away from wetland • If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source • For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10 feet heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland • Apply integrated pest management
Storm water runoff	• Retrofit storm water detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer • Use low impact development techniques to the greatest extent possible
Change in water regime	• Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	• Use privacy fencing or plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation native to western WA and appropriate for the local conditions • Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	• Use best management practices to control dust

(4) Increased Buffer Widths. When a larger buffer is necessary to protect wetland or other critical area functions and values based on site-specific characteristics, the director shall have the authority to require increased buffer widths in accordance with the recommendations of a qualified professional. This documentation must include, but not be limited to, the following criteria:
   (a) The wetland is used by a state or federally listed plant or animal species or has essential or outstanding habitat for those species, or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
   (b) The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
   (c) The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

(5) Modifications to Buffer Widths. Any modifications to the buffer width are to be based on the specific wetland functions, site-specific characteristics, location of the wetland within the watershed or sub-basin, and the proposed land use.
   (a) Averaging Buffer Widths. The director shall have the authority to average wetland buffer widths on a case-by-case basis, where a qualified wetlands professional demonstrates to the director's satisfaction that all of the following criteria are met:
      (i) The total area contained in the buffer after averaging is no less than that contained within the buffer prior to averaging;
      (ii) The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical area report from a qualified wetland professional.
      (iii) The buffer at its narrowest point is never less than either 75 percent of the required width or 75 feet for a Category I and II, 50 feet for Category III, and 25 feet for Category IV, whichever is greater.
      (iv) Disturbed portions of the buffer will be enhanced with native plantings.
   (b) Averaging to allow reasonable use of a parcel may be permitted when all of the following are met:
      (i) There are no feasible alternatives to the site design that could be accomplished without buffer averaging.
      (ii) The averaged buffer will not result in degradation of the wetland's functions and values as demonstrated by a critical area report from a qualified wetland professional.
      (iii) The total buffer after averaging is equal to the area required without averaging.
      (iv) The buffer at its narrowest point is not less than 75 percent of the required width; provided, that minimum buffer widths shall never be less than 75 feet for a Category I and II, 50 feet for Category III, and 25 for Category IV, whichever is greater.
   (c) Regional Benefit. The director shall have the authority to reduce the width of the standard buffer on a case-by-case basis if all of the following criteria are met:
      (i) The buffer is adjacent to a critical area that is being significantly restored through a city-approved mitigation plan that has regional benefit to critical area functions as determined by the director;

(ii) A critical area report has been submitted to the city that demonstrates the reduced buffer will protect the functions and value of the critical area being restored; and

(iii) The reduced buffer shall be clearly described in any applicable SEPA, MDNS or EIS document and shall be subject to review and comment by the public agencies with jurisdiction and affected tribes.

(6) Buffers on Wetland Mitigation Sites. All wetland mitigation sites shall have buffers consistent with the buffer requirements of this chapter. Buffers shall be based on the expected or target category of the proposed wetland mitigation site. Or, the buffer can be determined on a case-by-case basis where it can be shown that the buffer is protective of the functions and values of the compensatory wetland.

(7) Buffer Maintenance. Wetland buffers shall be retained in an undisturbed or enhanced condition. In the case of compensatory mitigation sites, removal of invasive nonnative weeds is required for the duration of the mitigation bond.

(8) Impacts to Buffers. Requirements for the compensation for impacts to buffers are outlined in OHMC 20.24.050.

(9) Overlapping Critical Area Buffers. If buffers for two contiguous critical areas overlap (such as buffers for a stream and a wetland), the wider buffer applies.

(10) Allowed Uses. The following uses may be permitted within a wetland buffer, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize negative impacts to the buffer and adjacent wetland:

(a) Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife.

(b) Passive recreation facilities designed and in accordance with an approved critical areas report, including:

(i) Wildlife viewing structures; and

(ii) Walkways and trails, provided pathways are limited to minor crossings having no adverse impacts on water quality. They should generally be parallel to the perimeter of the wetland, located in the outer 25 percent of the wetland buffer area, and avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width for pedestrian use only. Raised boardwalks utilizing nontreated pilings may be acceptable.

(c) Educational and scientific research activities.

(d) Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way; provided, that the maintenance or repair does not increase the footprint or use of the facility or right-of-way.

(e) Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located completely outside of the wetland buffer boundary; provided, that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column would be disturbed. If avoidance of an entrance/exit drilling portal is not feasible, buffer disturbance is permitted with a restoration plan from a qualified wetland professional.

(f) Repair and maintenance of nonconforming uses or structures, where legally established within the buffer, provided they do not increase the degree of nonconformity.

(g) Storm water management facilities, limited to storm water dispersion outfalls and bioswales, may be allowed within the outer 25 percent of the buffer of Category III or IV wetlands only; provided, that:

(i) No other location is feasible; and

(ii) Their location, with mitigation, will not degrade the functions or values of the wetland.

(h) Fencing is allowed in conformance with OHMC 20.12.140. (Ord. 1874 § 2, 2019; Ord. 1801 § 18, 2018; Ord. 1440 § 3, 2005).

20.24.040 Critical areas reports.

If required by the director in accordance with OHMC 20.12.070(2), a critical areas report shall be prepared by a qualified wetlands professional and shall include the following:

(1) A site plan for the project containing the following:

(a) Maps (to scale) depicting delineated and surveyed wetlands and required buffers on site, as well as buffers for off-site critical areas that extend onto the project site or that might be impacted by the proposed activity; the proposed development; other critical areas; grading and clearing limits; and areas of proposed impacts to wetlands and/or buffers (include square footage estimates).

(b) A depiction of the proposed storm water management facilities and outlets (to scale) for the development, including estimated areas of intrusion into the buffers of any critical areas. The written report shall contain a discussion of the potential impacts to the wetland(s) associated with anticipated hydroperiod alterations from the project.

(2) A written report for the project containing the following:

(a) The name and contact information of the applicant; the name, qualifications, and contact information for the primary author(s) of the wetland critical area report; a description of the proposal; identification of all the local, state, and/or federal wetland-related permit(s) required for the project.

(b) A vicinity map for the project.

(c) Documentation of any fieldwork performed on the site, including field data sheets for delineations, rating system forms, baseline hydrologic data, etc.

(d) A description of the methodologies used to conduct the wetland delineations, wetland ratings, or impact analyses, including references.

(e) Identification and characterization of all critical areas, wetlands, water bodies, shorelines, floodplains, and buffers on or adjacent to the proposed project area. For areas of the project site, estimate conditions within 300 feet of the project boundaries using the best available information.

(f) For all wetlands on the subject property and within 300 feet of the project boundary, provide the following: required buffers; wetland rating, including a description of and score for each function (OHMC 20.24.010); wetland buffer width (OHMC 20.24.030); hydrogeomorphic classification; wetland acreage based on a

professional survey from the field delineation (acreages for on-site portion or estimate entire wetland area including off-site portions); Cowardin classification of vegetation communities; habitat elements; soil conditions based on site assessment and/or soil survey information; and to the extent possible, hydrologic information such as location and condition of inlets/outlets (if they can be legally accessed), estimated water depths within the wetland, and estimated hydroperiod patterns based on visual cues (e.g., algal mats, drift lines, flood debris, etc.). Provide acreage estimates, classifications, and ratings based on entire wetland complexes, not only the portion present on the proposed project site.

(g) A description of the proposed actions, including an estimation of acreages of impacts to the wetlands and buffers based on the field delineation and survey and an analysis of site development alternatives, including a no-development alternative.

(h) An assessment of cumulative impacts to wetlands and buffers from development of the site.

(i) Evaluation of the functions of the wetland and adjacent buffer. Include data sheets and references for the method used.

(j) A description of reasonable efforts made to apply mitigation sequencing pursuant to mitigation sequencing (OHMC 20.12.090) to avoid, minimize, and mitigate impacts to critical areas.

(k) A discussion of measures, including avoidance, minimization, and compensation, proposed to preserve existing wetlands and restore any wetlands that were degraded prior to the current proposed land use activity.

(l) A conservation strategy for habitat and native vegetation that addresses methods to protect and enhance on-site habitat and wetland functions.

(3) If compensatory mitigation is proposed, a mitigation plan is required that includes the information identified in OHMC 20.24.050(8).

(4) Unless otherwise provided, a critical areas report may be supplemented by or composed, in whole or in part, of any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. (Ord. 1801 § 19, 2018; Ord. 1440 § 3, 2005).

20.24.050 Compensatory mitigation.

(1) Requirements for Compensatory Mitigation.

(a) Compensatory mitigation for alterations to wetlands and buffers shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with the standards in OHMC 20.12.090, 20.12.100 and this section, and with reference to the Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans – Version 1 (Ecology Publication No. 06-06-011b, Olympia, WA, March 2006, or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Publication No. 09-06-32, Olympia, WA, December 2009).

(b) Mitigation ratios shall be consistent with subsection (7) of this section.

(c) Mitigation requirements may also be determined using the credit/debit tool described in Calculating Credits and Debits for Compensatory Mitigation in Wetlands

of Western Washington: Final Report (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised) consistent with subsection (4) of this section.

(2) Types of Compensatory Mitigation. Mitigation for lost or diminished wetland and buffer functions shall rely on a type listed below in order of preference. A lower-preference form of mitigation shall be used only if the applicant's qualified wetland professional demonstrates to the approval of the director that all higher-ranked types of mitigation are not viable, consistent with the criteria in this section.

(a) Restoration. Restoration (OHMC 20.02.020(85)) of wetlands is divided into re-establishment and rehabilitation.

(i) Reestablishment (OHMC 20.02.020(83)). Reestablishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

(ii) Rehabilitation (OHMC 20.02.020(84)). Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching dikes to reconnect wetlands to a floodplain or return tidal influence to a wetland.

(b) Establishment (Creation, OHMC 20.02.020(78)). Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.

(c) Enhancement (Enhancement, OHMC 20.02.020(79)) is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling nonnative or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities. Applicants proposing to enhance wetlands or associated buffers shall demonstrate how the proposed enhancement will increase the wetland's/buffer's functions, how this increase in function will adequately compensate for the impacts, and how existing wetland functions at the mitigation site will be protected.

(d) Protection/Maintenance (Preservation, OHMC 20.02.020(82)). Preservation includes the purchase of land or easements or repairing water control structures or fences. This term also includes activities commonly associated with the term preservation. Preservation does not result in a gain of wetland acres. Permanent protection of a Category I or II wetland and associated buffer at risk of degradation can be used only if:

(i) The city determines that the proposed preservation is the best mitigation option;

(ii) The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;

(iii) The area proposed for preservation is of high quality or critical for the health of the watershed or basin due to its location. Some of the other high quality features include:

(A) Rare wetland types such as bogs, mature forested wetlands, estuaries, or vital wildlife habitat;
(B) The presence of habitat for priority or locally important wildlife species;
(C) Priority sites in an adopted watershed plan;

(iv) The preserved wetland and buffer are protected in perpetuity through a conservation easement, deed restriction, or dedication as a separate tract;

(v) The city may approve other legal and administrative mechanisms in lieu of a conservation easement if it determines they are adequate to protect the site;

(vi) Creation, restoration, and enhancement opportunities have also been considered and preservation is the best mitigation option. To the extent appropriate and practicable, preservation should be done in conjunction with creation, restoration, and/or enhancement;

(vii) Some combination of mitigation where preservation may be an element is utilized based on an ecological evaluation employing the credit/debit tool described in Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Western Washington: Final Report (Ecology Publication No. 10-06-011, Olympia, WA, March 2012, or as revised).

(3) Location of Compensatory Mitigation. Site selection for compensatory mitigation shall be based on a location that will provide the greatest ecological benefit and have the greatest likelihood of success. Where feasible, mitigation shall occur in the same sub-basin as the permitted wetland alteration. However, if it can be demonstrated that a mitigation site in an alternative sub-basin or watershed would provide a greater ecological benefit and offer a more successful replacement of wetland functions and values, compensatory mitigation may take place in an alternative sub-basin or watershed. If a mitigation bank or in-lieu-fee program is proposed for the required mitigation, documentation shall be provided that demonstrates there is an ecological benefit. The documentation shall also include how locating the mitigation out of the sub-basin or watershed will not impact other nearby critical areas.

(4) Wetland Mitigation Banks. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the mitigation bank instrument. Use of credits from a wetland mitigation bank certified under Chapter 173-700 WAC is allowed if:

(a) The approval authority determines that it would provide appropriate compensation for the proposed impacts; and
(b) The impact site is in the service area of the bank; and
(c) The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and
(d) Replacement ratios for projects using bank credits is consistent with replacement ratios specified in the certified mitigation bank instrument.

(5) In-Lieu-Fee (ILF) Mitigation. Credits from an approved in-lieu-fee program may be used when all the following apply:

(a) The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts; and
(b) The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument; and

(c) Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument for the in-lieu-fee program; and

(d) The impacts are located within the service area specified in the approved in-lieu-fee instrument.

(6) Timing of Compensatory Mitigation. It is preferred that compensatory mitigation projects be completed prior to activities that will disturb wetlands. If that is infeasible, compensatory mitigation shall be completed immediately following disturbance and prior to use or occupancy of the action or development. Construction of mitigation projects shall be timed to reduce impacts to existing fisheries, wildlife, and flora.

(7) Wetland Mitigation Ratios.

(a) When an applicant proposes to alter a wetland, the affected wetland acreage shall be replaced through wetland creation or reestablishment, rehabilitation, enhancement, or preservation according to the ratios established in the table below.

Category and Type of Wetland	Creation or Reestablishment	Rehabilitation	Enhancement	Preservation
Category I – Natural Heritage Site	Not considered possible	Case-by-case	Case-by-case	Case-by-case
Category I – Mature Forested	6:1	12:1	24:1	24:1
Category I – Based on functions	4:1	8:1	16:1	20:1
Category II	3:1	6:1	12:1	20:1
Category III	2:1	4:1	8:1	15:1
Category IV	1.5:1	3:1	6:1	10:1

(8) Compensatory Mitigation Plan. When a project involves wetland and/or buffer impacts, a compensatory mitigation plan prepared by a qualified wetlands professional shall be required, meeting the following minimum standards:

(a) Wetland Critical Area Report. A critical area report for wetlands must accompany or be included in the compensatory mitigation plan and include the minimum parameters described in OHMC 20.24.040.

(b) Compensatory Mitigation Report. The report must include a written report and plan sheets that contain, at a minimum, the following elements:

(i) The written report must contain, at a minimum:

(A) Description of how the project design has been modified to avoid, minimize, or reduce adverse impacts to wetlands;

(B) Complete site characterization to include parcel size, soils, vegetation, hydrology, wildlife, and topography;

(C) Complete site characterization of the proposed mitigation site to include parcel size, soils, vegetation, hydrology, wildlife, and topography;

(D) Goals, objectives, and performance standards for the mitigation proposal;

(E) A description of the proposed mitigation construction activities and timing of activities;

(F) Performance standards for upland and wetland communities, a monitoring and a maintenance schedule and actions proposed by year for a minimum of five years.

(ii) The scaled plan sheets must contain, at a minimum:

(A) Surveyed edges of the existing wetland and buffers, proposed areas of wetland and/or buffer impacts, location of proposed wetland and/or buffer compensation actions.

(B) Conditions expected from the proposed actions on site, including future hydrogeomorphic types, vegetation community types by dominant species (wetland and upland), and future water regimes.

(C) A planting plan for the compensation area, including all species by proposed community type and water regime, size and type of plant material to be installed, spacing of plants, typical clustering patterns, total number of each species by community type, and timing of installation.

(9) Buffer Mitigation Ratios. Impacts to buffers shall be mitigated at a minimum 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

(10) Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for 10 years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. (Ord. 1874 § 3, 2019; Ord. 1801 § 20, 2018; Ord. 1440 § 3, 2005).

Chapter 20.25
FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Sections:

20.25.005 Description and purpose.

The intent of these regulations is to avoid impacts to streams, riparian habitat, anadromous fish, and wildlife conservation areas where such avoidance is feasible and reasonable. This

chapter contains standards, guidelines, criteria and requirements intended to identify, evaluate and mitigate potential impacts to habitat conservation areas within the city and to enhance degraded habitat and streams in appropriate cases. In appropriate circumstances, impacts resulting from regulated activities may be minimized, rectified, reduced and/or compensated for, consistent with this chapter. (Ord. 1801 § 22, 2018).

20.25.010 Classification and designation of fish and wildlife habitat conservation areas.

While not all the following critical fish and wildlife habitat conservation areas are known to exist in the city, their designation here allows for future categorization for protection. The following categories shall be used for relevant development standards:

(1) Areas with which state or federally designated endangered, threatened, and sensitive species have a primary association.
   (a) Federally designated endangered and threatened species are those fish and wildlife species identified by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) that are in danger of extinction or threatened to become endangered. The USFWS and NMFS should be consulted for current listing status.
   (b) State designated endangered, threatened, and sensitive species are those fish and wildlife species native to the state of Washington identified by the Washington Department of Fish and Wildlife (WDFW), that are in danger of extinction, threatened to become endangered, vulnerable, or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. State designated endangered, threatened, and sensitive species are periodically recorded in WAC 232-12-014 (state endangered species) and WAC 232-12-011 (state threatened and sensitive species). The WDFW maintains the most current listing and should be consulted for current listing status.
   (c) State priority habitats and areas associated with state priority species are considered to be priorities for conservation and management. Priority species require protective measures for their perpetuation due to their population status, sensitivity to habitat alteration, and/or recreational, commercial, or tribal importance. Priority habitats are those habitat types or elements with unique or significant value to a diverse assemblage of species. A priority habitat may consist of a unique vegetation type or dominant plant species, a described successional stage, or a specific structural element. Priority habitats and species (PHS) are identified and listed by the WDFW;
(2) Areas of rare plant species or high-quality ecosystems identified by the Washington State Department of Natural Resources (WDNR) through the Natural Heritage Program under Chapter 79.70 RCW;
(3) State Natural Area Preserves and Natural Resource Conservation Areas. Natural area preserves and natural resource conservation areas are defined, established, and managed by the WDNR;

(4) Habitats and species of local importance, as identified by the city in accordance with OHMC 20.25.020;
(5) Commercial and recreational shellfish areas, including all public and private tidelands or bedlands suitable for shellfish harvest as well as shellfish protection districts established pursuant to Chapter 90.72 RCW;
(6) Geoduck concentration areas, including all public and private bedlands suitable for geoduck colonization;
(7) Kelp and eelgrass beds; herring, smelt, and other forage fish spawning areas;
(8) Naturally occurring ponds under 20 acres and their submerged aquatic beds that provide fish or wildlife habitat, including those artificial ponds intentionally created from upland areas for mitigation purposes;
(9) Waters of the state as defined in RCW 90.48.020 and include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters, and all other surface waters and water courses in Washington.
    (a) Stream types are established by the WDNR and classified in WAC 222-16-030 and include:
        (i) Type S water means all waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW including periodically inundated areas of their associated wetlands.
        (ii) Type F water means segments of natural waters other than Type S waters, which are within the bankfull width of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of one-half acre or greater at seasonal low water and which in any case contain fish habitat.
        (iii) Type Np water means all segments of natural waters within the bankfull width of defined channels that are perennial nonfish habitat streams. Perennial streams are waters that do not go dry any time of a year of normal rainfall.
        (iv) Type Ns water means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from any stream reach that is a Type Np water. Type Ns waters must be physically connected by an above-ground channel system to Type S, F, or Np waters.
        (Ord. 1801 § 23, 2018; Ord. 1440 § 4, 2005).

20.25.020 Designation of habitats and species of local importance.

(1) Habitats and species of local importance are those identified for protection by the city. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

(2) The city shall accept and consider nominations for habitat areas and species to be designated as locally important on an annual basis. Habitats and species may be nominated for designation by any person.
(3) Habitats and species to be designated shall exhibit at least one of the criteria in subsections (3)(a) through (3)(c) of this section and shall meet the criteria in subsections (3)(d) through (3)(f) of this section.
    (a) Local populations of native species are vulnerable or declining or are likely to become threatened or endangered based on existing or predictable threats;
    (b) The species or habitat has recreational, commercial, game, tribal, or other special value;
    (c) Long-term persistence of a species within the urban growth area of Oak Harbor is dependent on the protection, maintenance and/or restoration of the nominated habitat;
    (d) Protection by county, state, or federal policies, laws, regulations, or nonregulatory tools is not adequate to prevent degradation of the species or habitat in the city; and
    (e) Without protection, there is likelihood that the species or habitat will decline over the long term.
    (f) Nominated areas must represent high-quality native habitat or habitat that either has a high potential to recover to a suitable condition and is of limited availability or provides landscape connectivity contributing to conservation of the designated species or habitat.
(4) A petition to nominate an area or a species to this category shall contain all of the following, using best available science:
    (a) A statement demonstrating that nomination criteria are met;
    (b) A proposal for whether specific habitat features should be protected (for example, nest sites, breeding areas, and nurseries), or whether the habitat or ecosystem is being nominated in its entirety;
    (c) Proposed management strategies for the species or habitats. Where restoration of habitat is proposed, a conceptual plan for restoration must be provided as part of the nomination;
    (d) Signatures of all petitioners.
(5) The director shall determine whether the nomination proposal is complete, and if complete, shall evaluate it according to the characteristics enumerated in subsection (3) of this section and make a recommendation to the planning commission based on those findings.
(6) The planning commission shall hold a public hearing for proposals found to be complete and make a recommendation to the city council based on the characteristics enumerated in subsection (3) of this section.
(7) Following the recommendation of the planning commission, the city council shall hold an additional public hearing and shall determine by ordinance whether the designation criteria in this section have been met. Designation of a habitat or species of local importance shall be by ordinance.
(8) Approved nominations shall be specified in OHMC 20.25.010 and shall be subject to the provisions of the critical areas regulations in this title. (Ord. 1440 § 4, 2005).

20.25.030 Mapping.

The following, in addition to critical areas maps available through the city, may be used as a guide for locating fish and wildlife habitat conservation areas:

(1) WDFW priority habitat and species maps;
(2) Maps developed by the Island County marine resources committee, including the location of eelgrass and forage fish spawning areas;
(3) Maps developed by the Salmon Recovery Technical and Citizens Committee, Island County Water Resources Inventory Area 6;
(4) WDNR Natural Heritage Program maps and mapping data;
(5) Washington State Department of Health inventory of shellfish harvest areas;
(6) WDNR official water type reference maps;
(7) WDNR Puget Sound intertidal habitat inventory maps;
(8) WDNR shore zone inventory;
(9) WDFW "SalmonScape" accessible at http://apps.wdfw.wa.gov/salmonscape/;
(10) Northwest Indian Fisheries Commission – "Statewide Washington Integrated Fish Distribution" accessible at http://geo.nwifc.org/SWIFD/; and
(11) WDFW "Land Use Planning For Salmon, Steelhead and Trout: A Land Use Planner's Guide to Salmonid Habitat Protection and Recovery." (Ord. 1801 § 24, 2018; Ord. 1440 § 4, 2005).

20.25.040 Riparian buffers.

(1) Standard Buffer Widths. Aquatic fish and wildlife habitat conservation areas shall be protected with vegetated buffers, which also provide riparian wildlife habitat. These buffers shall have the following standard widths, measured perpendicular from the ordinary high water mark of the water body:
    (a) Type F streams: 100 feet throughout all reaches used by salmonids at any life stage at any time of the year, including reaches likely to be used by salmonids after foreseeable downstream restoration, as determined by the director;
    (b) Type Np and Ns streams: 50 feet;
    (c) Type S (including marine shorelines identified as fish and wildlife habitat conservation areas): 100 feet.
(2) Reductions for Lower Impact Land Uses. Buffer widths in subsection (1) of this section assume high-intensity land use is occurring adjacent to the water body, as is characteristic of an urban area. These widths may be reduced up to 25 percent if measures to minimize the impacts of the land use adjacent to the water body are applied, such as use of low impact development techniques, if feasible, retention of as much native vegetation and soils as possible, direction of noise and light away from the water body, and other measures that may be suggested by a qualified professional. Buffer widths may also be reduced up to 25 percent for lower impact land uses such as agriculture, at the discretion of the director and if best management practices are applied. If proposed future land uses are more intense, they are not eligible to maintain this reduction.
(3) Reductions for Restoration. Buffer widths may be reduced up to an additional 25 percent if the buffer is restored or enhanced from a preproject condition that is

disturbed (e.g., dominated by invasive species), so that functions of the postproject buffer are equal or greater. The restoration plan must meet requirements in OHMC 20.12.100 for a mitigation plan and OHMC 20.25.050 for a critical areas report. This reduction may be added to reductions for lower impact land uses.

(4) Buffer Averaging. The director shall have the authority to average buffer widths on a case-by-case basis, where a qualified professional demonstrates to the director's satisfaction that all of the following criteria are met:
   (a) The total area contained in the buffer after averaging is no less than that contained within the buffer prior to averaging;
   (b) Decreases in width are generally located where riparian functions may be less sensitive to adjacent land uses, and increases are generally located where riparian functions may be more sensitive to adjacent land uses, to achieve no net loss or a net gain in functions;
   (c) The averaged buffer, at its narrowest point, shall never be less than 25 feet;
   (d) The buffer has not been reduced in accordance with this section. Buffer averaging is not allowed if the buffer has been reduced; and
   (e) There were no feasible alternatives to the site design without buffer averaging.

(5) Signage. Signs shall identify postproject riparian buffers as critical areas or native growth protection areas, in accordance with OHMC 20.12.140(2).

(6) Allowed Uses. The following uses may be permitted within a riparian buffer, provided they are not prohibited by any other applicable law and they are conducted in a manner so as to minimize negative impacts to the buffer and adjacent water body:
   (a) Conservation or restoration activities aimed at protecting the soil, water, vegetation, or wildlife and designed consistent with the WDFW "Stream Habitat Restoration Guidelines" (2012).
   (b) Passive recreation facilities consistent with an approved critical areas report, including:
      (i) Wildlife-viewing structures; and
      (ii) Walkways and trails, provided pathways minimize adverse impacts on water quality. They should generally be parallel to the perimeter of the water body, located in the outer 25 percent of the riparian buffer area, and avoid removal of significant trees. They should be limited to pervious surfaces no more than five feet in width.
   (c) Stream crossings, if necessary to provide access to property and if impacts are fully mitigated consistent with an approved critical areas report and the Washington State Department of Fish and Wildlife "Water Crossing Design Guidelines" (2013).
   (d) Storm water management facilities, limited to approved low impact development techniques, may be allowed within the outer 25 percent of riparian buffers; provided, that:
      (i) No other location with less impact is feasible; and
      (ii) Mitigation for impacts is provided to achieve no net loss or a net gain in functions.
   (e) Marine Shoreline Erosion Control Measures. New, replacement, or substantially improved marine shoreline erosion control measures may be permitted, consistent

with all necessary state and federal permits and in accordance with an approved critical areas report that demonstrates the following:
(i) No feasible alternative would provide adequate protection to upland property;
(ii) Bioengineering or soft armoring shall be employed to the greatest extent feasible;
(iii) Mitigation measures shall ensure there is no net loss of the functions or values of intertidal or riparian habitat, allowing for off-site mitigation if necessary.

(f) Accepted erosion control measures may be found in the WDFW "Marine Shoreline Design Guidelines" (2014).

(g) Streambank Stabilization. Streambank stabilization to protect structures from future channel migration is not permitted except when achieved through bioengineering or soft armoring techniques in accordance with an approved critical areas report and all necessary state and federal permits.

(h) Streambank stabilization techniques may be found in the WDFW "Integrated Streambank Protection Guidelines" (2002).

(i) Public Flood Protection Measures. New public flood protection measures and expansion of existing ones may be permitted, subject to the director's review and approval of a critical areas report and all necessary state and federal permits. (Ord. 1801 §§ 25 – 28, 2018; Ord. 1440 § 4, 2005).

20.25.050 Critical areas reports.

If required by the director in accordance with OHMC 20.12.070(2), a critical areas report for fish and wildlife habitat conservation areas shall meet the requirements of this section.

(1) A critical areas report shall be required for all development within 300 feet of any stream or marine fish and wildlife habitat conservation area.

(2) At a minimum, the report shall contain the following:
(a) The name and contact information of the applicant, a description of the proposal, and identification of the permit requested;
(b) A copy of the site plan for the development proposal including:
(i) A map to scale depicting fish and wildlife habitat conservation areas, wetlands, buffers, the development proposal, and any areas to be cleared or graded; and
(ii) A description of the proposed stormwater management plan for the development and consideration of impacts from drainage alterations.
(iii) The dates, names, and qualifications of the persons preparing the report and documentation of any fieldwork performed on the site.

(3) Proposals shall be exempt from further report requirements under the following conditions:
(a) They are consistent with riparian buffer requirements in OHMC 20.25.040(1) or allowed uses in OHMC 20.25.040(6);
(b) They comply with Chapter 20.16 OHMC and will not affect other fish and wildlife habitat conservation areas, following criteria established by the director.

(4) Reports not exempt under subsection (3) of this section shall be prepared by a qualified professional in accordance with OHMC 20.02.020(54), with experience preparing reports

for the relevant type of habitat, and including the requirements established in OHMC 20.12.070.

(5) Critical areas reports for fish and wildlife habitat conservation areas shall address the following geographic areas:
   (a) The land parcel of the proposed activity;
   (b) All fish and wildlife habitat conservation areas, including riparian buffers identified in OHMC 20.25.040(1), within 300 feet of the project area; and
   (c) All wetlands and geologically sensitive areas within 300 feet of the project area.

(6) A critical areas report for a fish and wildlife habitat conservation area shall contain an assessment of habitats, including the following information at a minimum:
   (a) A detailed description of vegetation throughout the areas identified in subsection (5) of this section;
   (b) Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat in these areas, and an assessment of potential project impacts on the species;
   (c) A discussion of any federal, state, or local special management recommendations, including WDFW habitat management recommendations, that have been developed for habitats located in these areas or the species identified in subsection (6)(b) of this section.
   (d) A detailed discussion of the direct and indirect potential cumulative impacts on habitat from development of the site, including potential impacts to water quality;
   (e) Documentation of any fieldwork performed on the site, and a description of the methodologies used to conduct habitat assessments and impact analyses, including references and all assumptions made or relied upon;
   (f) An analysis of site development alternatives, including a no development alternative;
   (g) A discussion of proposed mitigation, consistent with OHMC 20.12.090, Mitigation sequencing, and OHMC 20.12.100, Mitigation plan requirements; and
   (h) A discussion of ongoing management practices that will protect habitat after the project site has been developed, including proposed monitoring and maintenance programs.

(7) When appropriate, due to the type of habitat or species present or the project area conditions, the director may also require the habitat management plan to include:
   (a) An evaluation by an independent qualified professional regarding the applicant's analysis and the effectiveness of any proposed mitigating measures or programs, to include any recommendations as appropriate;
   (b) A request for consultation with the WDFW or the local Native American Indian tribe or other appropriate agency; and
   (c) Detailed surface and subsurface hydrologic features both on and adjacent to the site.

(8) Unless otherwise provided, a critical areas report may be supplemented by or composed of, in whole or in part, any reports or studies required by other laws and regulations or previously prepared for and applicable to the development proposal site, as approved by the director. (Ord. 1801 §§ 29 – 33, 2018; Ord. 1440 § 4, 2005).

20.25.060 Performance standards – Approval of activities.

(1) Approval of Activities. The director shall condition approval of activities allowed within or adjacent to a habitat conservation area, or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:
   (a) Establishment of buffer zones;
   (b) Preservation or restoration of critically important vegetation and/or habitat features such as snags and downed wood;
   (c) Preservation or restoration of contiguous wildlife habitat corridors, to minimize the isolating effects of development on habitat areas;
   (d) Limitation of access to the habitat area, including fencing to deter unauthorized access;
   (e) Seasonal restriction of construction activities;
   (f) Establishment of a duration and timetable for periodic review of mitigation activities; and
   (g) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

(2) Nonindigenous Species. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

(3) Mitigation and Contiguous Corridors. Mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

(4) Mitigation and Equivalent or Greater Biological Functions. Mitigation for alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve equivalency or improvement on a per function basis.

(5) Approvals and the Best Available Science. Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science.

(6) Establishment of Buffers.
   (a) The director shall require the establishment of buffer areas for activities adjacent to habitat conservation areas when needed to protect habitat conservation areas. Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths shall reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby.
   (b) Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

(c) All land and shoreline uses, development, occupancy, and critical area resource management of any kind shall comply with the provisions of the City of Oak Harbor Shoreline Master Program (SMP).

(7) Endangered, Threatened, and Sensitive Species.

(a) No development shall be allowed within a habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, unless a management plan consistent with applicable state or federal agency regulations or guidance is provided. Appropriate management measures shall be included in a critical areas report for review by the city. The city may require a consultation with the respective agency prior to approval.

(b) Nesting bald eagles and bald eagle habitat shall be protected consistent with the USFWS Bald Eagle Management Guidelines, or the state or federal regulations in place at the time of application. Whenever activities are proposed adjacent to a verified nest territory or communal roost, a bald eagle habitat management plan shall be developed. Activities are adjacent to managed bald eagle sites when they are within 660 feet of a nest or within 1,000 feet of a great blue heron colony; or within distances determined by the director for other fish and wildlife habitat conservation areas. Proposed activities which may affect oak trees must comply with Chapter 20.16 OHMC.

(8) Anadromous and Resident Fish.

(a) All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

(i) Activities shall be timed to occur only during the allowable work window as designated by the WDFW for the applicable species;

(ii) An alternate alignment or location for the activity is not feasible;

(iii) The activity is designed so that it will not degrade the functions or values of the fish habitat or other critical areas;

(iv) Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical area report; and

(v) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved critical area report.

(b) Structures that prevent the migration of fish shall not be allowed in the portion of water bodies currently, historically, or potentially used by fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.

(Ord. 1801 § 34, 2018; Ord. 1440 § 4, 2005).

Chapter 20.28
GEOLOGICALLY HAZARDOUS AREAS

Sections:

20.28.010 Designation of geologically hazardous areas.

(1) Geologically hazardous areas include areas susceptible to erosion, sliding, earthquake, tsunami, or other geologic events and conditions. Improper and incompatible development sited in these areas can pose a threat to the health and safety of citizens, placing not only itself at risk, but also potentially creating or increasing hazards to surrounding development and land uses. Areas susceptible to one or more of the following types of hazards shall be designated as a geologically hazardous area:
   (a) Areas mapped on the city of Oak Harbor geologically hazardous areas map;
   (b) Unstable slopes, as defined in OHMC 20.02.020;
   (c) Steep slopes, as defined in OHMC 20.02.020; and
   (d) Areas of moderate to high liquefaction due to soil type and/or location or seismically induced ground disturbance such as surface rupture, fissuring, and lateral spreading.

(2) As the city is not impacted by mine or volcanic hazards, development in the city shall comply with International Building Code (see OHMC Title 17) requirements with respect to these potential hazards. (Ord. 1801 § 36, 2018; Ord. 1440 § 5, 2005).

20.28.020 Critical areas report.

All single-family residential development within 100 feet of a designated geologically hazardous area and all commercial, industrial, or multifamily developments within 200 feet of a designated geologically hazardous area shall be considered “adjacent” to the geologically hazardous area and shall be required to submit a critical areas report, as described in this section. The director shall approve the critical areas report only if it demonstrates that the proposed development will not increase the risk of harm to public safety or neighboring properties or critical areas. To determine if a critical areas report is required on slopes between 15 and 39 percent, the director may require the applicant to provide a letter prepared by a certified geologist or civil engineer specializing in geotechnical engineering that determines whether springs or ground water seepage is present on the subject slope.

(1) Geotechnical Analysis. Except as provided in subsections (2) and (3) of this section, all development proposals within or adjacent to a designated geologically hazardous area

shall submit a site assessment, geotechnical report, grading and erosion control plan and landscape/revegetation plan. This analysis shall contain the following information:

(a) Site Assessment. Along with the standard site plan requirements, the following information shall be provided for the subject property, prepared by a licensed land surveyor:
  (i) Topography map at two-foot contour intervals for the entire site, including abutting public rights-of-way, private roads, or access easements;
  (ii) Location of all significant trees (evergreen or deciduous trees 12 inches or more in diameter measured four feet above existing grade);
  (iii) Location of all manmade drainage structures or features including pipes, drains, catch basins, drainage structures, culverts, and underdrain pipes;
  (iv) Location of all frequently flooded areas, as defined in Chapter 17.20 OHMC, and all other critical areas, as defined in this title, including: oak trees, wetlands, fish and wildlife habitat conservation areas, critical aquifer recharge areas, and geologically hazardous areas;
  (v) Location of all existing site improvements and the amount of existing hard surface area; and
  (vi) Location of all utilities, both above and below ground.

The site plan shall also include a vicinity map, showing the location of the property in relationship to surrounding lots and other critical areas.

(b) Geotechnical Report. The report, prepared by a qualified professional, shall include an assessment of the geologic characteristics of the soils, sediments, and/or rock of the project area and potentially affected adjacent properties, and a review of the site history regarding landslides, erosion, and prior grading. Soils analysis shall be prepared in accordance with accepted classification systems in use in the region. The assessment shall include, but not be limited to:
  (i) Data regarding underlying geology, slope gradients, soil types, and subsurface information, including boring and/or test pit logs describing soil stratification and results of soil tests conducted;
  (ii) Identify any previous landslide activity in the vicinity of the project and provide an assessment of the overall slope stability and the effect the development will have on the slope and adjacent properties over time;
  (iii) Recommendations for grading procedures, fill placement, and compaction criteria, temporary and permanent slope inclinations and support, and design criteria for corrective measures and opinions and recommendations regarding the capabilities of the site;
  (iv) Evaluation of the seismic stability of the site in drained and saturated conditions, including a statement that the design criteria of proposed structures consider a seismic event with a 10 percent probability of being exceeded in 50 years;
  (v) Potential for liquefaction and proposed mitigation measures;
  (vi) A description of the hydrology (both surface and subsurface) of the site, including locations of any wetlands, streams, springs, seeps, and ground water along with recommendations consistent with the city's critical areas regulations for addressing any impacts;

(vii) A recommendation on building site location, foundation type and depths, minimum building setbacks, minimum deck and accessory building setbacks, and if necessary the minimum no-disturbance setback from any geologically sensitive area based upon the geotechnical analysis. The report shall also include recommendations on the design of temporary and permanent retaining structures if any are proposed;

(viii) An estimate of bluff retreat rate that recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm event; and

(ix) Recommendations and requirements for handling contaminated soils and materials if encountered on the site.

(c) Grading and Erosion Control Plan. The plan shall be prepared by a qualified professional and shall include:

(i) A schedule showing when each stage of the project will be completed, and estimate starting and completion dates, limiting the time that soil is exposed and unprotected to the shortest possible period.

(ii) Measures to be taken for slope stabilization and erosion control, using best management practices as contained in the Washington State Department of Ecology's 2012 Stormwater Management Manual for Western Washington (as amended December 2014): Volume II, Construction Stormwater Pollution Prevention (Publication No. 14-10-055), or future updated publications or other methodology as approved by the director.

(d) Landscape/Revegetation Plan. A revegetation plan shall be prepared which:

(i) Shows measures to be taken for protection and replacement of the natural vegetative cover;

(ii) Includes a note stating that vegetation trimming debris shall be removed from slopes in such a fashion as to not disturb existing vegetation; and

(iii) Includes a schedule showing when each stage of the project will be revegetated with estimated starting and completion dates.

(2) Geotechnical Letter Requirements. For the following small development applications, a letter prepared by a qualified professional may be prepared in lieu of the full geotechnical reporting requirements:

(a) Building additions less than 30 percent of their entire structural footprint.

(b) Additions to a building's height where the footprint of the existing structure is not changed.

(c) Earth retaining walls less than 10 feet in height and set back more than 50 feet from the top of a steep slope.

(d) Detached auxiliary buildings such as garages and sheds with no living spaces.

A geotechnical letter shall include an assessment of the existing geologic and geotechnical site conditions, including surface water runoff, ground water, soil types, erosion, and slope stability. The qualified professional shall prepare conclusions and recommendations on the suitability of the proposed development and any mitigation necessary to address existing site conditions that may need to be modified due to the proposed development.

(3) Exceptions. For the following single-family and multifamily residential development applications, the director may waive the requirements for geotechnical analysis or letter, if the development is unlikely to have any impact on a geologically hazardous area:

(a) Single-story additions to a single-family residence less than 200 square feet in size, located so that the addition is no closer than the facade closest to the steep or unstable slope of the existing structure.
(b) Detached auxiliary buildings such as garages and sheds that are 50 feet or more away from a steep or unstable slope.
(c) Decks attached to single-family and multifamily structures where no additional load-bearing weight is added to an adjacent steep or unstable slope. (Ord. 1801 §§ 37 – 40, 2018; Ord. 1784 § 77, 2016; Ord. 1440 § 5, 2005).

20.28.030 Building setback.

(1) New structures and additions to existing structures within or adjacent to a geologically hazardous area shall be set back a minimum of 25 feet from the top of a steep or unstable slope unless a larger setback is recommended in a geotechnical analysis or by the International Building Code. In no case shall the setback be less than 25 feet from a steep or unstable slope unless allowed through the "reasonable use" provisions of OHMC 20.12.060 and supported by a geotechnical report and approved by the director. Decks which add no substantial loading weight to the hazardous area and accessory buildings 120 square feet or less may extend into the setback area to within 10 feet of the top or toe of a steep or unstable slope, unless a larger setback is recommended by the geotechnical analysis or by the International Building Code.
(2) Signage. After completion of the project, the top of the steep or unstable slope shall be identified with signage as approved by the director, as a critical area or native growth protection area, in accordance with OHMC 20.12.140(2). (Ord. 1801 §§ 41, 42, 2018; Ord. 1440 § 5, 2005).

20.28.035 Reduction of storm water impacts.

Storm water impacts shall be addressed in compliance with geotechnical recommendations, city code, and the Washington State Department of Ecology's 2012 Stormwater Management Manual for Western Washington (as amended December 2014) (Publication No. 14-10-055), or future updated publications, and other applicable regulations. Storm water drainage in areas of steep or unstable slopes shall be designed in such a manner that storm water does not create stability or erosion impacts. Surface drainage shall be directed away from landslide and erosion hazard areas. When no other solution is feasible, surface drainage piping may be located on the face of a geologically hazardous area when contained in a pipe slope drain (closed, nonleaking pipe) in such a way that erosion will not be exacerbated. At no time shall concentrated storm water runoff be allowed to flow uncontained over a steep or unstable slope or impact a neighboring property. (Ord. 1801 § 43, 2018).

20.28.040 Modifications and flexibility.

Minor alterations on steep or unstable slopes or associated setbacks may be allowed by the director where all of the following standards have been met:

(1) A site assessment has been submitted showing that the proposal will have no adverse impact on the stability or erosion susceptibility of the slope;
(2) The impacted area totals no more than 20 percent of the entire site;

(3) The modification will not increase surface water discharge or sedimentation to adjacent properties or critical areas beyond predevelopment conditions;
(4) The activity will not adversely impact other critical areas;
(5) The development will not decrease slope stability on adjacent properties.
(Ord. 1801 § 44, 2018; Ord. 1784 § 78, 2016; Ord. 1440 § 5, 2005).

20.28.050 Repair of slope instabilities.

Repair of slope instabilities and slope failures on an emergency basis shall be allowed by the director as needed to correct an immediate danger to the public health, welfare and safety. The director shall use the guidance of this chapter when evaluating the necessary repairs and add mitigation measures as appropriate to ensure that the intent of this chapter has been met. (Ord. 1440 § 5, 2005).

20.28.060 Seasonal restriction and best management practices.

Clearing and grading within the wet weather months (October through April) shall be allowed in or adjacent to geologically hazardous areas only with the approval of the director. The developer shall fully implement a wet weather construction plan using at a minimum the current best management practices as contained in the Washington State Department of Ecology's 2012 Stormwater Management Manual for Western Washington (as amended December 2014): Volume II, Construction Stormwater Pollution Prevention (Publication No. 14-10-055), or future updated publication. If the wet weather construction plan is not implemented or turbid water leaves the site, construction shall be stopped immediately until proper erosion control devices are implemented and established. Best management practices include, but are not limited to:

(1) Exposed soils shall be protected from the forces of rain and flowing water within two days during the winter season and seven days during the summer season.
(2) Erosion control devices shall include as appropriate silt fences, straw mats, hay bales, filter fabrics, plastic sheeting, mulch, retention of vegetative buffers, and soil stabilization plant materials.
(3) Development shall be phased to limit the area of exposed soils to no more than two acres at a time.
(4) Water flows shall be directed away from steep or unstable slopes. At no time shall water be allowed to flow freely over steep or unstable slopes.
(5) Vegetation removal or planting on steep slopes shall be conducted by hand or by nonimpacting procedures as approved by the director. Heavy equipment shall not be allowed on steep or unstable slopes. (Ord. 1801 § 45, 2018; Ord. 1784 § 79, 2016; Ord. 1440 § 5, 2005).

Chapter 20.32
CRITICAL AQUIFER RECHARGE AREAS

Sections:

20.32.010 Designation of critical aquifer recharge areas.

The goal of designating critical aquifer recharge areas (CARAs) is to protect the functions and values of Oak Harbor's drinking water by preventing pollution and maintaining supply.

(1) CARAs are those areas with a critical recharging effect on aquifers used for potable water. CARAs have prevailing geologic conditions associated with infiltration rates that create a high potential for contamination of ground water resources or contribute significantly to the replenishment of ground water. These include aquifer recharge areas moderately or highly susceptible to degradation, as identified by the Island County aquifer recharge area map or other study using criteria established by the Washington State Department of Ecology for soil permeability, geologic matrix, infiltration and depth to water.

(2) The approximate location and extent of CARAs are shown on the city's adopted critical areas maps. These maps are to be used as a reference for the city, project applicants and property owners and may be superseded by new data. (Ord. 1801 §§ 46, 47, 2018; Ord. 1440 § 6, 2005).

20.32.020 Regulated activities.

The following permitted activities or land uses are subject to the requirements of this chapter, when conducted within 200 feet of a CARA moderately or highly susceptible to degradation:

(1) Above or below ground storage tanks for hazardous substances or hazardous wastes.

(2) Commercial, industrial, institutional or other facilities that include: automobile washers, chemical treatment storage and disposal facilities, dry cleaners, hazardous waste generators, junk yards and salvage yards, oil and gas drilling, on-site sewage systems, pesticide storage and use, petroleum transmission facilities and/or storage tanks, solid waste handling and recycling facilities, vehicle repair and services, wastewater application to land surfaces, and other activities that create a significant risk of contaminating CARAs.

(3) Residential sewage disposal systems that serve two or more residences or that have a density greater than one system per acre.

(4) Stormwater management facilities that infiltrate the majority of water they manage. (Ord. 1801 § 48, 2018; Ord. 1440 § 6, 2005).

20.32.030 Critical areas report.

(1) For all regulated activities, the applicant shall submit a report describing the best management practices to be used to minimize the risk of aquifer contamination. At a minimum, these practices shall include those recommended by the Stormwater Management Manual for Western Washington: Volume IV, Source Control BMPs (Publication No. 14-10-055) or future updated publications, as applicable, and shall comply with requirements in the Washington Administrative Code for the proposed activity.

(2) The following general development standards shall apply to all regulated activities:
  (a) Floor drains shall be connected to an approved sanitary sewer system;
  (b) Vehicle washing facilities must be self-contained and connected to an approved sanitary sewer system;
  (c) Underground tanks shall be installed in accordance with Chapter 173-360 WAC, Underground Storage Tanks;
  (d) Vehicle repair and service areas shall be conducted over impermeable pads and located within an enclosed structure;
  (e) Chemicals shall be stored in a manner that is protected from the weather and located within containment areas; and
  (f) Additional protective measures may be required if deemed necessary by the city of Oak Harbor.

(3) The applicant shall also submit a spill prevention plan that identifies equipment being used or any structures that could fail and contaminate CARAs. The plan shall include provisions for regular inspection, repair, replacement, clean-up methods to be used, and methods to dispose of all spilled materials.

(4) If the director determines that additional precautions may be necessary to protect against ground water contamination, a hydrogeologic site evaluation prepared by a qualified professional who has training and experience in hydrogeology per WAC 308-15-057 may be required. The city may engage an independent qualified professional to review the evaluation, at the applicant's expense. The evaluation shall address some or all of the following, as specified by the director:
  (a) Hydrogeologic Setting.
    (i) Description of the geologic setting of the site, illustrated with geologic and soil maps;
    (ii) Discussion of geologic features which may influence ground water movement, such as faults, landforms, etc.;
    (iii) Description of the occurrence and movement of groundwater in the area, including a general discussion of aquifer recharge and discharge, depth of groundwater and groundwater flow patterns; and
    (iv) General discussion of groundwater quality in the area.
  (b) Site-Specific Hydrogeologic Data.
    (i) Scaled map showing the location of wells (in use or inactive) and springs within 1,000 feet of the site or as required by the director;
    (ii) Depth to groundwater layer in the immediate vicinity;

(iii) Hydrogeological cross-sections through the site and immediate vicinity with references to information used to prepare the cross-sections;
(iv) Description of groundwater movement beneath the site with considerations for the following:
(A) Areal distribution, stratification and hydraulic conductivity of the water-bearing formations;
(B) Probable migration pathways for contaminants;
(C) An estimate of the probable times of travel through the soil horizontally and vertically from a potential contaminant source;
(v) Description of how the contaminants of concern will be attenuated within the saturated zone; and
(vi) Estimate of the quantity and/or quality of water recharged to the saturated zone under anticipated operation.

(5) A mitigation plan shall be required to address groundwater impacts identified in the hydrogeologic site evaluation, consistent with OHMC 20.12.090 and 20.12.100. The director may require that the plan include monitoring, process controls, remediation and discussion of alternatives. (Ord. 1801 §§ 49, 50, 2018; Ord. 1784 § 80, 2016; Ord. 1440 § 6, 2005).

Chapter 20.34
FREQUENTLY FLOODED AREAS

Sections:

20.34.010 Description and purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas caused by flooding, while protecting the functions and values of the floodplains. In addition, this chapter will give special consideration to anadromous fish habitat in combination with Chapter 20.25 OHMC, Fish and Wildlife Habitat Conservation Areas. (Ord. 1801 § 51, 2018).

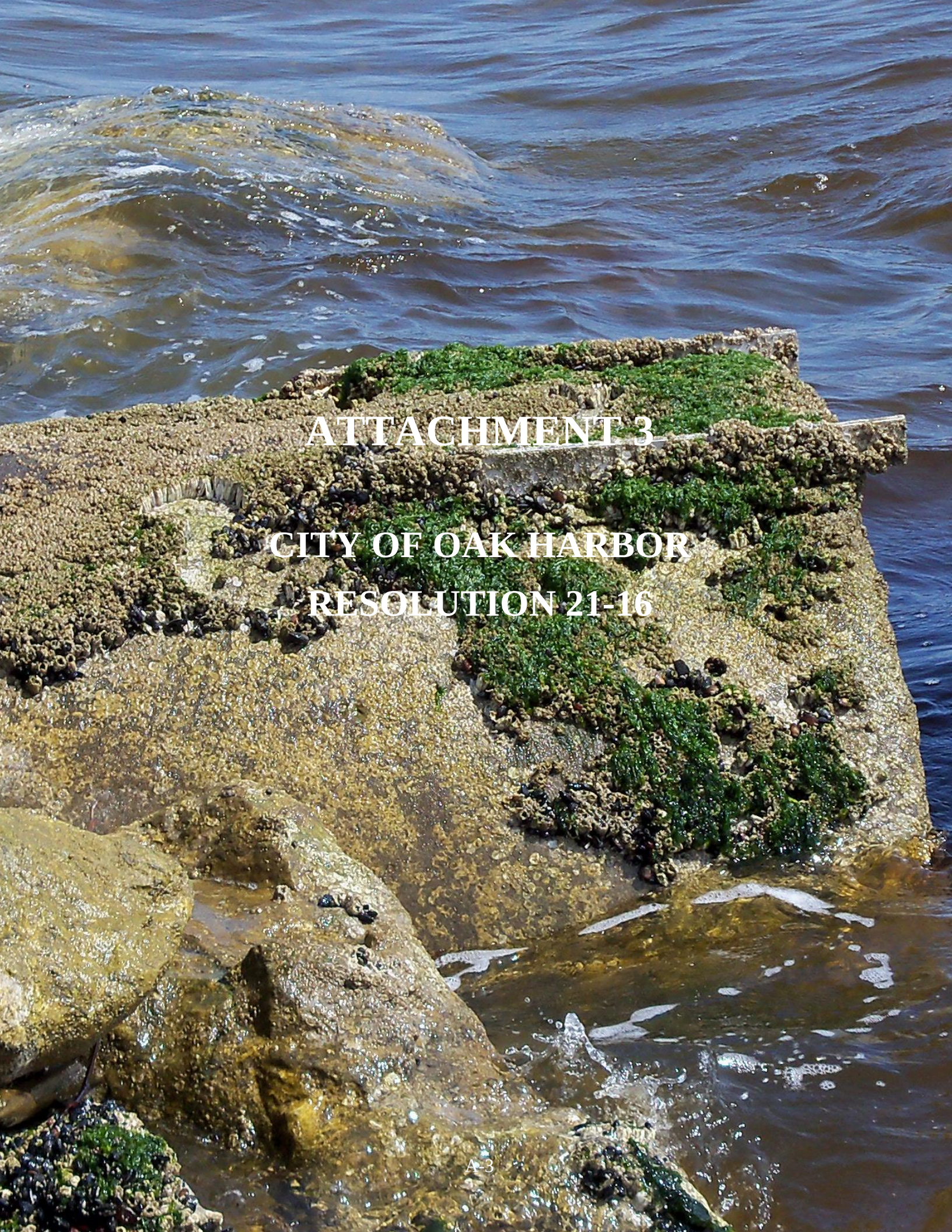
20.34.020 Classification and designation.

Frequently flooded areas are lands in the floodplain subject to at least a one percent or greater chance of flooding in any given year, or within areas subject to flooding due to high ground water. These areas include, but are not limited to, streams, rivers, lakes, coastal areas, wetlands, and areas where high ground water forms ponds on the ground surface (WAC 365-190-030(8)). Those frequently flooded areas (a.k.a. areas of special flood hazard) are identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study of Island County and Incorporated Areas for the city of Oak Harbor" dated March 12, 2016, and any revisions thereto, with an accompanying Flood Insurance Rate

Map (FIRM), dated March 7, 2017, and any revisions thereto. The best available information for flood hazard area identification as outlined in OHMC 17.20.150(2) shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under OHMC 17.20.150(2). (Ord. 1801 § 51, 2018).

20.34.030 General provisions, administration, provisions for flood hazard reduction.

All general provisions, administration and provisions for flood hazard reduction are encompassed in Chapter 17.20 OHMC (Flood Damage Prevention). (Ord. 1801 § 51, 2018).



ATTACHMENT 3

CITY OF OAK HARBOR

RESOLUTION 21-16

CITY OF OAK HARBOR
RESOLUTION NO. 21-16

A RESOLUTION OF THE CITY OF OAK HARBOR APPROVING THE SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENTS AND DIRECTING STAFF TO FORWARD THE SHORELINE MASTER PROGRAM AMENDMENTS TO THE WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR FORMAL ACTION PURSUANT TO WAC 173-26-110.

WHEREAS, the Shoreline Management Act (SMA) of 1971, codified as RCW Chapter 90.58, requires all cities and counties with "shorelines of the state" to prepare and adopt a Shoreline Master Program (SMP) that is based on state laws and rules, tailored to the local jurisdiction; and,

WHEREAS, in February 1972, the City of Oak Harbor adopted its Shoreline Management Act-based SMP via Ordinance No. 309; and,

WHEREAS, the 1972 City of Oak Harbor SMP underwent major updates in February 1999 (Ordinance No. 1165) and again in December 2013 (Ordinance No. 1675); and,

WHEREAS, WAC 173-26-090(2)(a) requires each local government conduct a review of their master program at least once every eight years, and, if necessary, revise their master programs; and,

WHEREAS, WAC 173-26-090(3)(b) requires this periodic review address the following: amendments to the SMA and Washington Department of Ecology (DOE) program guidelines and incorporate as necessary; a review of locally adopted comprehensive plans and development regulations to ensure consistency; and, potential amendments needed to reflect changed circumstances, new information, or improved data; and,

WHEREAS, at a City of Oak Harbor City Council workshop on August 28, 2019, the City Council directed staff to incorporate the optional joint review process with DOE pursuant to WAC 173-26-104; and,

WHEREAS, in May 2020, to assist in providing information to the public on the periodic review, a webpage was developed disseminating pertinent information which included: project overview; scope of review; public participation opportunities; SEPA documents; proposed draft plan amendments; and supplementary documents; and,

WHEREAS, from February 26, 2019 to April 27, 2021 the SMP periodic review was discussed at twelve regularly advertised Planning Commission meetings; and,

WHEREAS, from February 27, 2019 to April 28, 2021 the SMP periodic review was discussed at eleven regularly advertised City Council meetings and workshops; and,

WHEREAS, pursuant to WAC 173-26-104(2)(c)(i) the City provided reasonable notice and opportunity for public comment during a 30-day joint City/DOE comment period from March 1, 2021 to March 31, 2021; and,

WHEREAS, no public or agency comments were received during the 30-day joint City/DOE comment period; and,

WHEREAS, on March 13, 2021 the City's SEPA responsible official issued a Determination of Nonsignificance (DNS), SEPA file SEP-21-03, with no appeal filed; and,

WHEREAS, on March 17, 2021, pursuant to RCW 36.70A.106, a notice of intent to amend development regulations was transmitted by the City to the Washington Department of Commerce; and,

WHEREAS, on March 23, 2021 pursuant to WAC 173-26-104(2)(c)(ii) the City and DOE held a properly noticed local/state public hearing before the City's Planning Commission; and,

WHEREAS, on March 25, 2021 a neighborhood forum was held to discuss and receive resident input on a geologic study (City of Oak Harbor Residential Bluff Conservancy – Policy and Regulation Review, January 2021) performed in the Residential-Bluff Conservancy Designation; and,

WHEREAS, based on recommendations contained in that geologic study and resident comments received at the neighborhood forum, revisions focused at bluff setback, vegetation retention, and density were incorporated into the draft SMP; and,

WHEREAS, on April 13, 2021 the City transmitted the necessary materials, in conformance with WAC 173-26-104(3)(a), to initiate DOE's determination of consistency; and,

WHEREAS, on April 21, 2021 the City received confirmation from DOE that the April 13, 2021 submittal included all required materials in conformance with WAC 173-26-104(3)(a); and,

WHEREAS, a determination of consistency was received from the DOE in May 2021; and,

WHEREAS, a revised SMP draft incorporating recommended state revisions and amendments based on comments and new information was presented by the City's Development Services at a properly noticed Planning Commission public hearing held May 25, 2021; and,

WHEREAS, after due consideration, the Planning Commission forwarded a recommendation of approval to the City Council; and,

WHEREAS, a properly noticed City Council public hearing was held on June 1, 2021, wherein the Council continued the public hearing to June 30, 2021, to provide an opportunity for further review and discussion on the proposed amendments; and,

WHEREAS, following additional discussion, the City Council approved Resolution No. 21-16 adopting the amended Shoreline Master Program included as Exhibit A;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Oak Harbor that the Shoreline Master Program Periodic Review Amendments be approved and forwarded to the Washington Department of Ecology for formal state approval.

PASSED by the City Council this 30th day of June 2021.

CITY OF OAK HARBOR

ROBERT SEVERNS, MAYOR

Attest:

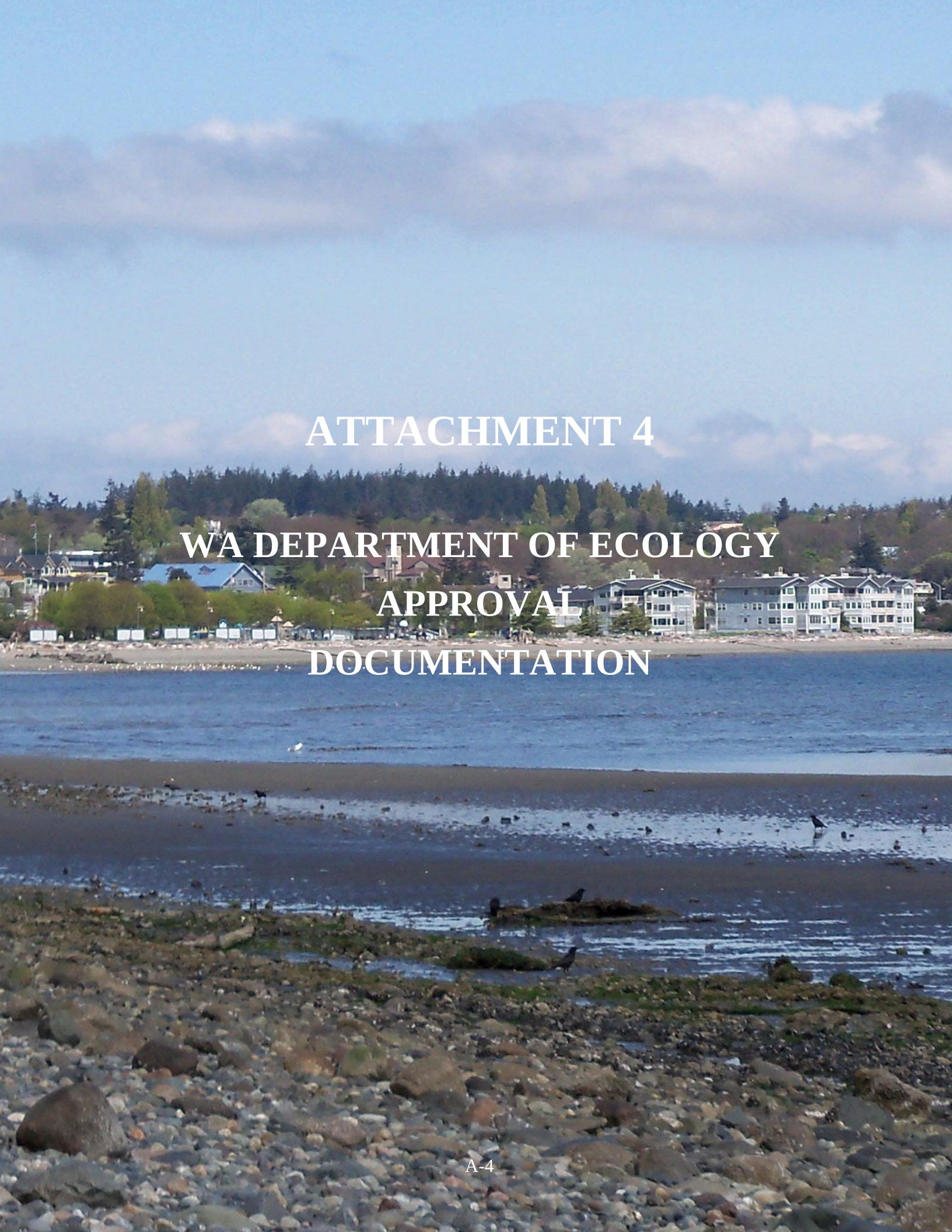
Julie Lindsey, City Clerk

Approved as to form:

Grant Weed, City Attorney

EXHIBIT "A"

CITY OF OAK HARBOR AMENDED SHORELINE MASTER PROGRAM



ATTACHMENT 4

WA DEPARTMENT OF ECOLOGY APPROVAL DOCUMENTATION

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

August 31, 2021

The Honorable Robert Severns
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

Re: Final Ecology Approval of the City of Oak Harbor Shoreline Master Program Periodic Review Amendment

Dear Mayor Severns;

The Department of Ecology (Ecology) is pleased to announce final approval of the Oak Harbor Shoreline Master Program (SMP) amendment. Ecology finds the City of Oak Harbor's (City) program consistent with the policy and procedural requirements of the Shoreline Management Act (RCW 90.58) and its implementing rules.

Ecology approves the City's SMP amendment as submitted.

The enclosed Attachment A, Findings and Conclusions document, provides more information about our decision. This is Ecology's final action and there will be no further modifications to the proposal.

The amendments adopted by this action conclude the City's periodic review under RCW 90.58.080(4). Ecology's approval affirms the amendments are consistent with the applicable provisions of the SMA and its implementing rules, including periodic review requirements of WAC 173-26-090.

The amended SMP is effective 14 days from the date of this letter. This time period was established by the state legislature and is intended to provide lead time for the City to prepare to implement the amended SMP.

Ecology is required to publish a newspaper notice that the City's SMP has received final approval. The publication of this notice, in the form of a legal ad, will begin a 60-day appeal period. We will provide a copy of the notice to the City for its amendment record.

Please send Ecology a final clean copy version of the complete approved SMP that includes the amendment changes.

If you have any questions, please contact our regional shoreline planner, Railin Santiago, at railin.santiago@ecy.wa.gov or (425) 301-6989.

Sincerely,

Laura Watson
Director

Enclosure

cc: Dennis Lefevre, City of Oak Harbor
Joe Burcar, Ecology
Railin Santiago, Ecology

ATTACHMENT A: FINDINGS AND CONCLUSIONS
CITY OF OAK HARBOR SHORELINE MASTER PROGRAM
PERIODIC REVIEW AMENDMENT

SMP Submittal accepted July 15, 2021, Resolution No. 21-16
Prepared by Department of Ecology on August 13, 2021

INTRODUCTION

The Department of Ecology (Ecology) Findings and Conclusions (presented herein as Attachment A), provide the factual basis for our decision on the City of Oak Harbor (City) Shoreline Master Program (SMP) periodic review and associated amendment. This document is divided into three sections providing an **Introduction**; the **Findings of Fact** regarding the amendment history, the initial determination of consistency, local and state review and the final submittal summary; **and Conclusions**. A summary of comments received during the joint public comment period is provided in the Amendment History and Review Process section.

Brief Description of Proposed Amendment

The City is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to Ecology for approval. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process on May 27, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The City's final adopted resolution incorporated all our required and recommended changes provided as part of the initial determination.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2013. Now, the proposed amendment is needed to comply with the statutory deadline for a periodic review of the Oak Harbor SMP pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed

The City prepared a checklist and analysis documenting the proposed amendment. The amendment is intended to:

- Bring the SMP into compliance with requirements of the Shoreline Management Act or state rules that have been added or changed since the City completed their SMP comprehensive update;
- Ensure the SMP remains consistent with local amended comprehensive plans and regulations; and
- Incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data.

Oak Harbor's SMP is a standalone planning document that outlines goals and policies for the shoreline of the city and establishes regulations for development occurring in that area. Some critical areas protection standards from the City's Critical Areas Ordinance have been incorporated into the City's SMP by reference.

The SMP is divided into seven chapters:

1. Introduction
2. Shoreline Environments
3. General Provisions
4. Shoreline Use Policies and Regulations
5. Shoreline Modification Provisions
6. Administration
7. Definitions

The City's SMP regulates shoreline uses and development along approximately 1.3 miles of marine waters (Oak Harbor and Crescent Harbor), as well as all associated wetlands.

In addition to editorial changes modifying terms used and general edits to correct or update syntax, formatting, citations, and references throughout the SMP, the City identified the following amendments to the Oak Harbor SMP:

Chapter 1 Introduction

- Sections C.2 and D.2 - Clarification that the SMP does not apply to federal entities on federal lands.
- Section H - the City incorporated a more detailed description of the history of the SMP and added a summary on the Periodic Review.

Chapter 2 Environmental Designations

- Section B - clarification that the SMP does not apply to federal entities on federal lands [1.b and 1.c; 6.c.2].
- Section B.4 – the following were added under Management Policies associated with the Residential Bluff Conservancy Environment:
  - "typically 100 years" has been added when the code references "life of a structure".
  - Policies regarding avoiding the need for future stabilization, and considering shoreline impacts for fully built-out conditions of a subdivision.
  - A policy regarding maintaining the storm drainage system in good repair, and constructing these systems to avoid failure even if they experience "erosion/slope failure, freezing, etc."

Chapter 3 General Provisions

- Section B.1 - added that the SMP should be periodically reviewed to ensure consistency with local policies and regulations [b.3].
- Section B.3 - regarding Archaeological and Historic Resources, the City makes several mostly non-substantive revisions [b.1; c.1; c.1.b.i (A); and c.1.c].
- Section B.4 - critical areas and floodplain ordinances are referenced, and critical areas exclusions are added.
- Section B.5 - regarding Environmental Impacts and Mitigation, the following revisions are made:
  - A new policy has been added regarding encouraging projects to consider Sea Level Rise. [b.5]
  - A non-substantive change related to BMPs and stormwater [c.6].

- Section B.6 - removed a provision that previously allowed payment to a public access fund [c].

Chapter 4 Shoreline Use Provisions

- In multiple places "Nonconforming Development" is replaced with "Nonconforming Structures, Uses and Lots".
- A new footnote has been added to the Shoreline Use table and applied to the Aquatic SED for some uses. The footnote states: "See adjacent upland environment".
- "typically 100 years" has been added when the code references "life of a structure".
- The steep slope setback has been modified from 25 feet to 50 feet based on a recommendation from a City Geocoastal report.
- Where stormwater requirements, BMPs or LID is referenced, language has been updated to more closely match the currently used stormwater manual.
- Section D.4 - Regulations under Boating Facilities and Marinas have been revised as follows:
  - A new provision has been added to minimize excavation waterward of the OHWM and minimize impacts to shoreline processes [c.1.e].
  - A change regarding prohibited treated building materials.
- Section D.7 - Under Parking regulations provisions regarding stormwater management are condensed to reduce redundancy [c.2 and 6].
- Revised references to live aboard vessels and floating homes.
- Section D.9 - Regulations regarding Floating on-water residences have been revised to comply with Periodic Review Checklist items 2014 and 2011c [c.4 and 5].

Chapter 5 Shoreline Modification Provisions

- A new footnote has been added to the Shoreline Modifications Table and applied to the Aquatic SED uses. The footnote states: "See adjacent upland environment".
- "typically 100 years" has been added when the code references "life of a structure".
- Where there is reference to the demonstration of need for shoreline stabilization, "prepared by a qualified professional" has been added.
- Section C.2 - Under the dredge and disposal requirements, the City removed a requirement that the project would need to comply with the Federal Nationwide Permit.
- Section C.3 - Under the Fill regulations they revised the SDP cost threshold to match the OFM 2017 adjusted threshold.
- Section C.4 - In regards to the policies and regulations for Piers, Docks, Floats, Mooring Balls and Mooring Buoys:
  - The policies related to mooring balls and buoys were reorganized to reduce redundancy [b.2 & 8].
  - Revised references to live aboard vessels and floating homes.
  - Reduced the maximum length of a single-family dock float from 60 feet to 30 feet [c.5.a].
  - Two new marina provisions were added, 1. Prohibiting skirting on overwater structures [c.8.i]; and 2. Requirements to minimize lighting and shading [c.8.j].
  - A new Pier/Dock Repair/replacement provision was added stating "Boat lifts cannot be placed in documented Pacific herring, surf smelt and/or sand lance habitat" [c.10.d].
  - A mooring ball/buoy provision regarding minimizing ecosystem impacts was revised [c.11.e].

Chapter 6 Administration

- Section E.2 - Revised Conditional Use Permits from a Type II to a Type III which is consistent with permit processes described under OHMC 18.20.240 and 18.20.250.
- Section E.6 - A provision was added under Permit Process to describe SMP Amendments.
- Section E - Language regarding Filing with Ecology has been completely revised to be consistent with the Periodic Review checklist item 2017d [7 and 8].
- Section F.3 - Cost thresholds are updated [a].
- Section F.3 - Added three exemptions related to operation and maintenance of agricultural drainage/diking; operation, maintenance or construction of irrigation systems; and retrofitting structures for ADA compliance [n through p].
- Section F.6 - Local review/permit exceptions are added.
- Section I.7 - Special procedures specific to WSDOT projects were added.
- Section J - Nonconforming Provisions were revised and reorganized to differentiate between uses, structures and lots.
- Section N - The "Amendments to the Master Program" section has been revised to address elements from the Periodic Review Checklist including Periodic Review checklist items2017j and 2009c [2 through 4].

Chapter 7 Definitions

- Definitions are added for the following terms: bioengineering, date of filing, degradation, effective date, erosion hazard areas, fish and wildlife habitat conservation areas, floating on-water residence, geologically hazardous areas, historic preservation, nonconforming lot, no net loss, permeable pavement, permeable soils, persistent bioaccumulative toxin, pervious surface, soft shoreline stabilization, sensitive species, substantial development, and vessel.
- Definitions for the following terms are revised: aquaculture, associated wetlands, beach, beach enhancement/restoration, beach feeding, berm, best available science, best management practices, boat lift, boat lift canopy, boat rail or railway, buffer, CERCLA, Clearing, covered moorage, critical areas, dredge material, dredging, ell, enhancement, erosion, excavation, float, floating dock, floating home, floodway, functions and values, groin, habitat, historic site, Impervious surface, low impact development, marina, monitoring, moorage, native vegetation, Nonconforming development or structure, normal maintenance, normal repair, ordinary high water mark, permeability, person, pesticide, pier, priority species, recharge, recreational float, riparian, riprap, runoff, sediment, seismic hazard areas, shoreline master program, shoreline modification, shoreline permit, shorelines, significant vegetation removal, steep slope, water-dependent use, water-oriented use, water-related use, watershed and restoration plan.
- Definitions for the following terms are deleted: degrade, habitat conservation areas, houseboat, launching rail, launching ramp, moorage cover, and practicable.

Amendment History, Review Process

As part of the periodic review and SMP amendment, the City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating

to shorelines. An important element of the public participation plan is the City's SMP Periodic Review project website[1].

The City used Ecology's checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process.

On March 13, 2021, the City, acting as lead agency for this non-project action, completed an environmental checklist and on issued a determination of non-significance (DNS) under WAC 197-11-340(2). Ecology did not comment on the DNS. The City's record indicates Department of Commerce was notified of the City's intent to adopt[2] on March 17, 2021.

The City and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on March 1, 2021 and continued through March 31, 2021. A virtual public hearing before the Planning Commission was held on March 23, 2021.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii).

Ecology distributed notice of the joint comment period to state interested parties on February 25, 2021. Separate notice, and an invitation to consult, was sent on February 25, 2021 to the Lower Elwha Klallam Tribe, Jamestown S'Klallam Tribe, Port Gamble S'Klallam Tribe, Samish Indian Nation, Stillaguamish Tribe of Indians, Suquamish Tribe, Swinomish Indian Tribal Community, and Tulalip Tribes.

The City accepted comments on the proposed SMP amendment during the 30-day comment period.

Three (3) comments were submitted on the proposed amendment. Two of the commenters provided verbal feedback during a public forum on residential bluff regulations and policy. The City provided a Public Comment Summary which included City Responses. The City's summary identified 7 (seven) individual points (or topics) from these commenters. A majority of the comments were related to stormwater, or asked the City questions about residential development along bluff properties.

No additional amendments resulted directly from these comments. However, in response to a question about building setbacks from bluffs, the City clarified that the SMP amendment will incorporate a recommendation from the *City of Oak Harbor Residential Bluff Conservancy Policy and Regulation Review* which will increase the steep slope setback from 25 feet to 50 feet. See SMP Chapter 4 Table 2 Footnote 6.

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[1] https://www.oakharbor.org/dev/page/shoreline-master-program-periodic-review
[2] RCW 36.70A.106 and WAC 173-26-104(2)(a)

Ecology has reviewed all the comments received during the joint review process along with the City's responses. Ecology finds the City's responses are consistent with the statutory obligations for conducting periodic reviews. The City considered whether to incorporate amendments to reflect changed circumstances, new information, or improved data, as provided or raised during the comment period. Ecology concurs, that no additional amendments related to public comments are warranted at this time based upon the significance of this information and the existing SMP provisions.

Initial Determination of Consistency

As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. After the joint City-State comment period and hearing, and consideration of the comments received, the City submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules.

The proposed SMP amendment was received by Ecology on April 13, 2021 for initial state review and verified as complete on April 21, 2021.

Ecology provided the City a formal written statement documenting our initial determination of consistency. We considered the record, including comments received and the City's responses to these comments, and concluded that portions of the proposal were not consistent with applicable laws and rules.

On May 27, 2021, we provided a written statement describing the specific areas of concern and changes necessary. Ecology identified nine (9) required changes. Ecology identified issues with proposed changes to the pier width and light penetration standards, permit application requirements, and incorporation of critical area ordinance. Ecology also identified six (6) recommended changes to improve clarity and implementation of the proposed amendments.

After review by Ecology of the complete initial record submitted and all comments received, Ecology determined that the City's proposed amendments, subject to and including Ecology's required changes, are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). We concluded that if the issues identified within our required and recommended changes were resolved prior to local adoption, we anticipated being able to approve this SMP Periodic Review amendment upon formal submittal per WAC 173-26-110.

Based upon this determination, we advised the City to consider the issues we identified and changes proposed prior to local adoption. We further advised that if the identified required and recommended changes were accepted or issues identified were otherwise resolved prior to local adoption, we anticipate being able to approve your SMP Periodic Review amendment.

The City considered the changes identified in Ecology's initial determination and accepted all required and recommended changes prior to local adoption. In between the initial determination and local adoption the City made a couple other revisions in addition to the required and recommended changes. These included adding a definition for "date of filing" and adding a new critical areas provision exclusion regarding transferrable density calculation (OHMC 20.12.080).

Final Submittal

With passage of Resolution No. 21-16 on June 30, 2021, the City authorized staff to forward the proposed amendments to Ecology for formal approval. The City submitted the amendments on July 15, 2021 and Ecology verified the submittal as complete on July 20, 2021.

At the conclusion of our formal review, Ecology's Director must decide to approve the program as submitted, approve it with required changes and/or recommended changes, or deny approval.

Consistency Review

Consistency with Chapter 90.58 RCW

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on March 13, 2021.

Other Studies or Analyses supporting the SMP amendment

In addition to the periodic review checklist and public participation plan, Ecology also reviewed the following documents prepared for the City in support of the SMP amendment:

- *Consistency Review of Relevant Comprehensive Plans and Development Regulations*. This document provides the City's review as required by WAC 173-26-090(3)(b)(ii);
- *Amendments to Reflect Changing Local Circumstances, New Information, or Improved Data.* This document demonstrates the City's additional review and analysis pursuant to WAC 173-26-090(3)(b)(iii); and
- *City of Oak Harbor Residential Bluff Conservancy Policy and Regulation Review.* This report describes existing site conditions and analysis critical to policy assessment including bluff recession, slope stability, waves, sea level rise, and hydrologic storm analysis. Additionally, this report summarizes existing shoreline and critical areas policies and provides recommendations for practical, efficient, and effective revisions to protect the City of Oak Harbor Residential Bluff Conservancy's economic and ecological resources into the future. The City incorporated these recommendations into the draft SMP amendment.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendments are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Ecology concludes that the proposed amendment satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv) and WAC 173-26-186(8)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process, including conducting public hearings, providing notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that we have complied with the state's procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090, WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed periodic review amendment is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.

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