

# Island County Shoreline Master Program

## CHAPTER 17.05A Shoreline Master Program Regulations and Procedures

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### **17.05A.010 Title**

This Chapter is the Island County Shoreline Master Program Regulations and Procedures.

### **17.05A.020 Short Title**

This Chapter may be referred to as the “Island County Shoreline Master Program,” “Shoreline Master Program,” “Master Program,” “Program,” or “SMP,” which is comprised of the components described in ICC 17.05A.040.

### **17.05A.030 Purpose**

The purposes of this Chapter are:

- A. To carry out the responsibilities imposed on Island County by Chapter 90.58 RCW, the Shoreline Management Act (SMA or Act) of 1971, as now or hereafter amended;
- B. To provide clear, effective goals, policies, shoreline environment designations, development standards, and procedures consistent with the implementing guidelines set forth in WAC 173-26;
- C. To provide for wise and proper management of shorelines, wetlands, and water bodies in a manner that will allow present and future generations of users the opportunity to enjoy marine oriented resources, consistent with the goals, policies, and stated purposes of the Island County Shoreline Master Program;
- D. To implement the Shoreline Master Program goals, policies, and shoreline restoration plan;
- E. To set forth procedures for regulating uses and activities governed by the SMA; and
- F. To protect and enhance the natural shoreline systems and critical areas while at the same time protecting the rights of the private property owners for the timely and reasonable use and enjoyment of their properties, consistent with the protection of the natural systems and the public trust doctrine.

### **17.05A.035 Caveat Disclaimer**

- A. It is the specific intent of this Chapter to place the obligation of complying with its requirements upon the owner of the land within its scope, and no provision or term used in this Chapter is intended to impose any duty whatsoever upon Island County or any of its officers or employees running to any specific person or entity. Nothing contained in this Chapter shall be construed as a guarantee or warranty on the part of the County that site development has or will be accomplished in accordance with the provisions of this Chapter, nor shall it be construed to create or form the basis for any liability on the part of the County or its officers, employees, or agents for any injury or damages resulting from the failure or consequence of any inspection notice, order, certificate, permission, or approval authorized or issued or done in connection with the implementation or enforcement of this Chapter, or by reason of any action or inaction on the part of the

County related in any manner to the enforcement of this Chapter by its officers, employees, or agents.

- B. Further, the administration of this Chapter shall not be construed to impose or create a basis for any liability on the part of the County, its appointed and elected officials, officers, agents, or employees, nor shall this Chapter be construed to create any special relationship with or otherwise protect any specific person or class of persons.
- C. Island County shall require a written disclosure statement be provided to a prospective buyer or a lessee that specifically notifies them of any recorded covenants, the provisions and acknowledgements contained within the covenants, and that such covenants run with the land.
- D. Island County shall require that the applicant for any variances that are granted sign a statement holding Island County harmless. The signed statement shall be recorded in the Island County Auditor's Office with the property title to inform future owners of the property.

#### **17.05A.040 Shoreline Master Program**

The Island County Shoreline Master Program, as adopted pursuant to Chapter 90.58 RCW, shall consist of the following:

- A. The goals, policies, shoreline environment designation management policies and the shoreline restoration plan contained in the shoreline master program element of the Island County Growth Management Act (GMA) Comprehensive Plan; and
- B. The shoreline regulations, administrative procedures, and Shoreline Environment Designations Map as contained in this Chapter.

#### **17.05A.050 Applicability**

- A. This Shoreline Master Program shall apply to every person, individual, firm, partnership, association, organization, corporation, local or state government agency, public or municipal corporation, or other nonfederal entity which develops, owns, leases, or administers lands, wetlands, or waters subject to this Shoreline Master Program.
- B. This Shoreline Master Program applies to all "development" as defined by this Chapter and RCW 90.58, whether or not a shoreline permit or statement of permit exemption is required. All proposed uses, activities, and development occurring within shoreline jurisdiction shall comply with this Shoreline Master Program and RCW 90.58.
- C. **Applicability to Federal Agencies**
  - 1. The policies and provisions of Chapter 90.58 RCW and this Shoreline Master Program shall be applied to federal lands and agencies as provided by the Coastal Zone Management Act (Title 16 United States Code §1451 et seq.) and Washington Administrative Code (WAC) 173-27-060(1) and (3).

2. The requirements of this Chapter shall apply to nonfederal activities undertaken on lands subject to nonfederal lease or easement, even though such lands may be under Federal ownership.
3. The shoreline permit system shall apply to substantial developments undertaken on lands not federally owned but under lease, easement, license, or other similar Federal property rights short of fee ownership, to the Federal government.
4. The provisions of this Program shall not apply to lands held in trust by the United States for Indian Nations, tribes, or individuals.

**D. Relationship to Comprehensive Plan**

This SMP provides regulations and development standards to implement the goals and policies of the Island County GMA Comprehensive Plan, Shoreline Master Program Element. These regulations apply to all land and waters of Island County under the jurisdiction of the Shoreline Management Act (Chapter 90.58 RCW).

**E. Applicability to Substantial Development**

1. This Shoreline Master Program applies to all “substantial development” as defined by this Chapter and RCW 90.58.
2. No substantial development may be undertaken unless a valid Shoreline Substantial Development Permit is first issued by the County and unless all work proceeds in compliance with the requirements of the Shoreline Management Act, this Master Program, and other applicable federal, state, and local laws and regulations.
3. This Program applies to all uses and development within the shoreline jurisdiction whether or not a shoreline permit or statement of permit exemption is required.

**17.05A.060 Shoreline Environment Designations and Maps**

- A. Shorelines of the state within Island County shall be designated on official shoreline maps to be kept in the office of the Island County Planning & Community Development Department. (See Appendix: Island County Shoreline Environment Designations Map.)
- B. Shorelines shall be categorized into Shoreline Environment Designations using the following six designations: Aquatic, Natural, Rural Conservancy, Urban Conservancy, Shoreline Residential, and High Intensity. The Shoreline Residential designation includes the sub-designations of Shoreline Residential-Canal Community and Shoreline Residential-Historic Beach Community. For each shoreline designation, this section establishes the purpose and the criteria that are to be applied in establishing the extent of each designation.
- C. Whenever there is a conflict between the descriptions of Shoreline Environment Designations and the mapped boundaries of the Shoreline Environment Designations the County will rely on criteria contained in SMP chapter III (Shoreline Environment

Designations), RCW 90.58.030(2), and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

D. Aquatic Shoreline Environment Designation

1. Purpose: The purpose of the Aquatic designation is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the Ordinary High Water Mark.
2. Criteria for Designation: Areas designated Aquatic should meet one or more of the following criteria:
  - a) All saltwater areas waterward of the Ordinary High Water Mark, including estuarine channels and coastal lagoons, other than those designated High Intensity.
  - b) All SMA jurisdiction freshwater lakes waterward of the Ordinary High Water Mark.

E. Natural Shoreline Environment Designation

1. Purpose: The purpose of the Natural designation is to preserve, protect, and restore areas that are relatively free of human influence or that include minimally degraded natural features and resources.
2. Criteria for Designation: Areas designated Natural should meet one or more of the following criteria:
  - a) Areas that are generally free from development, including shoreline modifications, structures, roads, high intensity agricultural uses, or that have the potential to regain natural conditions with minimal or no restoration activity.
  - b) Areas critical for the support of priority, threatened, or endangered species.
  - c) Areas of waterfowl and other bird concentration.
  - d) Areas where the shoreline, whether minimally disturbed or intact, represents an ecosystem type or geologic feature that is of particular scientific or educational interest.
  - e) Forested riparian areas predominantly composed of native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies.
  - f) Areas of shoreline-associated wetlands with generally intact buffers.
  - g) Salt marsh areas that are intact or, if previously used for agriculture, are capable of being restored.
  - h) Feeder bluffs without existing development above or below the slope, or development that is sufficiently set back from the top of slope so that the slope can function normally without endangering the development.

- i) Undisturbed estuaries or accretional spits.
- j) Areas unable to support new development or uses without significant adverse impacts to ecological functions, or that possess serious development limitations or human health and safety risks due to the presence of environmental hazards related to flooding, erosion or landslides and similar occurrences.
- k. For areas designated due to the presence of specific habitat features, the designated areas should be large enough to protect the value of the habitat resource.

#### F. Rural Conservancy Shoreline Environment Designation

1. Purpose: The purpose of the Rural Conservancy designation is to protect, conserve, and manage ecological functions, harvestable natural resources, and aesthetic, cultural, historic, and recreational areas in order to provide for rural residential use and recreational opportunities.
2. Criteria for Designation: Areas designated Rural Conservancy should meet one or more of the following criteria:
  - a) The shoreline is generally undeveloped or currently supporting lesser intensity resource-based uses, such as agriculture, forestry, or recreational uses, or is designated agricultural or forest lands pursuant to RCW 36.70A.170.
  - b) The shoreline supports human uses but is subject to environmental limitations, including steep slopes presenting erosion and slide hazards, wetlands, streams, areas prone to flooding, or contains areas that cannot provide adequate water supply or sewage disposal.
  - c) The shoreline supports or can support low impact outdoor recreational activities.
  - d) The shoreline has aesthetic, cultural, historic, or recreational qualities of regional or statewide importance.
  - e) The shoreline is predominantly low density residential use.
  - f) The shoreline has low intensity water-dependent uses.

#### G. Urban Conservancy Shoreline Environment Designation

1. Purpose: The purpose of the Urban Conservancy designation is to protect and restore ecological functions of open space and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.
2. Criteria for Designation: Areas inside urban growth areas and non-municipal urban growth areas, as defined in RCW 36.70A.110, should be designated Urban Conservancy if any of the following characteristics apply:
  - a) They are suitable for water-related or water-enjoyment uses.

- b) They include open space, floodplains, or other sensitive areas that should not be more intensively developed.
- c) They have potential for ecological restoration.
- d) They retain important ecological functions, even though partially developed.
- e) They have the potential for development that is compatible with ecological restoration.

#### H. Shoreline Residential Shoreline Environment Designation

1. Purpose: The primary purpose for designating an area Shoreline Residential is to allow for residential development and for moderate to high impact recreational uses in appropriate areas of the shoreline.
2. Criteria for Designation: Areas inside County-adopted rural areas of more intense development (RAIDs), if they are characterized by predominantly single-family or multi-family residential development or are planned and platted for residential development, but are not predominantly covered by wetlands, stream corridors, or annually flooded areas shall be designated Shoreline Residential when any of the following characteristics apply:
  - a) Areas that are legally subdivided for residential use at a density of one or more units per acre and are not constrained by inadequate water supply and the inability to dispose of sewage due to soil conditions or lot sizes; or
  - b) Areas developed with or planned for moderate to high impact recreational uses.
3. Shoreline Residential-Canal Community and Shoreline Residential-Historic Beach Community are higher density residential areas adjacent to manmade canals or low bank marine shorelines that have historical platting and development patterns no longer allowed by zoning or the SMP. These waterfront lots are designated and mapped based on approved subdivision limits and are subject to the regulations for Shoreline Residential designated areas, except when regulations specifically state that a regulation applies only to these specific communities.
4. Island County Historic Beach Communities include the following platted subdivisions and other similarly situated plats meeting the definition of Historic Beach Community set forth in ICC 17.05A.070.

Madrona Beach (Auditors File # 3997780 Nov. 1926)

Maple Grove Beach (Auditors File # 3997763 Sept. 1930)

Maple Grove Beach No. 2 (Auditors File # 3997761 Oct. 1930)

1st Addition Maple Grove Beach #2 (Auditors File # 3997741 Oct. 1941)

Sunnyshore Acres (Auditors File # 3997776 Aug. 1928)

Tyee Beach (Auditors File # 3997748 July 1939)

Juniper Beach (Auditors File # 3997784 June 1920)

Pebble Beach Div. 1 (Auditors File # 3997764 Aug. 1930)

Utsalady (Auditors File # 3997706 Apr. 1881)

Utsalady Beach (Auditors File # 3997814 Nov. 1950)  
Columbia Beach (Auditors File #3998015 Aug.1961)  
Clinton Beach (Auditors File # 3997789 Sept.1920)  
Bush Point Beach (Auditors File #3998106 Sept.1967)  
Pattons Beachwood Manor (Auditors File # 3998033 Feb.1966)  
Hidden Beach Lots (Auditors File # 3998078 Aug.1964)  
Whidbey Shores (Auditors File # 3997878 May 1961)  
Saratoga (Auditors File # 3997698 June 1907)  
Bell's Beach Waterfront Tracts (Auditors File # 3997743 Dec. 1941)  
Moonwink Div 1 (Auditors File # 3999017 Oct. 1971)  
Maxwelton Beach (North of Swede Hill Road, Maxwelton Rd and Mill Beach Lane)  
Possession Beach Walk (R32812-010-0100, R32812-054-0130, R32812-067-0130)  
Sunlight Beach (S8220-01-00038-0, S8220-01-00040-0, S8220-01-00007-0, S8220-00-00004-0, S8220-00-00006-0, S8220-00-00007-0, S8220-00-00008-0, S8220-00-00009-0, S8220-00-00039-0 & S8220-00-00040-0)  
Shore Ave. (R22923-153-3900, S6080-00-00001-0, S6080-00-00001-0, S6080-00-00003-0, & S6080-00-00004-0)  
Sandy Point (lots R32902-458-3820, R32902-459-3950, R32902-460-4020, S8080-00-02001-0, S8080-00-02002-0, S8080-00-02003-0, and S8080-00-02004-0 on west end of Whale Walk)  
West Beach & Seaview (Beachwood Drive/Whitecap Lane S7675-00-00001-0, S7675-00-00003-0, S7675-00-00004-0, S7675-00-00005-0, S7675-00-00006-0, & S7675-00-00007-0; W Crosby Rd, going south along W Beach Rd, starting at S7700-00-0000A-0 and ending at S8385-00-00020-0)

## I. High Intensity Shoreline Environment Designation

1. Purpose: The purpose of the High Intensity designation is to provide for high intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and, where feasible, restoring ecological functions in areas that have been previously degraded.
2. Criteria for Designation: Areas designated High Intensity should include only areas that currently support water-dependent uses related to commercial boatyards and marinas, transportation or navigation facilities, or are suitable and needed to accommodate similar water-oriented uses in the next twenty years.

### **17.05A.070 Definitions**

Words used in this Ordinance, unless defined herein or the context clearly otherwise implies, shall assume the definitions contained in Chapter 90.58 RCW, as now or hereafter amended, and such guidelines as have been, or may be, adopted pursuant to Chapter 90.58 RCW, including WAC 173-26. Definitions that are provided in other titles, chapters, and sections of the Island County Code shall apply in the interpretation and enforcement of this chapter. When not



inconsistent with the context, words used in the present tense shall include the future, the singular shall include the plural, and the plural the singular.

**Accretion Shoreform:** Shoreline with a backshore which has been produced by the long-term deposition of sand or gravel by littoral drift from a feeder bluff or other source. Such shoreforms include barrier beaches, points, spits, and hooks.

**Act:** Shoreline Management Act of 1971, Chapter 90.58 RCW (also SMA or Act).

**Administrator:** See Shoreline Administrator.

**Affected Tribe:** Any Tribe recognized by the federal government and subject to established treaty rights whose ancestral villages, campsites, grave sites, fishing sites, or other territory within the County may be impacted by a proposed development project in or near an archaeological site.

**Agriculture:** The cultivation of soil, production of plant crops, or the raising of livestock.

**Agricultural Activities:** Agricultural uses and practices including, but not limited to: producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.

**Agricultural Land:** Specific land areas on which Agriculture Activities are conducted.

**Alteration:** Any human activity which results or is likely to result in an impact to existing vegetation, hydrology, wildlife or wildlife habitat. Alterations do not include walking, fishing, or any other passive recreation or other similar activities.

**Appurtenance:** See Normal Appurtenance.

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

**Aquaculture, Commercial:** Commercial Aquaculture is the cultivation or farming of fish, shellfish or other aquatic plants and animals for sale.

**Aquaculture, Non-commercial:** The cultivation or farming of fish, shellfish or other aquatic plants and animals for personal consumption, research, or restoration or enhancement of native species.

**Archaeology:** The systematic, scientific study of material remains of past human life and activity. In Island County examples include shell middens, lithic sites, earthworks, rock cairns, and burial grounds. While shell middens and burial grounds are strongly associated with shorelines, the other types may also be found within the shorelines of the County.

**Baseline (for No net loss):** Shoreline ecological conditions existing as documented in the Island County Shoreline Master Program Shoreline Inventory and Characterization report dated March, 2012.

**Beach Enhancement or Restoration:** Process of restoring a beach to a state more closely resembling a natural beach using beach feeding, vegetation, drift sills, or other non-intrusive means, as applicable.

**Beach Feeding:** Process of replenishing a beach by delivery of materials dredged or excavated elsewhere.

**Berm:** A linear mound or series of mounds of sand or gravel generally paralleling the water at or landward of the line of Ordinary High Tide.

**Board or BOCC:** Board of Island County Commissioners.

**Boat Launch or Ramp:** Graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device. A boat launch also includes associated wash station and parking.

**Boating Facility:** Any public or private facility for storing or launching vessels or watercraft. This includes marinas, open water moorage and anchorage areas, boat launch ramps, boat lifts, mooring buoys, piers, floats and docks, or any other similar single-user or shared-use facility for public recreational use or private residential use. For purposes of this Program, upland boat storage structures such as boathouses, boat repair shops, and other similar structures, and docks serving four or fewer single-family residences are not considered boating facilities.

**Breakwater:** Protective structures which are normally built offshore to protect beaches, bluffs, dunes, or harbor areas from wave action.

**Buffer:** The landward area adjacent to the OHWM, measured in feet, which protects the SMA waterbody from alterations caused by a development proposal. Buffers are established based on the Shoreline Environment Designation.

**Buffer Area:** A parcel or strip of land that is designed and designated to permanently remain vegetated in an undisturbed and natural condition to protect an adjacent aquatic or wetland site from upland impacts, to provide habitat for wildlife, and to afford limited public access.

**Bulkhead:** A form of structural shoreline stabilization erected parallel to and near the Ordinary High Water Mark for the purpose of stabilizing a slope and protecting the adjacent structures from the action of waves or currents.

**Buoy:** A float attached by rope to the seabed to mark channels in a harbor or underwater hazards, or to be used to moor a boat in a harbor or channel.

**Campground and Camping Facilities:** Facilities in which sites are offered for persons using tents or other personal, portable overnight shelters. Campgrounds are for short-term stays and do not include trailer parks.

**Campground, Marine:** A campground where camping is restricted to users that access the site by water.

**Canal Community:** The communities of Lagoon Point, Sandy Hook, and Mariners' Cove are discrete residential communities developed along engineered canals. The locations and boundaries of the canal communities are designated on official shoreline maps to be kept in the office of the Island County Planning & Community Development Department.

**Clearing:** The cutting and removal of vegetation by mechanical or chemical methods.

**Commercial Development:** A business use or activity involving retail or wholesale marketing of goods and services as defined in ICC Chapter 17.03. This definition does not include Bed & Breakfast Inns or Country Inns, which are named as specific uses in the shoreline use table in ICC 17.05A.080.

**Commercial-Industrial Pier or Dock:** A pier or dock including a gangway and/or float which is intended for any commercial or industrial use other than storage or moorage of boats used for recreational purposes.

**Community Beach:** A beach area jointly owned by a homeowners association for use of the neighborhood.

**Community Pier or Dock:** A pier or dock including a gangway and/or float which is intended for use in common by lot owners or residents of a subdivision or residential planned development district.

**Conditional Uses, Shoreline:** A use or development which requires issuance of a shoreline conditional use permit pursuant to the use table in ICC 17.05A.080 or a use which is not classified within the SMP. Conditional uses must be evaluated according to the review criteria established in WAC 173-27-160.

**Consumer Price Index:** for any calendar year, that year's annual average Consumer Price Index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The Office of Financial Management must calculate the new dollar threshold and transmit it to the Office of the Code Reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

**Critical Saltwater Habitat:** includes the following areas within marine shorelines: mudflats and intertidal habitats with vascular plants; subsistence, commercial and recreational shellfish beds; kelp and eelgrass beds; spawning and holding areas for forage fish, such as herring, smelt, and sand lance; and areas with which priority species, as defined by WAC 173-26-020(29), have a primary association.

**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 this Program at any state of water level.

**Disabled (person):** A person likely to meet the federal supplemental security income disability standard. In making this determination, the department should give full consideration to the cumulative impact of an applicant's multiple impairments, an applicant's age, and vocational and educational history (RCW 74.62.030).

**Dock:** A structure which abuts the shoreline and is generally used as a landing or moorage place for commercial or pleasure craft. A mooring platform (e.g., pier, ramp or float) that extends waterward of the OHWM but due to topography, critical areas, etc. may also extend landward of the OHWM to provide a connection to land. Waterward of the OHWM they are held in place with pilings/anchors. Pilings located around their perimeter (whether detached or attached) that are not utilized to hold the dock in place but instead utilized for berthing/mooring to that facility (e.g., dolphins) shall be considered part of the dock.

**Dolphin:** A cluster of piles used as a fender, as at the entrance to a dock.

**Dredging:** The removal of earth, sand, gravel, silt, or debris from the bottom of a stream, river, lake, bay, or other water body for the purpose of deepening a navigational channel or to obtain use of the bottom materials for fill. Dredging includes any harvesting of natural resources by any mechanical or hydraulic means which involves substrate displacement or disturbance.

**Drift Cell (drift sector or littoral 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.

**Dune:** A hill or ridge of sand deposited by wind or wave action.

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

**Ecological Processes:** Ecological processes, ecosystem processes, or ecosystem-wide processes means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; the presence of living, functioning organisms; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

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

**Emergency:** An unanticipated and imminent threat to public health, safety, or the environment which requires immediate actions within a time too short to allow full compliance.

**Exceptional Feeder Bluff:** A shoreline bluff area with substantial sediment input into the netshore drift system with a shorter recurrence interval as compared to a non-exceptional feeder bluff, as identified on a map available from Island County Department of Community Development. Exceptional feeder bluffs can be identified by the general absence of vegetative cover or portions of the bluff face fully exposed. Other indicators include the presence of slide debris, boulder or cobble lag deposits, and fallen trees across the beachface. Exceptional feeder bluff segments lack a backshore, old or rotten logs, and coniferous bluff vegetation.

**Existing Lot:** A lot or parcel of land which was legally established and recorded with the County Auditor as a fractional part of divided lands having fixed boundaries prior to adoption of this Chapter and consistent with Chapter 17.03.

**Experimental Aquaculture:** An aquaculture project that uses methods or technologies which are unprecedented or unproven.

**Extreme Low Tide:** The lowest line on the tidelands reached by a receding tide.

**Feeder Bluff:** A coastal bluff that, as a result of its natural erosion, delivers sand and gravel to the beach that is subsequently transported by waves and currents along the shoreline to maintain beaches and accretion shoreforms elsewhere within the local Drift Cell.

**Feedlot:** An enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for livestock feeding or grazing, nor shall it include normal livestock wintering operations.

**Fender:** A device installed adjacent to a dock to lessen shock and prevent chafing. A pile or a row or cluster of piles placed to protect a dock or ferry loading ramp from damage by docking vessels.

**Ferry Terminal (includes dolphins, ramp, ticket booths, and waiting structures):** Piers, docks and associated dolphins, ramps, fenders, floats, ticketing structures, and waiting structures associated with the loading and landing of vehicle and passenger ferry vessels.

**Fetch:** The distance across a body of water measured in a straight line from the most waterward point along the ordinary high water line or lawfully established bulkhead on a given stretch of shoreline to the closest point on the ordinary high water line or lawfully established bulkhead on a separate stretch of shoreline.

**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.

**Finfish Facility:** Rearing facilities where finfish are hatched, fed, nurtured, held, maintained, or reared for commercial purposes or harvest. This includes fish farms, fish hatcheries, rearing ponds, spawning channels, and other similarly constructed or fabricated facilities. Facilities that discharge or allow the exchange of unfiltered water into waters of the state are “open.” Facilities

that do not discharge or allow the exchange of unfiltered water into waters of the state are “contained.”

**Fish and Wildlife Habitat Conservation Areas:** Critical areas and their associated buffers including the following:

1. Areas with which endangered, threatened, sensitive, and priority species listed by the federal or state government have a primary association;
2. Areas that are priority habitats as listed by the Washington Department of Fish and Wildlife;
3. Streams;
4. Commercial and recreational shellfish beds;
5. Kelp and eelgrass beds;
6. Herring, smelt, and sand lance spawning and holding areas;
7. Priority habitat areas for marine shellfish, including but not limited to pandalid shrimp, Dungeness crab, geoduck, hardshell clam, subtidal hardshell clam, and red sea urchin;
8. Areas with which priority species, as defined by WAC 173-26-020(29), have a primary association;
9. State natural area preserves;
10. State natural resource conservation areas;
11. Species and Habitats of Local Importance;
12. Flora species included in the Protected Species list; and
13. All areas designated by the Department of Natural Resources (“DNR”) through the Washington Natural Heritage Program as high quality wetland ecosystems and high quality terrestrial ecosystems and shown on a Map prepared by Island County dated October 11, 1999.

**Float:** A floating structure that is moored, anchored, or otherwise secured in the water offshore and that may be associated with a fixed-pile pier, or may be a standalone structure, such as platforms used for swimming and diving.

**Floating Home:** A floating home is a building constructed on a float, used in whole or in part as a dwelling, and not a vessel, and is typically characterized by permanent utilities, a semi-permanent anchorage/moorage design, and by the lack of adequate self propulsion to operate as a vessel.

**Floodplain (100-year):** The land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.

**Flushing Capacity:** The ability of a water body to completely renew the volume of water it retains.

**Forest Practices:** Activities conducted on or directly related to forest land and relating to growing, harvesting, or processing timber. These activities include but are not limited to: road and trail construction, final and intermediate harvesting, pre-commercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees, and brush control. See WAC 222-16-010.

**Gabions:** A form of structural shoreline stabilization composed of masses of rocks, rubble or masonry held tightly together, usually by wire mesh, so as to form blocks or walls. Sometimes used on heavy erosion areas to retard wave action or as foundations for breakwaters or jetties.

**Geologically Hazardous Areas:** Those areas that because of their susceptibility to erosion, sliding, or other geologic events, are generally not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns, including:

1. Erosion Hazard Areas including areas designated in the Department of Ecology Coastal Zone Atlas dated April 1979, as it may be amended or revised, as land which has had recent or historical slide activity or has unstable slope conditions, including those lands within one hundred (100) feet (either top or base) thereof, and other areas likely to become unstable, such as bluffs, steep slopes, and areas with unconsolidated soils.
2. Landslide Hazard Areas including:
  - a) Areas with all three of the following characteristics:
    - (i) Slopes steeper than fifteen percent;
    - (ii) Hillsides intersecting geologic contacts with a relatively permeable sediment overlying a relatively impermeable sediment or bedrock; and
    - (iii) Springs or groundwater seepage.
  - b) Areas that have shown movement during the holocene epoch (from ten thousand years ago to the present) or which are underlain or covered by mass wastage debris of this epoch;
  - c) Slopes that are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials;
  - d) Slopes having gradients steeper than eighty percent subject to rockfall during seismic shaking;
  - e) Areas potentially unstable as a result of rapid stream incision, stream bank erosion, and undercutting by wave action, including stream channel migration zones; and
  - f) Any area with a slope of forty percent or steeper and with a vertical relief of ten or more feet except areas composed of bedrock. A slope is delineated by establishing its toe and top and measured by averaging the inclination over at least ten feet of vertical relief.
3. Seismic Hazard Areas subject to severe risk of damage as a result of earthquake induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis.

**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.

**Grade Level (average):** Calculation made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

**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:** Structures designed to modify or control water flow and sand movement.

**Ground Floor:** The floor of a structure or building that is approximately level with the ground.

**Height, Building:** The vertical dimension measured from average grade to the highest point of a structure; provided that antennas, chimneys, and similar appurtenances shall not be used in calculating height, unless such appurtenance obstructs the view of a substantial number of adjacent residences.

**High Intensity Agriculture:** Shall mean existing and on-going agriculture including dairies, animal feeding operations and concentrated animal feeding operations as those terms are used in federal and state regulations and livestock operations with an Animal Unit density greater than three (3) per acre.

**Historic Beach Community:** Limited areas within the shoreline of Island County that have been platted in a dense pattern with small lots relative to other areas of the County. The existing marine waterfront lots are developed with residential Structures constructed thirty feet (30') or less from the ordinary high water mark and the Structures were established prior to enactment of the Shoreline Management Act.

**Houseboats:** A vessel used for living quarters but licensed and designed substantially as a mobile structure by means of detachable utilities, anchoring, and the presence of adequate self propulsion to operate as a vessel.

**Impervious Surface:** A surface area that prevents or impedes infiltration of water into the soil mantle; or retards the infiltration of water into the soil mantle such that it causes water to run off the surface in greater quantities or at a greater rate of flow than under natural conditions. Common impervious surfaces include roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled



surfaces. Open, uncovered retention or detention facilities are not considered impervious surfaces.

**Jetty:** Jetties are Structures designed to modify or control water flow and sand movement and are generally employed at inlets for the purpose of improving navigation.

**Joint Use Pier or Dock:** A pier or dock including a gangway and/or float which is intended for private, noncommercial use by two to four waterfront building lots under separate ownership, where at least one boundary of each building lot lies within 1,000 feet of the boundary of the lot on which the joint use pier or dock is to be constructed.

**Lake:** A body of freshwater that occurs in a depression of land or expanded part of a stream that is greater than 6.6 feet in depth at the deepest point at ordinary low water, and has a water salinity of less than 0.5 parts per thousand.

**Landward:** Horizontally toward the land and away from the water.

**Littoral Drift:** The natural movement of sediment, particularly sand and gravel, along marine or lake shorelines as a result of wave and wind action.

**Live-aboard Vessel:** A seaworthy vessel that was designed primarily for navigation but is used as a residence. A boat or other floating structure is a residence if it is occupied 30 out of 45 days or 90 out of 365 days while moored or anchored in the same area, or if the local government, the marina, or the occupant of the boat defines it as a residence. The phrase “in the same area” means within a radius of one mile of any location where the same vessel previously moored or anchored. A vessel that is occupied and is moored or anchored in the same area, but not for the number of days described in this subsection, is considered a recreational or transient vessel (WAC 332-30-106).

**Low Intensity Agriculture:** Shall mean existing and on-going agriculture including livestock management with an Animal Unit density of less than one (1) per acre; seasonal hay mowing and related activities and horticulture involving one (1) acre or less of cultivated land.

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

**Marine Campground:** A primitive, waterfront campground accessible by hand-carried watercraft (e.g., kayak, canoe) with each site in the campground accommodating up to three tents. Overflow may be allowed at the discretion of the land manager.

**Marinas:** Marinas are facilities which provide boat launching, storage, supplies, and services for small pleasure craft. There are two basic types of marinas: open type construction (floating breakwater or open pile work) and solid type construction (bulkhead or fill).

**May:** Indicates that the action is within the discretion and authority of the approving agency.

**Moorage Structure:** A structure built over or floating upon the water, typically used as a landing place for marine transport or for commercial or recreational purposes.

**Mudflat (marine):** Areas along a shoreline composed of fine sediment often with a high organic material content that are typically exposed during low tides and submerged during high tides.

**No Net Loss:** “No Net Loss” means the maintenance of the aggregate total of the County shoreline ecological functions over time. The no net loss standard contained in WAC 173-26-186 requires that the impacts of shoreline use or development, whether permitted or exempt from permit requirements, be identified and mitigated such that there are no resulting adverse impacts on ecological functions or processes.

**Non-Structural Shoreline Stabilization:** Shoreline erosion control and restoration practices using only plantings or organic materials to restore, protect, or enhance the natural shoreline environment. Focus on the use of woody plants and limited structural-mechanical systems that are integrated in a structurally and environmentally sound manner to repair and protect slopes against shallow mass wasting and surface erosion. At least eighty percent (80%) of the stabilization project must be constructed of naturally-occurring materials used in ways that are consistent with current nearshore processes. Measures such as live stake, live fascine, brushlayer, live cribwall, vegetated geogrid, branchpacking, and live slope grating are examples of soft shore protection techniques. Also called bioengineering or soft shore stabilization.

**Normal Appurtenance:** A structure that is necessarily connected to the use and enjoyment of a single-family residence, including a garage, deck, driveway, utilities, fences, gazebo, septic tank and drainfield, and grading less than two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the Ordinary High Water Mark.

**Normal Maintenance and Repair:** Usual acts to prevent a decline, lapse, or cessation from a lawfully established condition or restores a development to a state comparable to its original condition, including but not limited to maintaining the same size, shape, configuration, location and appearance. Replacement of a structure is not considered normal maintenance or repair.

**Normal Protective Bulkhead:** Structural and nonstructural shoreline stabilization installed at or near, and parallel to, the Ordinary High Water Mark for the sole purpose of protecting an existing single-family residence and normal appurtenant structures from loss or damage by erosion.

**Ordinary High Water Mark (OHWM):** On all lakes, streams, and tidal water is 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 of Ecology; 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 freshwater shall be the line of mean high water.

**Parking Lot:** An off-street, ground level open area, usually improved, for the temporary storage of motor vehicles. A vista parking lot is a parking lot directly associated with an area established to provide a public view of the shoreline or water.

**Passive Recreation:** Outdoor activities such as walking, biking, and wildlife viewing.

**Permitted Uses:** Uses which are allowed within the applicable shoreline designation, provided that they must meet the policies, use requirements, and regulations of this Chapter 17.05A and any other applicable regulations of the county or state.

**Pier:** A structure which abuts the shoreline and is generally used as a landing or moorage place for commercial and pleasure craft. A pier is a fixed platform above the water.

**Port:** Any harbor area under the jurisdiction of a legally constituted port district, as prescribed under Washington State law, or any harbor area which is largely devoted to shipping and cargo handling. A Port may include water-dependent uses such as boat building and repair, cargo or passenger facilities, commercial and recreational moorage, float plane facilities, and similar uses. A Port may also include water-related uses.

**Primary Association:** Use of an area by a protected species for rearing young, roosting, breeding, or foraging on a regular basis during the appropriate season, as well as habitats that are used less frequently or regularly but which provide for essential life cycle functions. Areas of Primary Association for listed salmonids shall include all aquatic environments in which they reside, as well as riparian environments necessary to support the formation and function of the aquatic environment. Areas of Primary Association for protected flora and fungi include both the immediate area where the species occurs and the contiguous habitat necessary for its long term persistence.

**Primary Structure:** The structure associated with the principal use of the property. If more than one structure is associated with the principal use of the property, the one with the highest assessed value shall be considered the primary structure. For purposes of interpreting ICC 17.05A110 (Shoreline Modification Regulations), the phrases “primary structure or appurtenance” and “primary structures and appurtenances” shall mean the primary structure and those appurtenances which cannot be relocated because they are either (a) structurally attached to the primary structure (such as garages and decks) or, (b) no other suitable location exists for their relocation and the primary structure would become unusable if the appurtenance were damaged or destroyed.

**Priority Habitat:** A habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; important marine mammal haul-out; refugia habitat; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may also be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

**Protected Habitats:** Habitats listed by the federal government, habitats designated by the Washington Department of Fish and Wildlife as Priority Habitats, and those habitats which are determined by Island County to be worthy of a higher level of protection than other habitats and are designated as Habitats of Local Importance under Chapter 17.02 ICC.

**Protected Species:** Species of flora and fauna listed by the federal government or the State of Washington as endangered, threatened, sensitive, or priority which are present in Island County and those species of flora and fauna which are determined by Island County to be worthy of a higher level of protection than other species and are designated as Species of Local Importance under Chapter 17.02 ICC.

**Public Access:** A trail, path, road, or launching ramp by which the general public can reach the public waters from a public road.

**Public Boat Launching Ramps:** Boat launching ramps that are used by the public. Ownership of the facilities can be either private or public.

**Public Recreational Pier or Dock:** A pier or dock including a gangway and/or float either publicly or privately owned and maintained intended for use by the general public for recreational purposes, but not to include docks constructed as part of a marine development.

**Ramp:** See Boat Ramp

**Recreation:** The exercise and refreshment of body and mind through forms of play, sports, relaxation, amusement, or contemplation. Passive shoreline recreation is light to moderate intensities of recreation, such as hiking, day camping, viewing nature, boating, swimming and fishing. Active recreation is a more intensive and land consumptive use of the shoreline areas, such as sports fields, swimming pools, or indoor recreation centers.

**Recreational Development:** Public and private parks and facilities for hiking, camping, indoor and outdoor sports, or similar developments.

**Regulated activity:**

1. Removing, excavating, disturbing, or dredging soil, sand, gravel, minerals, organic matter, or materials of any kind;
2. Dumping, discharging, or filling;
3. Draining, flooding, or disturbing the water level or water table. In addition, an activity which involves intentional draining, flooding, or disturbing the water level or water table in a wetland or stream in which the activity itself occurs outside the regulated area may be considered a regulated activity;
4. Driving piling or placing obstructions, including placement of utilities;
5. Constructing, reconstructing, demolishing, or altering the size of any structure or infrastructure;
6. Altering the character of a regulated area by destroying or altering vegetation through clearing, harvesting, cutting, intentional burning, shading, or planting;

7. Activities which result in significant changes in water temperature or physical or chemical characteristics of wetland or stream water sources, including changes in quantity of water and pollutant level;
8. Application of pesticides, fertilizers, and/or other chemicals unless demonstrated not to be harmful to the regulated area;
9. The division or redivision of land pursuant to ICC Chapter 16.06; and
10. The creation of impervious surfaces.

**Replacement:** The construction of a new structure to perform the same function when an existing structure can no longer serve its purpose. In addition, repairs that exceed a certain threshold are also effectively replacement. The following are thresholds for considering a repair to be effectively a replacement: 1) when more than 50 percent of a structure is being replaced; or 2) the cost of maintenance or repairs to an existing structure exceeds 50 percent of the value of the existing structure.

**Restoration:** To reform, revitalize, or establish the characteristics and natural processes of a degraded shoreline resource back into a persistent, resilient system.

**Residential Development:** The development of single-family residences, including appurtenant structures and uses, multi-family development, and the creation of new residential lots through land division.

**Retaining Wall:** Structure placed behind the OHWM which acts as a stabilizing mechanism for unstable geologic conditions, foundation support for structures, or to retain land behind the retaining wall.

**Revetment:** A form of structural shoreline stabilization comprising a facing of stone, concrete, or similar material, built to protect a scarp, embankment, or shore structure against erosion by waves or currents.

**Riprap:** A form of structural shoreline stabilization comprising a foundation or sustaining wall of stones or chunks of concrete thrown together without order (as in deep water) or a layer of similar material on an embankment slope to prevent erosion.

**Seaward:** The direction away from land and toward the sea.

**Setback:** The distance a structure is placed behind a specified line or feature.

**Shall:** A mandated action that must be done.

**Shorelines:** All of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

**Shoreline Administrator (Administrator):** The Island County Planning & Community Development Director (Director) or his or her designee.

**Shoreline 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 permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to Chapter 90.58 RCW at any stage of water level (RCW 90.58.030; WAC 173-27-030).

**Shoreline Environment Designations:** The categories of shorelines established by local shoreline master programs in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. WAC 173-16-0060(4).

**Shoreline Ecological Functions:** Shoreline functions or shoreline ecological functions are the work performed or role played individually or collectively within ecosystems by a wide variety of interacting physical, chemical, and biological components that are interdependent in varying degrees and scales, and that produce the landscape and habitats as they exist at any one time. Shoreline ecological functions include, but are not limited to those included in WAC 173-26-201(3)(d)(i)(C).

**Shoreline Exemption:** An exemption from needing to obtain a shoreline substantial development permit. Exemptions are defined in WAC 173-27-020(7) and are available for uses and developments set forth in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58. Although exempt from requiring a substantial development permit, these uses must comply with applicable provisions of this Program and the Act.

**Shoreline Jurisdiction:** The geographic areas regulated by the SMA, related rules, and the applicable master program: all shorelines and shorelines of statewide significance, plus lands extending landward for 200 feet in all directions, as measured on a horizontal plane from the Ordinary High Water Mark of shorelines; associated floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters subject to the SMA. See RCW 90.58.030(2)(f), WAC 173-16-030(17) and WAC 173-22-030(10). Also see the definitions of “shorelines” and “shorelines of statewide significance.”

**Shoreline Master Program (SMP) or Master Program or Program:** The Island County Shoreline Master Program, being the Shoreline Master Program Element of the Comprehensive Plan and Chapter 17.05A ICC. Master programs must be developed in accordance with the policies of the SMA in RCW 90.58.020 and the implementing guidelines in WAC 173-26, be approved by the state, and be consistent with the rules (WACs) adopted by the Washington State Department of Ecology.

**Shoreline Management Act (SMA or Act):** Shoreline Management Act of 1971, Chapter 90.58 RCW.

**Shorelines of Statewide Significance:** Means those areas of Puget Sound and the Strait of Juan de Fuca and adjacent saltwater north to the Canadian line and lying seaward from the line of

extreme low tide; and those additional areas specified in the Act (RCW 90.58.030(2)(e), which in Island County, includes the Skagit Bay shoreline from Brown Point to Yokeko Point.

**Shoreline Stabilization:** Structures or modifications for the purpose of retarding shore erosion from wave or current action, protecting channels and harbors from wave action, encouraging deposition of beach materials, or preventing shoreline overflow and retaining uplands. Shoreline stabilization may consist of bulkheads, seawalls, dikes, revetments, breakwaters, jetties, groins, gabions, large woody material placement, beach nourishment, vegetation enhancement, biotechnical methods, or similar structures or modifications.

**Shoreline Substantial Development Permit Exemption:** Certain developments that meet the precise terms of listed exemptions are granted exemptions from the requirements of the substantial development permit process of the Act. 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 SMP and obtain a statement of shoreline exemption. A shoreline conditional use permit or a shoreline variance permit may also be required even though the activity does not require a shoreline substantial development permit (RCW 90.58.030(3)(e)); WAC 173-27-030(7) and -040).

**Should: “Should”** means a particular action is required unless there is a demonstrated, compelling reason, based on policies of the Shoreline Management Act and this Chapter, against taking the action.

**Signs:** Publicly displayed messages on signs, billboards, placards, or buildings whose purpose is to provide information, direction, or advertising.

**Single-Family Residence:** A detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership which are a normal appurtenance.

**Soft Shore Stabilization:** (see Non-Structural Shoreline Stabilization)

**Solid Waste:** All solid and semisolid wastes including but not limited to garbage and rubbish, recyclable materials, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities.

**Spit:** An accretion shoreform which extends seaward from and parallel to the shoreline. They are usually characterized by a wave-built berm on the windward side and a more gently sloping muddy or marshy shore on the leeward side. A curved spit is normally called a hook.

**Structure:** A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

**Structural Shoreline Stabilization:** Shoreline stabilization that includes placement of riprap, fitted stone, poured-in-place or precast concrete, driven wood or metal piles, or other similar hard armoring.

**Subdivision:** The division or redivision of land, including short subdivisions, as defined in Chapter 58.17 RCW and ICC Title 16.

**Substantial Development:** Any development meeting the definition in RCW 90.58.030(3)(e), now or as hereafter amended, which includes any development of which the total cost, or fair market value, exceeds five thousand seven hundred and eighteen dollars (\$5,718.00) or any development which materially interferes with normal public use of the water or shorelines of the state; except that developments meeting the precise terms of the exemptions specified in RCW 90.58.030(3)(e) (i through xii) shall not be considered Substantial Development.

**Tidal/Wave Energy:** A form of hydropower that converts the energy in the flow of tidal waters or currents into a form that may be transmitted or transported elsewhere, typically as electricity through the use of submerged turbines.

**Tidelands:** Beds and shores of navigable tidal waters lying between the line of Ordinary High Tide and the line of Extreme Low Tide.

**Tram:** A power-assisted shoreline access device that includes a car or gondola suspended on a cable.

**Transportation Facility:** Transportation facilities include roads, trails, airports, barge landings, County docks, floatplane facilities, ferries and related terminals, and parking areas.

**Tribe:** Any Indian tribe, band, nation, or other organized group or community formally recognized by the federal government (See Affected Tribe).

**Use:** The purpose that land, buildings, or structures now serve or for which they are or may be occupied, maintained, arranged, designed, or intended.

**Utilities:** Includes major and minor facilities and infrastructure that serve individual home owners as well as area wide populations. Utilities include, but are not limited to, sewer infrastructure, water infrastructure, communications infrastructure, stormwater infrastructure, power infrastructure, etc.

**Water Courses:** Streams and man-made surface water conveyance ditches, including portions that are within culverts.

**Water-Dependent Uses:** A use or a portion of a use which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. Examples of water dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, and sewer outfalls.

**Water-Enjoyment Uses:** A recreational use or other use facilitating 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 its location, design, and operation assures 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. Primary water-enjoyment uses may include, but are not limited to, parks, piers, and other improvements facilitating public access to shorelines of the state. General water-enjoyment uses may include but are not limited to, restaurants, museums, aquariums, scientific or ecological reserves, resorts, and mixed-use commercial. Provided, however, that water enjoyment uses conform to the above water-enjoyment specifications and the provisions of the Shoreline Master Program.

**Water-Oriented Uses:** Refers to any combination of Water-Dependent, Water-Related, or Water-Enjoyment Uses. “Non-water-oriented” serves to describe those uses which have little or no relationship to the shoreline and are not considered priority uses under the Act. Examples of “Non-water-oriented” uses include facilities primarily devoted to professional offices, automobile sales or repair shops, mini-storage facilities, multi-family residential development, department stores, and gas stations that serve land based modes of transportation.

**Water-Related Uses:** 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 Water-Dependent commercial activities and the proximity of the use to its customers makes its service less expensive or more convenient. Examples include manufacturers of ship parts large enough that transportation becomes a significant factor in the product’s cost, professional services serving primarily Water-Dependent activities, and storage of water-transported foods. Examples of Water-Related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker, and log storage.

**Water Quality:** The physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation related, and biological characteristics.

**Wetland:** An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does 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 Identification and Delineation:** The process of evaluating vegetation, soils, and hydrology to determine whether a wetland is present, and if so determining the upland boundary of the wetland. Wetlands must be identified and delineated using the Corps of Engineers

Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0, 2010 or as revised).

**Wild Harvest (shellfish):** The harvest of shellfish naturally occurring in the open waters or tidelands of Island County or Puget Sound. Wild harvest does not include the harvest of any fish or shellfish that have been cultivated for commercial purposes.

#### **17.05A.080 Shoreline Use Classification**

The Shoreline Master Program's shoreline uses and developments shall be classified as follows:

**Permitted Uses and Developments** – Uses and developments that are consistent with this Program and RCW 90.58. Such uses or developments shall require a shoreline substantial development permit, a shoreline conditional use permit, a shoreline variance, or a statement that the use or development is exempt from a shoreline substantial development permit.

**Prohibited Uses and Developments** – Uses and developments that are inconsistent with this Program or RCW 90.58 and cannot be allowed through any permit.

Classification of a use or development as permitted does not necessarily mean the use or development will be allowed in all circumstances. It means the use or development may be permitted subject to review and approval by the County or the Department of Ecology. Many permitted uses or developments, including those that do not require a substantial development permit, can individually or cumulatively affect adjacent properties or natural resources and, therefore, must comply with the Program in order to avoid or minimize such adverse impacts. The County may attach conditions of approval to any permitted use via a shoreline substantial development permit or statement of permit exemption, or may deny a permit, as necessary to ensure consistency of the project with the Shoreline Management Act and the Shoreline Master Program.

The Shoreline Use Classification Table identifies the permitted (P), prohibited (X), and shoreline conditional (C) uses within the designated shoreline environments. Permitted uses apply only to shoreline uses as regulated by this SMP and must comply with all applicable SMP goals, policies, and use regulations and may require a Substantial Development Permit. Residential, commercial, and industrial shoreline uses, densities, and intensities of use are also subject to those specific uses and standards defined in the Island County Zoning Code, Chapter 17.03 ICC.

**Unclassified Uses:** Unclassified uses are those uses which are not specified in the definitions or shoreline use classification table in this section. Consistent with WAC 173-27-160(3), such uses shall be reviewed as conditional uses pursuant to the criteria in WAC 173-27-160(1).

<b>SEE SHORELINE USE CLASSIFICATION TABLE ON FOLLOWING PAGE</b>
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**TABLE 1: Shoreline Use Classification Table**

Allowed uses (P) in the shoreline must be allowed in the underlying zoning (ICC 17.03) in addition to the Shoreline Environment Designation. All allowed uses are subject to the limitations, conditions, or exceptions as provided in this Shoreline Master Program.

**NOTES:** P - Shoreline Permitted Use X - Shoreline Prohibited Use C - Shoreline Conditional Use

SHORELINE USES	SHORELINE DESIGNATIONS					
	Aquatic	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity
<b>SHORELINE USES</b>						
<b>Residential Uses</b>						
Single-family (and normal appurtenances)	X	P	P	P	P	C
Accessory dwelling units (e.g., guest houses)	X	C	C	P	P	X
Accessory Beach Access Structures on Private Lots	C	P <sup>1</sup> /C	P	P	P	C
Mobile home parks	X	X	X	X	X	X
Multi-family	X	X	X	X	P	X
Floating homes, houseboats	X	NA	NA	NA	NA	X
Land subdivision	P <sup>5</sup>	P	P	P	P	P
Accessory structures (e.g., garden house, boat house, etc.)	X	P	P	P	P	C
<b>Commercial Uses</b>						
Water-dependent commercial	X	X	X	P	P	P
Water-related & water-enjoyment commercial	X	X	X	X/P <sup>2</sup>	P	P
Non-water-oriented commercial	X	X	X	X/P <sup>2</sup>	X/P <sup>2</sup>	X/P <sup>2</sup>
<b>Industrial Uses</b>						
Port facilities	C	X	X	X	X	P
Water-dependent industry	C	X	X	X	X	P
Water-related industry	C	X	X	X	X	P

SHORELINE USES	SHORELINE DESIGNATIONS					
	Aquatic	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity
Log storage (rafting and stockpiling)	C	X	X	X	X	C
Non-water-dependent industry	X	X	X	X	X	X
<b>Boating &amp; Related Facilities</b>						
Boat launches	P <sup>3</sup> /C	C <sup>3</sup>	C <sup>3</sup>	C <sup>3</sup>	P <sup>3</sup> /C	P
Private piers, docks, & floats	C/P <sup>13</sup>	C	C	C	C/P <sup>1</sup>	P
Public piers, docks, & floats	C	C	P	P	P	P
Mooring Buoys	P	NA	NA	NA	NA	X
Float plane bases	C	X	X	C	C	P
Float plane docks	C	X	C	C	C	P
Marinas	C <sup>4</sup>	X	C	C	C	P
<b>Scientific, Educational, Historic, or Archaeological Uses (e.g., museums, schools, colleges, research institutes)</b>						
Water-dependent or –related	C	P	P	P	P	P
Non-water-related	X	X	C	C	C	C
<b>Resource Management and Extraction</b>						
Agriculture (low intensity)	NA	C	P	P	P	X
Aquaculture, Commercial, In-water, including mechanical or hydraulic harvest of shellfish	C	NA	NA	NA	NA	C
Aquaculture, Commercial, On-land activities, structures, processing, etc.	NA	X	C	C	X	C
Aquaculture, Non-Commercial, On-land and in-water	X/P <sup>14</sup>	X	P	P	P	P
Forest practices	X	C	C	C	P	P
Mining	X	X	X	X	X	X
<b>Transportation</b>						
Parking lots	X	P <sup>12</sup>	X	C	P	P

SHORELINE USES	SHORELINE DESIGNATIONS					
	Aquatic	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity
Railroads	X	X	X	X	X	X
Ferry terminals	C	X	C	C	X	P
Vehicular routes & facilities (new)	X	X	C <sup>6</sup>	C	C	P
Vehicular routes & facilities(existing)	X	C <sup>6</sup>	C <sup>6</sup>	C	C	P
Bridges and culverts	C	C	C	C	C	P
<b>Utilities</b>						
Production facilities <sup>7</sup>	C	C	C	C	C	C
Tidal and wave energy production facilities	C	C	C	C	C	C
Accessory utilities	C <sup>7</sup>	C <sup>7</sup>	P	P	P	P
Below ground transmission	C <sup>7</sup>	C <sup>7</sup>	P	P	P	P
Above ground transmission <sup>7</sup>	C	C	C	C	C	C
<b>Recreational Uses</b>						
Marine campgrounds, marine trails	P	P	P	P	P	X
Campgrounds, scenic overlooks & RV parks (i.e., private)	X	X	X	C	X	P
Natural preserves/parks (undeveloped)	P	P	P	P	P	P
Non-vehicular trails & paths (unpaved)	P	P	P	P	P	P
Passive recreation	P	P	P	P	P	P
Public parks	C	C	P	P	P	P
<b>Tourist Accommodations</b>						
Hotels & motels	X	X	C	C	C	P
Bed and breakfast Inns, country inns	X	C	C	P	P	P
<b>Signs<sup>8</sup></b>						

SHORELINE USES	SHORELINE DESIGNATIONS					
	Aquatic	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity
Navigational signs	P	P	P	P	P	P
Off-premises identification & directional	X	X	X	X	X	C
On-premises identification & directional	X	p <sup>8</sup>	P	P	P	P
<b>SHORELINE MODIFICATION</b>						
Breakwaters	C	NA	NA	NA	NA	C
Shoreline stabilization-structural	C	C	C	P	P	P
Shoreline stabilization- Non-structural	P	P	P	P	P	P
Shoreline Restoration/Beach Enhancement	P	P	P	P	P	P
Dikes	C	X	C	C	C	P
Grading (i.e., excavation & filling)	C/P <sup>10</sup>	C/P <sup>10</sup>	C/P <sup>10</sup>	P	P	P
Dredging	C/P <sup>9</sup>	C <sup>9</sup>	C	C	P	P
Groins and jetties	C <sup>9</sup> /P <sup>11</sup>	X/P <sup>10</sup>	X/C <sup>9,11</sup>	C <sup>9,11</sup>	C <sup>9,11</sup>	C <sup>9,11</sup>
Dolphins	P <sup>12</sup>	X	X	X	X	P <sup>12</sup>

**NOTES:** P - Shoreline Permitted Use X - Shoreline Prohibited Use C - Shoreline Conditional Use

1	Permitted use only for public access over private lots, including required public access for a subdivision. All other beach access structures in the Natural designation require a conditional use permit.
2	If part of a mixed-use development with a water-dependent use.
3	Public and community boat launches only.
4	Marinas are a conditional use in the Aquatic designation. Where the adjacent upland is designated Natural, marinas are prohibited.
5	Tidelands for public acquisition or preservation purposes.
6	Conditionally permitted for public transportation projects only.
7	Permitted conditionally only if no feasible alternative exists.
8	Signs identifying Public Access are exempt. For Natural designation, navigation aids and public information signs only.
9	For restoration or enhancement of natural resources only.

10	As part of an ecological restoration project.
11	As part of an approved marina or for navigational purposes.
12	As part of a permitted water-dependent use.
13	New and replacement docks, piers, and floats located within a designated canal community that are consistent with an approved canal community master plan may be reviewed as a permitted use provided that the approved canal community master plan contains standards applicable to docks, piers, and floats, and provided that these standards, are consistent with the standards enumerated in ICC 17.05A.110.B.23
14	Non-commercial aquaculture is a permitted use in the aquatic environment unless the adjacent (landward) area is designated as a natural shoreline environment.

### **17.05A.090 Shoreline Use and Development Regulations**

All developments and uses located within the jurisdiction of this Shoreline Master Program shall comply with all the regulations of this section.

#### **A. General Shoreline Development Standards**

1. All shoreline development shall be located, constructed, and operated so as to protect public health, safety, and welfare.
2. In shoreline areas, access, utilities, and public services are required to be available and adequate to serve existing needs and planned future development.
3. The location, design, construction, and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to applicable water quality management programs and regulatory agencies.
4. No structure within the shoreline shall exceed 35 feet in height, except that bridges and ferry facilities may be allowed to exceed 35 feet in height when necessary to accommodate navigation and docking requirements.
5. Land clearing, grading, filling, or alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not developed shall be replanted and maintained in perpetuity. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.
6. All shoreline developments and uses shall be located, designed, constructed, and managed to avoid disturbance of or minimize adverse impacts to Fish and Wildlife Habitat Conservation Areas including, but not limited to spawning, nesting, rearing and habitat areas, and migratory routes. Where avoidance of adverse impacts is not practicable, the Shoreline Administrator may require that mitigation measures to protect species and habitat functions be developed in consultation with state resource management agencies and federally recognized tribes, as needed.
7. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.
8. The release of oil, chemicals, or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling, or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been corrected.



9. The use of chemicals to control invasive aquatic weeds is prohibited, except when applied by a licensed pesticide applicator and approved for aquatic use.
10. All shoreline developments and uses shall control erosion during project construction and operation.
11. All shoreline developments and uses shall be located, designed, constructed, and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, erosion, and accretion.
12. All shoreline developments and uses shall be located, designed, constructed, and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.
13. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties, or substantial site regrading.
14. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water, or other means into any water body.
15. Storage, collection, and handling of solid waste associated with shoreline residences or commercial development shall be conducted so as to create no health hazards, rodent harborage, insect breeding areas, fire hazards, or air or water pollution.
16. Navigation channels shall be kept free of hazardous or obstructing development or uses.
17. Development and use of the shoreline shall be conducted in such a manner that unreasonable levels of noise, light, or glare will not intrude into adjacent areas. Shoreline activities may be restricted to reasonable hours and days of operation when necessary to protect residents and properties from adverse impacts such as noise, light, and glare.

B. Archaeological, Historic, and Cultural Resources

1. The Shoreline Administrator shall ensure that known or suspected locations of archaeological resources are protected consistent with provisions and procedures in the GMA Comprehensive Plan and Memorandum of Understanding between the County and the State Department of Archaeology and Historic Preservation (DAHP).
2. All shoreline permits shall contain a provision requiring permittees to immediately stop work and notify Island County, DAHP, and affected Native American Tribes

if human remains or archaeological resources are encountered during site disturbance, excavation, or development.

3. No permit for an application requiring an archaeologist's report will be issued prior to the receipt by the County of the required archaeological report and review and approval of the report by DAHP. All permits issued for development in areas known to be archaeologically significant or having the potential for the presence of archaeological resources shall provide for site inspection and reporting by a professional archaeologist during any development activity that is considered to have a high probability of encountering cultural resources.
4. All developments proposed for locations adjacent to historical sites which are registered on the State or National Historic Register shall be sited and designed so as to be complementary to the historic site. Development which degrades or destroys the historic character of such sites shall not be permitted.

#### C. Environmental Protection and Critical Areas

1. All shoreline use and development, including preferred uses and uses that are exempt from shoreline substantial development permit requirements, shall be sited, designed, constructed, conducted, and maintained in a manner that maintains shoreline ecological processes and functions, and protects the natural character of the shoreline.
2. Uses and developments that cause a net loss of ecological functions shall be prohibited, unless accompanied by mitigation that compensates for the ecological function or functions that would be otherwise be lost.
3. Uses and developments shall provide a level of protection equal to or better than countywide critical areas regulations and result in no net loss of ecological functions.
4. The County shall consider the cumulative impacts of individual uses and developments, including preferred uses and uses that are exempt from permit requirements, when determining whether a proposed use or development could cause a net loss of ecological functions.
5. The applicant for or owner of any new shoreline use or development shall mitigate adverse environmental impacts and impacts to shoreline ecological functions whether or not the use or development requires a shoreline substantial development permit or is exempt from a shoreline permit, consistent with WAC 173-26-201(2)(e).
6. Projects shall be designed to protect hydrologic connections between water bodies, water courses, and associated wetlands.
7. 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.
8. When compensatory mitigation measures are required, all of the following shall apply:
- a) The quality and quantity of the replaced, enhanced, or substituted resources shall be the same or better than the affected resources;
  - b) The mitigation site and associated vegetative planting shall be nurtured and maintained such that healthy native plant communities can grow and mature over time;
  - c) The mitigation shall be informed by pertinent scientific and technical studies, including but not limited to the Shoreline Inventory and Characterization Report, the Shoreline Restoration Plan and other background studies prepared in support of this Shoreline Master Program;
  - d) The mitigation shall replace the functions as quickly as possible following the impacts to ensure no net loss; and
  - e) The mitigation activity shall be monitored and maintained to ensure that it achieves its intended functions and values. The monitoring timeframes for wetland and wetland buffer mitigation shall be consistent with ICC 17.02A.070.
9. The County shall require the applicant or owner to post a bond or provide other financial surety equal to the estimated cost of the mitigation or restoration in order to ensure the mitigation or restoration is carried out successfully. The bond or surety shall be refunded to the applicant upon completion of the mitigation or restoration activity and any required monitoring.
10. Compensatory mitigation measures shall occur in the vicinity of the impact or at an alternative location within the same watershed sub-basin for impacts to freshwater shorelines or within the same marine shoreline drift cell for marine shoreline impacts, if the off-site location provides greater and more sustainable ecological benefits. When determining whether offsite mitigation provides greater and more

sustainable benefits, the County shall consider limiting factors, critical habitat needs, and other factors identified by the locally adopted shoreline restoration plan, or an approved watershed or comprehensive resource management plan. The County may also approve use of alternative mitigation practices such as in-lieu fee programs, mitigation banks, and other similar approaches provided they have been approved and sanctioned by the Department of Ecology, the Department of Fish and Wildlife, the Army Corps of Engineers, and Island County.

11. Land that is constrained by critical areas or buffers shall not be subdivided to create parcels that do not contain a buildable site outside of critical areas and their required buffers, unless the parcel is an open space tract created for the purposes of protecting and managing a critical area, and a conservation easement indicating that the parcel cannot be built upon is recorded with the County Auditor.
12. Geologically Hazardous Areas shall be regulated pursuant to the following:
  - a) Development within Erosion Hazard Areas, Landslide Hazard Areas, and Steep Slopes shall comply with Chapters 11.02 and 11.03 ICC.
  - b) Development within Seismic Hazard Areas shall comply with the applicable International Residential Code or the International Building Code.
  - c) Development within Tsunami Hazard Areas shall comply with Chapter 14.02A ICC.
  - d) Geologically hazardous areas are hereby declared to be “environmentally sensitive areas” pursuant to WAC 197-11-748 and 197-11-908.
  - e) New development that, during the life of the development, would cause foreseeable risk to the structure or the safety of its inhabitants from geological conditions or would require shoreline stabilization is prohibited, except where there is no alternative location for an allowed use and the development would not cause a net loss of ecological functions.
13. Fish and Wildlife Habitat Conservation Areas
  - a) Fish and Wildlife Habitat Conservation Areas (FWHCAs) are defined in ICC 17.05A.070 and include their associated buffers.
  - b) Buffers and use restrictions for each shoreline environment designation (see Table 3) have been developed in consideration of the protection of Fish and Wildlife Habitat Conservation Areas (FWHCAs). Buffer restrictions for portions of streams within shoreline jurisdiction are provided in Table 2. Buffers or restrictions on proposed shoreline uses or modifications may be required for the protection of FWHCAs if, through project specific project review, the Administrator finds that a significant impact on a FWHCA would occur as a direct result of the project.
  - c) Applications for projects located adjacent to marine waters, their associated wetlands, or any other FWHCA, shall include a complete and accurate Biological Site Assessment (BSA). Biological site assessments shall be prepared by a professional ecologist, biologist, or similarly qualified

professional at the applicant's expense and shall include the following information:

- (i) A site plan indicating all FWHCAs within shoreline jurisdiction that exist on or within one hundred (100) feet of the portion of the subject property proposed for development;
  - (ii) Identification of FWHCAs that meet the definition of critical saltwater habitat or critical freshwater habitat as defined in this Program;
  - (iii) Descriptions of all FWHCAs shown on the site plan, including qualitative and quantitative information regarding habitat value and condition of each FWHCA, including identification of measures to fully protect nesting sites of the Bald Eagle, Osprey and Heron;
  - (iv) Description of the proposed project, including, but not limited to, associated earthwork (grading, excavation, filling), structures, utilities, and existing habitat other than FWHCAs, including wetlands and areas that may act as wildlife corridors;
  - (v) Regulatory summary, identifying other agencies with jurisdiction, protection measures required by other regulations, and mitigation provided as part of the project;
  - (vi) Analysis of impacts to all protected species or habitats designated as FWHCAs, after consideration of compliance with other regulations and the requirements of this Shoreline Master Program;
  - (vii) If adverse impacts to protected species or habitats are likely to occur, a conceptual mitigation plan, including an analysis of feasible mitigation alternatives that would mitigate adverse impacts of the project. The effectiveness of the proposed mitigation measures shall be compared to other feasible alternatives. Mitigation sequencing shall be as required in section ICC17.05A.090.C.7; and
  - (viii) Best Management Practices, including a discussion of on-going maintenance practices that will assure protection of all FWHCAs on-site after the project has been completed. If monitoring is required, this section shall include a description of proposed monitoring criteria, methods, and schedule.
  - (ix) The recommendations of the approved Biological Site Assessment, Habitat Management Plan and mitigation plan, if required, shall be included as conditions of approval of the underlying permit.
- d) If the Biological Site Assessment (BSA) concludes that protected habitat may be affected by the proposed development, a Habitat Management Plan must be prepared by a professional ecologist, biologist, or similarly-qualified professional at the expense of the applicant. The Habitat Management Plan may be combined with the BSA, or a wetland mitigation plan, if required for the project. The Habitat Management Plan must consider Management Recommendations adopted by the Washington Department of Fish and

Wildlife, and the specific attributes of the affected properties, such as, but not limited to, property size and configuration, surrounding land use, the practicability of implementing the Habitat Management Plan, and the adaptation of the species to human activity.

Habitat Management Plans shall include:

- (i) An ecological assessment of the fish and wildlife habitat conservation areas present and potential adversely altered, to determine the gross area of loss and the functions, habitat, and types, sizes, and quantities of vegetation affected;
  - (ii) Statement of goals. Such statements shall include a discussion of any functions and values lost and the plan for replacement;
  - (iii) Methods. Information discussing “what, where, when, and how,” i.e., acreage of mitigation, wetland or other habitat types to be constructed or restored, location, dates for beginning and completing the project, methods of construction, and maintenance requirements shall be included;
  - (iv) Standards of success. A qualitative and to the extent possible, a quantitative description of what will be considered a successful, functioning wetland or Fish and Wildlife Habitat Conservation Area shall be provided;
  - (v) Monitoring. Same as requirements set forth in ICC 17.03.260.I;
  - (vi) Contingency plan. A contingency plan may be required by the Administrator to outline restorative measures to be taken should the mitigation fail or only partially succeed;
  - (vii) Standard Habitat Management Plan: In cases when the County has developed a standard Habitat Management Plan for a specific species, the applicant may either accept and sign the standard Habitat Management Plan or prepare his or her own Habitat Management Plan pursuant to this Program.
- e) Any person may nominate for designation a species or habitat of local importance within shoreline jurisdiction. Nominations for a species or habitat of local importance must meet the following criteria:
- (i) Protection by other county, state or federal policies, laws, regulations, or non-regulatory tools is not adequate to prevent degradation of the species or habitat in Island County; and
  - (ii) Proposed management strategies are supported by best available science; and
  - (iii) Proposed management strategies are practicable; and
  - (iv) Without protection, there is a likelihood that the species will not maintain and reproduce over the long term; and

- (v) Nominated species must satisfy the following criteria:
  - (1) Local populations which are in danger of extirpation based on existing trends; and
  - (2) The species is sensitive to habitat manipulation; and
  - (3) The species or habitat has commercial, game, or other special value such as locally rare species; and
- (vi) Habitats nominated to protect a particular species must satisfy the following criteria:
  - (1) The nominated habitat areas represent either high-quality native habitat or habitat that has an excellent potential to recover to a high quality condition and which is either of limited availability or highly vulnerable to alteration.
  - (2) Where a habitat is nominated to protect a species, the use of the habitat by that species is documented or is highly likely or the habitat is proposed to be restored with the consent of the affected property owner so that it will be suitable for use by the species; and
  - (3) Long term persistence of the species is dependent on the protection, maintenance or restoration of the habitat.
- f) Nominations for designation of a species or habitat of local importance within shoreline jurisdiction shall be processed pursuant to Chapter 16.26 ICC. The burden for providing information required for designation rests with the party nominating the habitat or species. Nominations shall be reviewed and approved as follows:
  - (i) The nomination shall:
    - (1) Indicate the specific habitat features to be protected (for example, nest sites, breeding areas, nurseries, etc.);
    - (2) Include management strategies for the species or habitats, supported by best available science; and
    - (3) Where restoration or habitat is proposed, include a specific plan for restoration, including a conceptual design and a means of financing of the restoration.
  - (ii) Pursuant to ICC 16.19.060, the Planning & Community Development Department shall determine whether the proposal is complete. For nominations that are complete, it shall evaluate the proposal for compliance with the criteria enumerated in ICC 17.05A.090.C.13.e.i-vi and make a recommendation to the Planning Commission based on those standards.
  - (iii) The Planning Commission shall hold a Public Hearing and make a recommendation to the Board of Commissioners.

- (iv) Following the recommendation of the Planning Commission, the Board of County Commissioners shall designate a FWHCA if the nomination satisfies the nomination criteria in ICC 17.05A.090.C.13.e.i-vi.
- (v) Approved nominations shall be subject to the provisions of this Chapter and may include additional specific restrictions for the protection of the habitat or species designated.
- g) Portions of streams within the shoreline jurisdiction of Island County shall be classified using the water type classification system of WAC 222-16-030, which include the following classifications and criteria:
  - (i) "Type S Water" means all waters within their bankfull width, as inventoried as "shorelines of the state," and the rules promulgated pursuant to chapter 90.58 RCW, including periodically inundated areas and their associated wetlands.
  - (ii) "Type F Water" means segments of natural waters other than Type S Waters, which are within the bankfull widths of defined channels and periodically inundated areas of their associated wetlands, or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and which in any case contain fish habitat or are described by one of the following four categories:
    - (1) Waters, which are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type F Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;
    - (2) Waters, which are diverted for use by federal, state, tribal, or private fish hatcheries, as further defined in WAC 222-16-030(2)(b);
    - (3) Waters, which are within a federal, state, local, or private campground having more than 10 camping units, as further defined in WAC 222-16-030(2)(c); or
    - (4) Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat, as further defined in WAC 222-16-030(2)(d).
  - (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 flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.
  - (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. Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

- h) **Stream Buffers:** Protective buffers shall be required to preserve stream and riparian functions within shoreline jurisdiction. Buffer distances shall be measured horizontally from the Ordinary High Water Mark of the stream. The following standard buffers apply to streams regulated under this Shoreline Master Program.

**TABLE 2: Stream Buffers**

<b>Water type</b>	<b>Standard Stream Buffer</b>
S – Shoreline of the State <sup>1</sup>	150 feet
F - Known to contain fish habitat	100 feet
Np – Perennial stream, does not contain fish habitat	50 feet
Ns – Seasonal stream, does not contain fish habitat	50 feet

- (i) **Increasing Stream Buffer Widths.** The Director has the authority to increase the standard buffer widths on a case-by-case basis based on the intensity of the proposed use, the functions of the stream and the characteristics of the existing buffer when a larger buffer is determined to be necessary to protect stream water quality or a Protected Species. However, an applicant may enhance any such buffer (such as by planting native plants) to maintain the standard buffer width following submittal, review, and approval of a Biological Site Assessment, Habitat Management Plan and mitigation plan, when required, which demonstrate that the enhancement will provide a buffer that protects stream water quality or a Protected Species, as applicable.
- (ii) **Decreased Stream Buffer Widths.** If the lot buildable area is less than 2,200 square feet, after the applicable buffers and setbacks have been deducted from the total lot area, the required stream buffer may be decreased provided that the following standards are met:
  - (1) Decreasing the stream buffer width will not adversely affect fish and wildlife habitat functions and values;
  - (2) If a portion of a buffer is reduced, an area of the remaining buffer equal to two (2) times the area removed from the standard buffer shall be enhanced using native vegetation or installed habitat

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<sup>1</sup> There are currently no streams classified as shorelines of the state in Island County; streams within shoreline jurisdiction would be classified as F, Np, or Ns.

- features. For example, if a buffer is reduced by 1,000 square feet, then 2,000 square feet of remaining buffer shall be enhanced;
- (3) The perimeter of the reduced buffer must be screened with dense vegetation or barrier fencing (other measures necessary to provide adequate protection for fish and wildlife habitat should be identified in the Biological Site Assessment or Habitat Management Plan); and
  - (4) The standard stream buffer width shall not be reduced by more than 25% of the standard buffer width.
- (iii) **Averaging Stream Buffer Widths.** Buffer widths may be modified by “averaging.” Buffer width averaging shall be allowed only where the applicant demonstrates through an approved Biological Site Assessment or Habitat Management Plan that the following criteria are met:
- (1) A decrease in a portion of the buffer is necessary to accomplish the purpose of the proposed project and no reasonable alternative is available;
  - (2) Averaging would allow the applicant to establish a corridor of native vegetation between natural systems;
  - (3) Decreasing the buffer width will not adversely affect fish and wildlife habitat functions and values;
  - (4) If a portion of a buffer is reduced through averaging, an area of additional buffer, contiguous with the existing buffer, shall be designated that is equal in size to the reduced portion of the standard buffer so that the total buffer area remains unchanged; and
  - (5) The standard stream buffer width shall not be reduced by more than 25 percent.
- (iv) **Allowed Uses in Buffers.** Buffers are intended to protect natural resources and shoreline functions. Buffers are typically required to be well vegetated with native plants. Up to twenty percent (20%) of the buffer area can be disturbed with a pedestrian (pervious) trail.
- i) **Standards: Critical Saltwater Habitats.** The following standards apply to all development adjacent to or containing Critical Saltwater Habitat:
- (i) Development shall not intrude into, over, or within ten (10) feet from eelgrass meadows and kelp beds except when there is no feasible alternative alignment or location and the development would result in no net loss of the plant species and habitat.
  - (ii) Except for boat launches, disabled persons/emergency response vehicles, and authorized temporary use of construction equipment, motorized vehicular travel is prohibited on private and public tidelands.
  - (iii) New docks, bulkheads, bridges, fill, floats, jetties, and utility crossings shall not intrude into or over critical saltwater habitats below the ordinary high water mark, except when:

- (1) Public need is clearly demonstrated;
  - (2) Avoidance of impacts is not feasible or would result in unreasonable cost;
  - (3) The project includes mitigation as required by this Chapter; and
  - (4) The project is consistent with resource protection and species recovery.
- (iv) Private, non-commercial docks, piers, and floats for individual residential or community use may be allowed pursuant to the requirements of this Chapter.
- (v) New over-water structures shall only be allowed for water-dependent uses, public access, ecological restoration, or except where otherwise explicitly allowed pursuant to the requirements of this chapter.
- (vi) All developments and uses on navigable waters or their beds shall be located and designed to allow for the safe, unobstructed passage of fish, marine mammals, and birds, particularly species dependent on migration.
- (vii) Uses that adversely impact the ecological functions of critical saltwater shall be prohibited except uses necessary to achieve the objectives of RCW 90.58.020, and then only when all potential impacts are mitigated as necessary to ensure maintenance of shoreline ecological functions and processes;
- (viii) On-Site Sewage Systems. The design of new and the replacement of existing on-site sewage systems shall comply with Chapter 8.07 ICC.
- (ix) Stormwater Management: Applications for residential subdivisions or for construction of any new non-residential facility shall require preparation, submittal, and approval of a storm water collection, treatment, and disposal system designed by a Professional Engineer and reviewed pursuant to Chapters 11.01 and 11.03 ICC. Infiltration of storm water shall be encouraged, except where this practice would be injurious or potentially injurious to the quality of ground water in designated Aquifer Recharge Areas, or would potentially destabilize an unstable or steep slope area.
- (x) Agricultural Facilities and Livestock
- (1) If construction of new agricultural facilities in the Commercial Agriculture Zone is proposed within shoreline jurisdiction, a County approved farm management plan will be required.
  - (2) Construction of new agricultural facilities or activities involving the raising or keeping of livestock in the Rural Agriculture zone shall require compliance with water quality regulations.
- j) Protection Standards: Nesting Sites and Territory—The following buffers and standards shall apply to all Heron, Osprey, and Bald Eagle nesting sites within shoreline jurisdiction:

- (i) Heron—One thousand (1,000) feet for non-residential development and three hundred (300) feet for residential development.
  - (ii) Osprey—Six hundred (600) feet for non-residential development and two hundred (200) feet for residential development.
  - (iii) Bald Eagle—Prior to authorizing any development on a site containing a Bald Eagle nesting site, the applicant shall submit documentation demonstrating compliance with all applicable Federal laws and regulations. A Biological Site Assessment will not be required by Island County based solely on the presence of a Bald Eagle nesting site.
- k) Protection Standards: Washington Natural Heritage Program Areas
- (i) For designated significant plant communities dominated by Big Leaf Maple (*Acer macrophyllum*) or Douglas Fir (*Pseudotsuga menziesii*), natural vegetation between the ordinary high water mark and a line fifty (50) feet landward of the top of banks and bluffs ten (10) feet or higher shall be retained, except for removal of hazardous, diseased or damaged trees and to allow for pedestrian waterfront access. Removal of invasive non-native species is authorized. Trimming but not removal for view enhancement is authorized.
  - (ii) For designated significant plant communities including white-top aster (*Aster curtus*) and golden indian paintbrush (*Castilleja levisecta*), a Biological Site Assessment and Habitat Management Plan shall be prepared to ensure protection of the protected species.
  - (iii) All other designated Washington Natural Heritage Program Areas. Requests for permit approval by Island County will be acted on only after consultation with the Washington Natural Heritage Program.
- l) Protection Standards: Habitats of Local Importance. Property owners within these areas are required to comply with Chapter 17.02A ICC, the Island County Critical Areas Ordinance; Chapter 17.03 ICC, the Island County Zoning Ordinance; Chapter 11.02 ICC, the Island County Clearing and Grading Ordinance; the Island County Shoreline Master Program; and all other applicable Federal, State, and County regulations. Variances from any shoreline or critical areas regulations shall specifically address any designated habitats of local importance located on or adjacent to the property proposed for development. Additional protections may be adopted with designation of a habitat of local importance.
- m) Protection Standards: All other Fish and Wildlife Habitat Conservation Areas shall be protected on a case-by-case basis. A Biological Site Assessment shall be prepared pursuant to ICC 17.05A.090.C.13.c, and a Habitat Management Plan, if required, shall be prepared pursuant to ICC 17.05A.090.C.13.d.
14. Critical Areas Regulations Adopted by Reference:

- a) The following Critical Areas provisions of Chapter 17.02A ICC dated July 1, 2008 (Ordinance C-02-08), are incorporated into this Shoreline Master Program by reference:
  - (i) 17.02A.030 Definitions
  - (ii) 17.02A.040(B) Critical Area Protection
  - (iii) 17.02A.040(E) Alteration of Critical Areas
  - (iv) 17.02A.040(F) Property Assessment
  - (v) 17.02A.070 Critical Area Mitigation
  - (vi) 17.02A.080 Monitoring and Adaptive Management
  - (vii) 17.02A.090 Wetlands
- b) In the event development or performance standards in ICC Chapter 17.02A are inconsistent with standards and requirements in this Shoreline Master Program, the standard that is more protective of natural resources in the shoreline shall govern.
- c) The standards for protection of aquifer recharge areas in ICC Chapter 8.09.097 are incorporated into this Shoreline Master Program by reference.

**D. Shoreline Buffers, Building Setbacks, and Impervious Surface Limits**

1. In order to protect shoreline ecological functions and shoreline scenic quality, minimum shoreline buffers are established as follows for all SMA shorelines in Island County. The minimum required buffer widths for each shoreline environment designation are shown in Table 3.
2. Residential development, including principal structures and all associated impervious surfaces, shall be located landward of the shoreline buffer plus building setback except as specified in this SMP or with the approval of a shoreline variance.
3. In all shoreline environment designations, a building setback shall be maintained from the landward edge of the required buffer. The minimum required building setbacks for each shoreline environment designation are shown in Table 3. No permanent structure or impervious surface may extend within the building setback, except as follows:
  - a) Impervious surfaces may not cover more than 20 percent of the building setback area; and
  - b) Structures less than 30 inches in height may be allowed; and
  - c) A single garden or storage structure over 30 inches in height may be allowed as accessory to a single-family residence. Such structures shall be limited to 200 square feet and shall be subject to a maximum height of 12 feet.

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**TABLE 3. Minimum Shoreline Buffers, Setbacks, Lot Widths, & Maximum Impervious Surface Limits**

Shoreline/Resource Type	Shoreline Environment Designation						
	N	RC	UC	SR	SRCC	SRHBC	HI
<b>Marine buffer-</b> measured landward from OHWM on marine shorelines (feet)	125	75	50	30	0	20	30
<b>Lake buffer-</b> measured landward from OHWM on lake shorelines (feet)	130	80	80	30	N/A	N/A	NA
<b>Steep slope buffer-</b> measured landward from top of bluff on marine shorelines with <b>slopes greater than 40%</b> (feet)	50	30	30	30	N/A	N/A	50
<b>Steep slope buffer-</b> measured landward from top of bluff on marine shorelines with <b>exceptional feeder bluffs</b> (feet)	50	50	50	30	N/A	N/A	N/A
<b>Setback,</b> measured landward from the most landward of the required marine, lake, or steep slope buffer (feet)	25	25	25	45	40	10	20
<b>Minimum lot width</b> (feet)	150	150	60	60	60	N/A	0
<b>Maximum impervious surface</b> (percent of lot within shoreline jurisdiction)	10%	10%	10%	35%	40%	80%	80%
<b>Environment Designations</b>							
<b>N: Natural</b> <b>RC: Rural Conservancy</b> <b>UC: Urban Conservancy</b>	<b>SR: Shoreline Residential</b> <b>SRCC: Shoreline Residential-Canal Community</b> <b>SRHBC: Shoreline Residential-Historic Beach Community</b> <b>HI: High Intensity</b>						
<b>Note: The Aquatic designation does not have a minimum buffer or building setback.</b>							

4. Buffers shall be measured landward in a horizontal direction perpendicular to the Ordinary High Water Mark (OHWM) of the shoreline water body, and shall be a three dimensional space that includes the airspace above.
5. Native vegetation within shoreline buffers shall be maintained in a predominately natural, undisturbed, undeveloped, and well-vegetated condition. Shoreline buffer vegetation may be modified only as specified in this SMP.
6. Shoreline buffers may be modified to include a trail up to five feet in width that is the minimum length necessary to provide access to the shoreline. Beach access structures may be allowed as provided in ICC 17.05A.100.C.
7. Shoreline buffer areas that contain non-native trees, shrubs, and herbaceous vegetation may be maintained in their existing condition until such time as the existing landscaping is removed or the entire site is developed or redeveloped under these regulations.
8. When development is proposed on a site where the shoreline buffer area does not have native vegetation throughout, the buffer shall be required to be enhanced with native trees and shrubs that contribute to habitat quality and ecological functions, proportionate to the impacts of the proposed development as determined by the Shoreline Administrator. If the site will not support trees and shrubs, the Shoreline Administrator may allow use of native herbaceous plants. As a general guideline, for development outside of any required setback or buffer, the percentage of the buffer to be enhanced should equal the percentage increase in impervious lot coverage on the site. Any enhancement required pursuant to setback or buffer modification provisions of this Program would be in addition to this general guideline.
9. Buffer areas and any required enhancement plantings, shall be shown on the site plan, require approval of the Administrator, and be recorded with the County Auditor as requirements that remain for as long as the approved development remains on the property.
10. The applicant shall monitor and report annually for a period of five (5) years on the condition of any buffer enhancement required by this Program. Monitoring shall include photographs of the plantings and an inventory of plant survival and cover expressed as a percent of the planting area. Buffer enhancement plantings shall have targets for vegetative cover that must be met within or by the fifth growing season. At that time, if the vegetative cover does not meet the target, additional planting or other action may be required and the monitoring period extended. The target for vegetative cover shall be 90 percent (90%) unless the Shoreline Administrator modifies the required target after determination that environmental conditions indicate less vegetative cover more nearly matches what a naturally occurring plant community would achieve at the particular location.



11. If buffers for any shoreline or critical areas are contiguous or overlapping, the buffers and setbacks that are most protective of shoreline resources shall apply.
12. Impervious surfaces shall be limited to the greater of the percentage listed in ICC 17.05A.090.D Table 3 or, the percentage of impervious surface within shoreline jurisdiction on any existing legal lot as of the date of adoption of this program.

E. Shoreline Setback and Buffer Modifications

1. On lots where the area of the lot outside of the standard shoreline buffer and building setback as indicated in Table 3, the required side setbacks in Chapter 17.03 ICC, and any required critical area buffer is less than 2,200 square feet, development may extend into the building setback provided:
  - a) The maximum building footprint (including principal structures and all associated impervious surfaces) shall be no larger than 2,200 square feet;
  - b) There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity;
  - c) The proposed development has utilized the maximum portion of the lot outside of the shoreline buffer, building setback, critical areas, and critical area buffers before extending into the building setback; and
  - d) Buffer enhancement is provided consistent with ICC 17.05A.090.G.
2. A legally established residential structure (including principal structures and all associated impervious surfaces) located wholly or partially within shoreline buffer or building setback may expand into the building setback provided:
  - a) The maximum building footprint (including principal structures and all associated impervious surfaces) shall be no larger than 2,200 square feet;
  - b) There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity;
  - c) The proposed development has utilized the maximum portion of the lot outside of the shoreline buffer, building setback, critical areas, and critical area buffers before extending into the building setback; and
  - d) Buffer enhancement is provided consistent with ICC 17.05A.090.G.
3. A legally established residential structure (including principal structures and all associated impervious surfaces) located wholly or partially within shoreline buffer or building setback may be replaced provided the footprint of the replacement structure in the building setback and shoreline buffer is in the same location as the original structure and buffer enhancement is provided per ICC 17.05A.090.G.
4. In the Rural Conservancy Environment, an existing legally established or nonconforming residential structure (including principal structures and all associated impervious surfaces) located wholly within the shoreline buffer may be modified or expanded provided:

- a) Any expansion of the building's footprint or any new impervious surface are located landward of the rear foundation wall (the wall furthest from the water) of the existing structure;
  - b) There is no opportunity to consolidate lots under common ownership that will alleviate the nonconformity;
  - c) Buffer enhancement is provided consistent with ICC 17.05A.090.G.
5. The following provisions shall apply to any development proposed within a shoreline buffer or building setback:
- a) The residence shall be located in the least environmentally damaging location relative to the shoreline and any critical areas;
  - b) The residence shall be located outside of areas subject to geologic hazards;
  - c) A geologic analysis indicates that with the reduced setback or buffer, the proposed structure will not require shoreline stabilization for the life of the single-family residence, typically 100 years;
  - d) The applicant has signed and recorded with the County a covenant that meets all the requirements as provided in ICC 11.02.170 and runs with the title of the property that waives any claim against Island County by reason of or arising out of issuance of the permit or approval by Island County for the development of the property and acknowledges that the structure was built in a location on the lot closer than normally permitted on the condition that it would not require future shoreline stabilization over the life of the structure, and that County regulations would not allow stabilization to protect the structure or other improvement should this presumption prove incorrect.
  - e) Any septic drainfield shall be located landward of the single-family residence, whenever possible, in compliance with Island County Health regulations;
  - f) Measures shall be taken to mitigate all adverse impacts, including using low impact development measures where appropriate, such as pervious pavement for driveways and other hard surfaces and infiltrating stormwater runoff through bioswales except where this would threaten slope stability, increase erosion, or potentially degrade groundwater quality; and
  - g) Copper shall not be used in any exterior finish material.
- F. Common Line Setback and Shoreline Buffer Reduction (Refer to Figure 1 at the end of this Chapter). The common line setback and shoreline buffer reduction procedures described in this section shall not be used to reduce a steep slope buffer.
1. Single-family residential development may be allowed in a setback, or a marine or lake buffer, where there are legally established residences adjacent to and within 100 feet of the project site that are waterward or partially waterward of the required shoreline buffer or building setback. In such cases, a single-family residential structure may be constructed within a marine or lake buffer, or within a

setback provided the proposed structure is set back from the OHWM to a common line drawn between the water-side corners of the facades of each adjacent residential structure that are nearest to the proposed structure.

2. If a lot proposed for development has only one residentially developed lot adjacent to and within 100 feet of the project site where there is a legally established residence that is waterward or partially waterward of the required marine or lake buffer or building setback, the minimum building setback may be reduced to the average of the two nearest residential structures within 100 feet of the project site on lots abutting the same shoreline or the required buffer width for the shoreline designation in which the proposed structure is located, whichever is greater.
3. If the common line setback allows the placement of a residential structure in the shoreline buffer, the area of the buffer shall not be reduced by more than fifty (50) percent.
4. If the common line setback allows the placement or expansion of a residential structure in the shoreline buffer or building setback the proponent shall enhance the remaining buffer consistent with ICC 17.05A.090.G.

G. Shoreline Buffer Enhancements Required (Refer to Figure 2 at the end of this Chapter).

1. In cases where new, expanded (greater than 200 square feet), or replaced residential structures (including principal structures and all associated impervious surfaces) are permitted in the shoreline building setback or buffer, buffer enhancement shall be provided as follows:
  - a) If the expansion or modification is greater than 200 square feet and adds impervious surface to the building setback, including the primary structure and all accessory structures and appurtenances, the proponent shall be required to enhance an equal area of the shoreline buffer with native vegetation;
  - b) If the expansion or modification is greater than 200 square feet and adds any new impervious surface within the shoreline buffer, including the primary structure and all accessory structures and appurtenances, the proponent shall be required to enhance an equal area of the shoreline buffer with native vegetation; and
2. Buffer enhancement shall meet the requirements of ICC 17.05A.090.H.
3. Requirements for vegetation enhancement associated with development in the building setback or buffer shall apply to the total of all new building area added on a project site after the effective date of this Program.
4. If the proponent removes impervious surface from within the shoreline buffer or building setback, the horizontal area (square feet) of removed impervious surface

may be deducted from the total of new impervious surface area for which enhancement of the buffer is required.

#### H. Shoreline Buffer Enhancement Standards

1. In all cases where shoreline buffer enhancement is a required condition of development in the shoreline buffer or building setback, the following shall apply:

a) An approved Landscape Enhancement Plan is required and shall contain the following:

- (i) A buffer enhancement plan subject to County approval shall be submitted. The plan will describe how the requirements of this section will be met;
- (ii) The plan shall take into account native growing conditions and specify appropriate plants and planting density for achieving a viable and self-sustaining buffer. If the site will not support trees and shrubs, native herbaceous plants shall be planted; and
- (iii) Failure to implement the approved Landscape Enhancement Plan is a violation of this chapter and will result in immediate revocation of all issued development permits.

b) Enhancement location.

For lots that are 50 feet wide or less, the required buffer enhancement shall be located adjacent to the OHWM for at least 20 feet of the width of the lot.

- (i) For lots 51-100 feet in width, the required buffer enhancement shall be located adjacent to the OHWM for at least 25 feet of the width of the lot.
- (ii) For lots greater than 100 feet in width, the required buffer enhancement shall be located adjacent to the OHWM for at least twenty-five percent (25%) of the width of the lot.

c) Vegetation standards.

- (i) All existing impervious area shall be removed from the enhanced shoreline buffer.
- (ii) No noxious weeds as listed by the Island County Noxious Weed Board shall be present on the property five (5) years after development approval.
- (iii) Only native species will be introduced to the enhancement area, except that short lived non-invasive nonnative species may be used to provide temporary vegetative cover while the native species become established.
- (iv) Enhancement areas shall have ninety percent (90%) vegetative cover of native species five years after enhancement begins, unless on-site environmental conditions indicate that the naturally occurring plant

community at the particular location would have less vegetative cover, as determined by the Shoreline Administrator.

- (v) Native trees and shrubs shall dominate the enhancement area after five (5) years unless a longer time of up to ten (10) years is necessary to meet this standard as determined by the Shoreline Administrator.
- (vi) If site-specific environmental conditions indicate that trees and shrubs will not survive on the site, or the enhancement area is contiguous to a coastal native prairie or dunes, the enhancement area shall be dominated by native herbaceous species.
- (vii) If these vegetation standards are not met after five (5) years, additional enhancement actions such as planting, seeding, and weed control may be required if in the judgment of the Shoreline Administrator they are necessary to meet these standards.

d) Monitoring requirements.

- (i) Monitoring reports shall be submitted annually to the Shoreline Administrator for at least five (5) years after planting, unless the Shoreline Administrator determines that a longer period or different frequency is appropriate. Monitoring must continue until all vegetation standards are met.
- (ii) Monitoring reports shall include photographs taken at approximately the same locations and time each year, preferably during the growing season.
- (iii) Monitoring shall report the extent and type of vegetation present in the enhancement area as the proportion (percent cover) of the enhancement area they cover. The methods used to determine the cover shall be described and reported for the following categories of plants: native trees, shrubs, and herbaceous plants; non-native trees, shrubs, and herbaceous plants.

I. Modification of Shoreline Buffer and Setback Requirements to Encourage Restoration

1. If a property owner removes existing structural shoreline stabilization and replaces it with natural soft shore stabilization in accordance with Army Corps of Engineers and National Marine Fisheries Service standards for shoreline restoration, the standard shoreline buffer (or setback in the Canal Communities) may be reduced by a distance equal to the distance that the OHWM is moved toward the principal structure on the site following removal of the structural stabilization, up to fifty percent (50%) of the required buffer width.
2. Approval of a shoreline buffer reduction for removal of structural shoreline stabilization shall be contingent on Island County approval of a project shoreline restoration plan. The Shoreline Administrator shall make final decisions on approval of buffer reduction requests based on the information provided and compliance with the provisions of this Program.

3. An approved buffer reduction granted by the County as the result of removal of structural shoreline stabilization may be held as a credit for up to five (5) years and used to reduce the standard shoreline buffer (or setback in a Canal Community) from ICC 17.05A.090.D (Table 3) for future onsite development.
4. For shoreline property owners that have removed structural shoreline stabilization in advance of shoreline development or redevelopment, Island County may give mitigation credit to any beneficial restoration action that occurred within five (5) years of the proposed development or redevelopment activity, provided that:
  - a) The applicant or property owner provides conclusive evidence of the pre- and post-restoration conditions using photographs, reports, plans, affidavits, or similar evidence;
  - b) The County confirms via site inspection, photographs, affidavits or other evidence that the restoration actions have improved shoreline conditions; and
  - c) The applicant or property owner provides assurances that the restoration area will be maintained for the life of the project. The assurance can be in the form of a notice on title, conservation easement, or similar mechanism.

#### J. Shoreline Setback Modification in Canal Communities

1. New residential development or expansion of existing residential development, including the primary structure, all accessory structures and appurtenances and all impervious surfaces may be placed in the landward forty percent (40%) of the shoreline setback under the following conditions:
  - a) The setback may not be reduced by an amount greater than would be allowed under the Common Line Setback Reduction regulations at ICC 17.05A.090.F; and
  - b) For any new structure or expansion of an existing structure, in which the footprint of the expansion will increase total impervious surface in the setback, the proponent shall enhance an equal area of the setback with native vegetation meeting the requirements of ICC 17.05A.090.H.
2. Requirements for vegetation enhancement associated with development in the setback shall apply to the total of all new building area added on a project site after the effective date of this Program.
3. If the proponent removes impervious surface between the OHWM and the shoreline buffer or building setback, the area (square feet) of removed impervious surface may be deducted from the total of new impervious surface area for which enhancement of the buffer is required.

K. Shoreline Vegetation Conservation

1. Unless otherwise specified, all shoreline use and development, including preferred uses and uses exempt from permit requirements, shall comply with the buffer provisions of this Program to protect and maintain shoreline vegetation and habitat.
2. Removal of native vegetation shall be avoided, where feasible. Where removal of native vegetation cannot be avoided, it shall be minimized to protect ecological functions. If non-native vegetation is to be removed, then it shall be replaced with native vegetation within the shoreline jurisdiction.
3. Native plant materials that are equivalent to those which would typically occur with respect to size, structure, and diversity at maturation shall be used in restoration, rehabilitation, or enhancement projects.
4. Natural features such as snags, stumps, logs, drift logs, or uprooted trees shall be left undisturbed to support fish and other aquatic systems, except where they would adversely affect navigation or represent a human health or safety risk.
5. Proponents of all new shoreline uses or developments shall demonstrate that site designs and layouts are consistent with the policies of this section to ensure shoreline functions, values, and processes are maintained and preserved. A shoreline permit or written statement of exemption shall not mandate, nor guarantee, unobstructed horizontal or lateral visibility of the water, shoreline, or any specific feature near or far.
6. Topping trees is prohibited.
7. Selective pruning or thinning of trees for safety or view protection or maintenance may be allowed when it is limited to:
  - a) Removal of no more than twenty-five percent (25%) of the canopy of any tree or group of trees (calculated based on the area of the crown, or upper portion(s) comprised of branches and leaves or as determined by a certified arborist) in any given five-year period; or
  - b) Pruning of trees that does not affect ecological functions. No more than twenty percent (20%) of the limbs on any single tree may be removed and no more than twenty percent (20%) of the canopy cover in any single stand of trees may be removed in a given five-year period. Pruning shall comply with the National Arborist Association pruning standards, unless the tree is a hazard tree as certified by an arborist and approved by the Shoreline Administrator.
8. The Shoreline Administrator may deny a request or condition approval of vegetation management or removal proposals for view maintenance if it is determined the action will result in an adverse effect to any of the following:

- a) Slope stability;
  - b) Habitat value;
  - c) Health of surrounding vegetation;
  - d) Risk of wind damage to surrounding vegetation;
  - e) Nearby surface or ground water; or
  - f) Water quality of a nearby water body.
9. Clearing by hand-held equipment of invasive or non-native shoreline vegetation or plants listed on the State Noxious Weed List is permitted in shoreline locations if provision is made for re-establishment of native vegetation in the disturbed area. Ground based motorized equipment may be used if accompanied by a plan for the re-establishment of native vegetation, and with prior written approval of the Shoreline Administrator.
  10. Aquatic weed control shall occur in compliance with all other applicable laws and standards. Use of chemical methods of weed control shall only be allowed when done by a qualified professional.
  11. Subdivision of property shall be in a configuration that will not require significant vegetation removal or shoreline modification and that will not adversely impact ecological functions. Each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.
- L. Flood Hazard Reduction
1. The following Flood Damage Prevention Ordinance provisions of Chapter 14.02A ICC, dated August 22, 2005 (Ordinance C-98-05), are incorporated into this Shoreline Master Program by reference:
    - a) 14.02A.030 General Provisions
    - b) 14.02A.040 Administration
    - c) 14.02A.050 Provisions for Flood Hazard Reductions
  2. New structural flood hazard reduction measures will be allowed only where demonstrated to be necessary, and when non-structural methods are infeasible and mitigation is accomplished.
  3. New structural flood hazard reduction measures will be allowed landward of associated wetlands and buffer areas except where no alternative exists as documented in a geotechnical analysis.
  4. New publicly funded dikes or levees will be required to dedicate and improve public access pathways unless it would cause unavoidable health or safety hazards.



5. All proposed development in the shoreline shall comply with the County's stormwater and surface water standards (ICC 11.03).
6. In the event development or performance standards in ICC 14.02A are inconsistent with standards and requirements in this Shoreline Master Program, the standard that is more protective of natural resources in the shoreline shall govern.
7. New or expanding development or uses in the shoreline, including subdivision of land, that would likely require structural flood control works within a stream, floodway, or coastal flood zone shall be prohibited.
8. Flood control works shall only be allowed in the shoreline if they are necessary to protect existing development and non-structural flood hazard reduction measures have been demonstrated to be infeasible.
9. Flood control works to protect existing development shall be permitted only when the primary use being protected is consistent with this Program, and the flood control works can be developed in a manner that is compatible with multiple use of shoreline resources for the long term, including shoreline ecological functions, fish and wildlife management, and recreation.
10. When allowed, new structural flood hazard reduction measures shall be located landward of associated wetlands and buffer areas except where no alternative exists as documented in a geotechnical analysis.
11. Solid waste shall not be stored in areas subject to flooding unless it can clearly be demonstrated that complete and effective flood-proofing of structures or equipment can be accomplished.

M. Public Access

1. Visual Access: Where feasible, new development, uses, and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's visual access (including existing views) of the shoreline from public properties or a substantial numbers of residences. Where it can be demonstrated that it is not feasible to avoid such impacts, every effort shall be made to minimize impacts to existing shoreline views.
2. Any unauthorized encroachment of development onto a shoreline public access or easement, including any public street end adjoining public shorelands or tidelands, shall be considered a violation of this Chapter and subject to enforcement and penalties as provided in this Chapter.
3. Physical Access: Existing public physical access shall not be eliminated except in conjunction with a public project which serves a valid purpose, and then only when the applicant shows that there is no feasible alternative and replaces the public access with public access of comparable functions and value at another location in the same vicinity.

4. Opportunities to provide or enhance a system of visual or physical public access shall be considered during the review and conditioning of all proposed commercial shoreline developments, publicly funded dikes or levees, or residential developments involving five (5) or more residential lots or dwelling units.
5. Physical public access shall be incorporated into all development proposals on public lands, all public and private commercial and industrial developments, all publicly funded projects, and all residential subdivisions of five (5) or more lots unless the project proponent demonstrates that any of the following conditions exist:
  - a) Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;
  - b) Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  - c) The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access are unreasonably disproportionate to the total proposed development;
  - d) Significant environmental impacts that cannot be mitigated will result from the public access; or
  - e) Significant undue and unavoidable conflict between public access requirements and the proposed use or adjacent uses would occur, provided that the applicant has first demonstrated and the County determines that all reasonable alternatives have been evaluated and found infeasible, including but not limited to:
    - (i) Regulating access by such means as maintaining a gate or limiting hours of use;
    - (ii) Designing separation of uses and activities (including but not limited to, fences, terracing, use of one-way glazing, hedges, landscaping); and
    - (iii) Provisions for access at a site geographically separated from the proposal such as a street end, vista, or trail system.
6. When physical public access is deemed to be infeasible based on considerations listed in 5a – e of this subsection, the proponent shall provide visual access to the shore or provide physical access or access improvement at an off-site location geographically separated from the proposed developmental (e.g., a public street end, vista, or trail system).
7. Required public access on privately owned land shall be commensurate with the scale and intensity of the proposed use or development.

8. Public access shall be located and designed to be compatible with the natural shoreline character, to avoid adverse impacts to shoreline ecological functions and processes, and to ensure public health and safety.
9. Public shoreline access provided by public road ends, public road rights-of-way, and public utilities rights-of-way shall not be diminished by the County, neighboring property owners, or other citizens.
10. Public access sites shall be directly connected to the nearest public street and shall include improvements that conform to the requirements of the Americans with Disabilities Act (ADA) when feasible and appropriate.
11. Public access shall include provisions for protecting adjacent properties from trespass and other possible adverse impacts to neighboring properties.
12. Signs indicating the public's right of access to shoreline areas shall be installed and maintained in conspicuous locations in accordance with County approved standards.
13. Required public access shall be fully developed and available for public use at the time of occupancy of the use or activity or final plat approval.
14. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, kayak or canoe haul-out, boat launching ramp, dock or pier area, or other area serving as a means of view or physical approach to public waters and may include interpretive centers and displays.
15. Public access easements and permit conditions shall be recorded as a separate tract on the deed of title and on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, as a minimum. Said recording with the County Auditor's Office shall occur at the time of final plat recording.
16. Maintenance of the public access facility shall be the responsibility of the fee simple owner unless otherwise accepted by a public or non-profit agency through a formal agreement approved by the Shoreline Administrator and recorded with the County Auditor's Office.

N. Water Quality and Quantity

1. The location, design, construction, and management of all shoreline uses and activities shall protect the quality and quantity of surface and ground water adjacent to the site.
2. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all shoreline development.

3. All shoreline uses and activities shall use best management practices (BMPs) for control of erosion and sedimentation during both project construction and operation.
4. All proposed developments and activities in the shoreline shall require compliance with the current edition of the Department of Ecology's Stormwater Management Manual, NPDES General Permit requirements, and the erosion control provisions of ICC 11.02.330 and the stormwater management provisions of ICC 11.03.
5. To avoid water quality degradation by malfunctioning or failing septic systems located within shoreline jurisdiction, on-site sewage systems shall be located and designed to meet all applicable water quality, utility, and health standards.
6. All dock and pier components that may come in contact with the water shall consist of non-toxic materials, such as wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by the Department of Ecology and the Washington Department of Fish and Wildlife for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenate, or pentachlorophenol is prohibited.
7. Herbicides, fungicides, fertilizers, and pesticides shall not be applied within twenty-five (25) feet of a water of the state, except by a qualified professional in accordance with state and federal laws. Further, pesticides subject to the final ruling in Washington Toxics Coalition, et al., v. EPA shall not be applied within sixty (60) feet for ground applications or within three hundred (300) feet for aerial applications of the subject water bodies and shall be applied by a qualified professional in accordance with state and federal law.
8. Low Impact Development (LID) techniques, including the use of pervious materials, shall be considered and implemented to the greatest extent feasible throughout the various stages of development including site assessment, planning and design, vegetation conservation, retrofitting, and built-out management techniques.

#### **17.05A.100 Shoreline Specific Use Regulations**

##### **A. Agriculture**

1. This program does not limit or modify existing and ongoing agricultural activities occurring on agricultural lands in cultivation or other agricultural use as of the effective date of this Chapter.
2. New agricultural uses and development proposed on land not currently in agricultural use, and conversion of agricultural lands to non-agricultural uses, shall conform to this Program, including but not limited to use restrictions, buffer and

setback requirements, vegetation management, and impervious surface coverage limits.

3. Erosion control measures shall conform to guidelines and standards established by the Natural Resource Conservation Service and the U.S. Department of Agriculture.
4. Pesticides shall be used, handled, and disposed of in accordance with provisions of the Washington Pesticide Application Act (RCW 17.21) and the Washington Pesticide Act (RCW 15.57).
5. New agricultural use and development shall be managed to:
  - a) Prevent livestock intrusion into the water;
  - b) Ensure that changes to the quantity and rate of surface water runoff do not harm shoreline ecological functions;
  - c) Prevent water quality degradation caused by manure, fertilizer, or agricultural chemicals;
  - d) Prohibit clearing of riparian areas;
  - e) Prevent shoreline erosion; and
  - f) Ensure no net loss of ecological functions and avoid adverse effects on shoreline resources and values.
6. Livestock waste shall be disposed of in such a manner as to prevent surface or groundwater contamination as specified by Island County Health regulations and Natural Resource Conservation Service (NRCS) guidelines and standards.
7. Watering areas for livestock within required buffers are prohibited except when:
  - a) no other feasible watering method is available,
  - b) adequate provisions are made to protect existing water quality,
  - c) a water right allowing withdrawals for this purpose has been obtained,
  - d) adequate provisions are made to prevent the erosion of soil, and
  - e) measures to protect against impacts to wetlands and wetland buffers is provided through a Farm Management Plan as required in ICC 17.02A.050.F.
8. Buffer zones conforming to NRCS guidelines and standards shall be established and maintained between tilled or grazed areas and associated water bodies to retard surface runoff, reduce siltation, filter and remove pollutants, provide habitat for fungi, plants, and wildlife, and provide shade for fish and other wildlife.

## B. Aquaculture

1. Aquaculture is an activity of statewide interest. When properly managed, aquaculture can result in long-term over short-term benefit and protect the

resources and ecology of the shoreline. Aquaculture is defined as dependent on the use of the water area (WAC 173-26-241(3)(b)(i)(A) and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area.

2. Commercial aquaculture operations require a shoreline conditional use permit which outlines uses and monitoring requirements based on site specific conditions and scientific indicators of the proposed operation. When a shoreline substantial development or conditional use permit is issued for a new aquaculture use or development, that permit shall apply to the initial siting, construction, and planting or stocking of the facility or farm. Authorization to accomplish initial siting, construction and planting shall be valid for a period of five (5) years with a possible extension per ICC 17.05A.130.C. After an aquaculture use or development is established under a shoreline permit, continued operation of the use or development, including, but not limited to, maintenance, harvest, replanting, restocking or changing the culture technique shall not require a new or renewed permit unless otherwise provided in the conditions of approval or if required pursuant to permit revision criteria in WAC 173-27-100 or this Program. Changing the species cultivated shall be subject to applicable standards of this Program.
3. The rights of treaty tribes to aquatic resources within their usual and accustomed areas shall be addressed through direct coordination between the project proponent and the Affected Tribes(s).
4. The location, design and operation of aquaculture facilities shall not significantly impact the aesthetic qualities of the shoreline, or result in adverse impacts to fish and wildlife habitat conservation areas as required by ICC 17.05A.090.C.13.
5. Aquaculture facilities are required to identify and use best management practices from appropriate sources including those from the Pacific Coast Shellfish Growers Association to minimize impacts such as light, noise, and odor from the construction and management of the facilities.
6. New aquatic species that have not been previously cultivated in Washington State shall not be introduced into Island County waters without written approval from the Washington Department of Fish and Wildlife.
7. A Shoreline Conditional Use Permit is required for any new commercial aquaculture use or development including conversions from non-geoduck aquaculture to geoduck aquaculture. The following standards and requirements shall apply to commercial geoduck aquaculture:
  - a) All subsequent cycles of planting and harvesting of commercial geoduck shall not require a new conditional use permit.
  - b) A single conditional use permit may be submitted for multiple sites within an inlet, bay or other defined feature, provided the sites are all under control of the same applicant and within county shoreline jurisdiction.

- c) Commercial geoduck aquaculture shall only be allowed where sediments, topography, land and water access support geoduck aquaculture operations without significant clearing or grading.
- d) Unless already addressed in other applications, applications for new commercial geoduck aquaculture shall contain:
  - (i) A narrative description and timeline for all anticipated geoduck planting and harvesting activities if not already contained in the federal or state permit application or comparable information mentioned above.
  - (ii) A baseline ecological survey of the proposed site to allow consideration of the ecological effects if not already contained in the federal or state permit application or comparable information mentioned above.
  - (iii) Measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in 17.05A.090.C.7.
  - (iv) Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.
- e) Island County will provide public notice to all property owners within three hundred feet of proposed commercial geoduck project boundaries. The county will also provide notice to tribes with Usual and Accustomed fishing rights to the area.
- f) Conditional use permits for geoduck aquaculture shall include allowance for work during low tides at night or on weekends but may require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses.
- g) Conditional use permits shall include monitoring and reporting requirements necessary to verify that geoduck aquaculture operations are in compliance with permit limits and conditions and to support cumulative impact analysis. The County shall consider the reporting and monitoring conditions of other permitting agencies before adding additional conditions to a permit.
- h) Conditional use permits shall be reviewed using the best scientific and technical information available. This requirement may be met through review and approval of information provided under federal and state agency permit reviews.
- i) Applicants shall apply best management practices to accomplish the intent of permit limits and conditions.

- j) To avoid or limit impacts from geoduck aquaculture siting and operations and achieve no net loss of ecological functions, permits shall consider the following and place conditions where applicable and not redundant with other agency permit conditions:
  - (i) The practice of placing nursery tanks or holding pools or other impervious materials directly on the intertidal sediments.
  - (ii) Use of motorized vehicles, such as trucks, tractors and forklifts below the ordinary high water mark.
  - (iii) Specific periods when limits on activities are necessary to protect priority habitats and associated species. The need for such measures shall be identified in the baseline ecological survey conducted for the site.
  - (iv) Alterations to the natural condition of the site, including significant removal of vegetation or rocks and regrading of the natural slope and sediments.
  - (v) Installation of property corner markers that are visible at low tide during planting and harvesting.
  - (vi) Mitigation measures such as buffers between commercial geoduck aquaculture and other fish and wildlife habitat conservation areas as necessary to ensure no net loss of ecological functions.
  - (vii) Use of predator exclusion devices with minimal adverse ecological effects and requiring that they be removed as soon as they are no longer needed for predator exclusion.
  - (viii) Use of the best available methods to minimize turbid runoff from the water jets used to harvest geoducks.
  - (ix) Number of barges or vessels that can be moored or beached at the site as well as duration limits.
  - (x) Public rights to navigation over the surface of the water.
  - (xi) Good housekeeping practices at geoduck aquaculture sites, including worker training and regular removal of equipment, tools, extra materials, and all wastes.
  - (xii) Where the site contains existing public access to publicly owned lands, consider recommendations from the Washington Department of Natural



Resources or other landowning agencies regarding protection of the existing public access.

8. Aquaculture uses and developments shall be operated to avoid the spread of disease to native marine or aquatic life. All aquaculture uses and developments shall comply with WDFW's transfer and import policies and requirements, including acquiring State certified seed, shell, and eggs from a registered source.
9. Floating and submerged aquaculture structures shall be located so as to not unduly restrict navigational access to waterfront property or interfere with general navigation, and other water-dependent uses, including normal public use of the surface waters. Floating and submerged aquaculture structures and facilities in navigable waters shall be marked in accordance with U.S. Coast Guard requirements.
10. Aquaculture structures constructed on public tidelands shall be located so as to not unduly restrict pedestrian circulation along public beaches.
11. Aquaculture wastes shall be disposed of in a manner that will ensure compliance with all applicable government waste disposal standards, including but not limited to, the Federal Clean Water Act, Section 401, and Chapter 90.48 RCW, Water Pollution Control. No garbage, wastes, or debris shall be allowed to accumulate at the site of any aquaculture operation.
12. No processing of any aquacultural product, except for the sorting or culling of the cultured organism and the washing or removal of surface organisms, shall occur in or over the water after harvest, unless specifically approved by permit. All other processing shall be located on land and shall be governed in addition by the provisions of Chapter 17.03 ICC.
13. Odors shall be controlled through the proper storage and disposal of feed and other organic materials and by maintaining a clean operation. A specific plan for identifying and controlling odors shall be developed and approved as part of the permit approval process. Odors shall not unreasonably interfere with the enjoyment of life and property of a substantial number of persons.
14. Commercial finfish net pen aquaculture is prohibited in marine waters..
15. Contained finfish facilities are allowed and must use filtration or other methods that assure that any discharged water does not harbor diseases or parasites known to afflict wild fish.
16. Aquaculture proposals that hydraulically, mechanically, or by digging (except traditional low impact hand implement digging), displace, or disturb bottom sediments through dredging, trenching, or excavation shall not be permitted unless consistent with the environmental, critical area, and critical saltwater habitat protection standards of the SMP.

17. Predator control shall not involve the intentional killing or abusive harassment of birds, mammals, or other aquatic species. Aquaculture operations shall comply with the Endangered Species Act, Marine Mammal Protection Act, Department of Fish and Wildlife regulations, and other wildlife protection laws as is determined by applicable Federal and State agencies.
18. For aquacultural projects using over-water structures, storage containers of necessary tools and apparatus seaward of the line of ordinary high tide shall be limited to permanent containers of not more than four feet in height as measured from the surface of the raft or dock; provided that in locations where the visual impact of the proposed aquacultural structure will be minimal, the Shoreline Administrator may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant. No chemicals, antibiotics, or toxins shall be stored seaward of the Ordinary High Water Mark.
19. For aquaculture which uses antibiotics, an annual report of antibiotic use shall be submitted to the Shoreline Administrator. The report shall indicate the type and amount of antibiotics used during the previous calendar year. In no case will antibiotics use be allowed to impair local habitat or species.
20. In promotion of the Island County solid waste management plan and with the associated goal of eliminating marine debris, aquaculture permit applicants shall submit for approval, a solid waste reduction and recycling plan.
21. Proposed aquaculture applications shall submit the following information at a minimum:
  - a) Species to be reared;
  - b) Aquaculture method(s);
  - c) Schedule, method, and type of feeding (if applicable);
  - d) Manpower/employment necessary for the project;
  - e) Harvest method and timing;
  - f) Location and plans for any shore-side activities including loading and unloading of the product and processing;
  - g) Methods and quantities of chemicals or antibiotics used for predator control or disease control, or to enhance production;
  - h) Disposal of aquaculture mortalities and other waste products by approved methods;
  - i) Environmental assessments including further baseline studies may be required depending upon existing conditions, the nature of the proposal, and probable adverse environmental impacts. Baseline and periodic monitoring, as required by permit, shall be at the Applicant's expense by County approved consultants unless otherwise provided for;
  - j) Existing water quality conditions;

- k) Other project specific information deemed necessary by the Shoreline Administrator to evaluate the potential effects of the proposal consistent with applicable regulations; and
- l) Methods proposed for removal of effluent, and by-products for closed system finfish facilities.
- m) Permit applications for commercial aquaculture shall include a biological site assessment and habitat management plan. The biological site assessment and habitat management plan shall be consistent with the requirements and standards described in ICC 17.05A.090.C.13. In addition, biological site assessments and habitat management plans associated with commercial aquaculture shall specifically address localized water quality effects, impacts to benthic species and habitats, and impacts to native salmonid species.

### C. Beach Access

- 1. Beach access structures shall only be allowed where the structure would provide access to a publicly owned beach or where the party proposing the beach access structure has rights of access to the adjoining tidelands.
- 2. In all shoreline designations beach access structures shall be prohibited on exceptional marine feeder bluffs.
- 3. In shorelines designated Natural:
  - a) On bluffs higher than ten (10) feet in height, beach access structures may be permitted for public access and for new subdivisions when the structure is for public access;
  - b) On banks lower than ten (10) feet in height, beach access structures are prohibited; and
  - c) On banks lower than ten (10) feet in height, beach access for single-family residences may be provided by means of a low impact trail.
- 4. When permitted, beach access structures shall be located, designed and operated to avoid critical areas and prevent a net loss of shoreline ecological functions or processes, including, but not limited to:
  - a) Habitat;
  - b) Slope stability;
  - c) Sediment transport; and
  - d) Water quality.
- 5. No portion of a beach access structure shall be constructed waterward of the Ordinary High Water Mark, unless there is no other feasible alternative, in which

case the waterward extension shall be the minimum necessary to provide pedestrian access to the beach, shall be designed and located to avoid or minimize adverse impacts to shoreline functions and shall comply with the mitigation sequencing noted in 17.05A.090.C.7.

6. When in-water, overwater, or waterward of the OHWM, construction is allowed in accordance with this section, it shall be limited to a small pier or pile-supported pedestrian landing platform of twenty-five (25) square feet or less that is otherwise consistent with the provisions of this Program.
7. Public beach access structures shall conform to applicable Americans with Disabilities Act (ADA) standards.
8. When allowed, beach access structures may be located within the shoreline buffer, provided that:
  - a) There is no other available public beach access within five hundred (500) feet of the lot or lots to be served by the proposed access;
  - b) The structure is the minimum size necessary to provide access;
  - c) Walkways shall not be covered;
  - d) The clear width of any walkway, staircase, tower, or tram shall be at least three (3) feet, and not exceed five (5) feet;
  - e) Landings may not exceed fifty (50) square feet each, except that for public access structures, a mid-slope resting area of up to one hundred (100) square feet may be allowed; and
  - f) The structure shall not extend more than twelve (12) vertical feet above the bank or slope.
9. Beach access structures shall be prohibited if any of the following apply:
  - a) The structure would adversely impact a critical area or marine feeder bluff, or increase landslide or erosion hazards; or
  - b) The structure is likely to interfere with natural erosion and accretion processes; or
  - c) The bank slope where the structure is placed is likely to require shoreline stabilization/shoreline defense works in the future to protect the beach access structure; or
  - d) Substantial bank or slope modification is required.
10. Permit applications for beach access structures shall include adequate geotechnical and biological analysis to determine whether the structure meets the standards of this section.
11. Existing lawfully constructed nonconforming beach access structures may be repaired or replaced in kind consistent with other provisions of this Program.

D. Boating Facilities (marinas, boat launches, mooring buoys, and floatplanes)

1. **Marinas and Float Plane Bases**

- a) Marinas are a permitted use in the Aquatic designation where adjacent uplands are designated High Intensity and as conditional uses where adjacent uplands are designated Rural Conservancy, Urban Conservancy and Shoreline Residential.
- b) Marinas are prohibited adjacent to the Natural designation.
- c) Floatplane bases shall comply with all applicable Use Requirements relating to marinas.
- d) Fill shall only be allowed when necessary to support water dependent portions of the marina facility and not for parking, unless no alternatives exist and such fill would be consistent with this Shoreline Master Program.
- e) Marinas shall be sited to minimize degradation of commercial and recreation shellfish beds, water quality, existing geohydraulic shoreline processes and shall be consistent with the Washington Department of Health's "Environmental Health Guidelines for Marina Development and Operation."
- f) Where moorage is offered in new, expanded, or renovated marinas, pump-out, holding or treatment facilities shall be provided for sewage contained on boats or vessels. Such facilities shall be located so as to be conveniently accessible to all boats capable of being moored at the marina. The marina operator shall be responsible for adequate and approved collection and disposal of sewage, solid waste, and petroleum waste from the marina.
- g) Marinas shall be located, designed, constructed, and operated so as not to interfere with the rights of adjacent property owners, adjacent water uses, or navigation.
- h) Long term moorage shall not be allowed in areas adjacent to shellfish beds, commercial aquaculture, or shallow water embayments with poor flushing action.
- i) Parking and loading areas shall be located a minimum of 100 feet from the immediate water's edge and beaches, where feasible.
- j) Marinas shall develop and implement a spill prevention, control, and countermeasure plan.
- k) Marinas shall provide adequate on-shore sewage and waste disposal facilities and restrooms. Such facilities shall be adequate to serve transient boaters as well as live-aboard boaters.
- l) Dredging or filling of wetlands for the sole purpose of constructing a marina shall be prohibited.
- m) New marina-related structures or uses that are not in and of themselves water-dependent shall not be located over water.

- n) Adaptive reuse of existing overwater structures for non-water-dependent water-oriented uses, may be permitted as a conditional use when the structure is historically significant but has become functionally obsolete for use by water-dependent uses.
- o) Public access facilities shall be required for all marinas, provided that marinas may restrict access to specific areas and times for safety and security reasons. The design and any operational restrictions of public access shall require approval of the Shoreline Administrator.
- p) Surface runoff from marina areas shall be controlled so that pollutants will not be carried into water bodies.
- q) Parking areas shall be subject to the policies and regulations of ICC 17.03.180.Q. No over water parking shall be allowed.
- r) Marinas shall be subject to the design standards for docks, piers, and floats in ICC 17.05A.110.B and the Non-Residential Design, Landscape and Screening Guidelines of ICC 17.03.180.P.

## 2. **Public Boat Launches**

- a) Public and community boat launches may be permitted when they are located, designed, and constructed in a manner that avoids or minimizes adverse impacts on coastal or fluvial processes, biological functions, aquatic and riparian habitats, water quality, navigation, area aesthetics, or neighboring uses. When permitted, public and community boat launches shall be:
  - (i) Located in areas where there is adequate water mixing and flushing action to ensure that minor discharges from normal operation of marine engines does not harm local shoreline ecology;
  - (ii) Designed so as not to retard or reduce natural shoreline flushing characteristics or littoral drift;
  - (iii) Designed and constructed using methods/technology that have been recognized and approved by state and federal resource agencies as the best currently available;
  - (iv) Designed so that existing or potential public access along beaches is not blocked or made unsafe, and so that public use of the surface waters is not unduly impaired;
  - (v) Designed in accordance with generally accepted coastal engineering principles and boating industry standards; and
  - (vi) Developed and maintained to support waterfront access for watercraft. In those limited instances where separate or associated uses are permitted,

other than restrooms or septic facilities, only uses that are water-dependent or afford public access uses shall be approved.

- b) Public boat launches shall provide adequate restroom and sewage and solid waste disposal facilities in compliance with applicable health regulations.
- c) When overwater development is proposed in association with a public boat launch facility, it may be permitted only where such use requires direct water access.
- d) Public and community boat launches shall be located and designed to prevent traffic hazards and minimize traffic impacts on nearby access streets.
- e) Public boat launch sites shall include parking spaces for boat trailers commensurate with projected demand and shall comply with the Transportation provisions of this Shoreline Master Program.

### 3. **Private Boat Launches**

- a) Private boat launches shall be allowed only when public boat launches are unavailable within one mile of the site.
- b) When permitted, private boat launches including launches accessory to residential development shall be designed and constructed using methods or technology that have been recognized and approved by state and federal resource agencies as the best currently available. Rail and track systems shall be preferred over concrete ramps or similar facilities that may require on-going maintenance or may block sediment transport.
- c) No more than one private boat launch facility or structure shall be permitted on a single parcel or residential lot.
- d) Designed in accordance with generally accepted coastal engineering principles and boating industry standards.

### 4. **Mooring Buoys**

- a) Commercial or recreational mooring buoys may be permitted provided that they are consistent with this Program and that individually or cumulatively:
  - (i) They do not impede the ability of other landowners to access private property; and
  - (ii) They do not pose a hazard to or obstruct navigation or fishing; and
  - (iii) They do not contribute to water quality or habitat degradation; and
  - (iv) They do not pose a threat to a commercial shellfish growing area classification or reduce the ability to upgrade the classification.
- b) The installation and use of mooring buoys (including commercial and recreational buoys) in marine waters shall be consistent with all applicable state laws, including WAC 246-282, the current National Shellfish Sanitation

Program standards, and Washington State Department of Fish & Wildlife, Health, and the Department of Natural Resources standards.

- c) Private recreational mooring buoys on state-owned aquatic lands shall not be used for residential (living on the boat) or commercial purposes.
- d) Mooring buoys shall be located to:
  - (i) Avoid eelgrass beds and other critical saltwater habitats; and
  - (ii) Prevent obstruction to navigation.
- e) Mooring 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 buoys shall not be allowed on lake shorelines of the state.
- g) Mooring buoys shall be clearly marked and labeled with the owner's name and contact information and permit number(s).
- h) The Shoreline Administrator shall plan for and coordinate with other agencies to control the placement and number of mooring buoys within bays and other areas to protect water quality and habitat and ensure that transit channels are maintained. Under no circumstances shall mooring buoys exceed the density limits in state Department of Health guidelines and National Shellfish Sanitation Program standards.
- i) The capacity of each mooring buoy may not exceed one (1) boat and its appurtenant shore access craft.

#### E. Commercial Development

1. New water-related commercial development may be allowed in the shoreline jurisdiction within the Urban Conservancy, Shoreline Residential, and High Intensity designations where allowed by the underlying zone classification according to Chapter 17.03 ICC.
2. New commercial development is prohibited in the Aquatic, Natural and Rural Conservancy shoreline designations.
3. Water-oriented commercial uses and developments shall be allowed in the shoreline when it is demonstrated that the use or development will not result in a net loss of shoreline ecological functions or processes, or have significant adverse impact on other shoreline uses, resources and values such as navigation, recreation and public access.
4. Commercial uses shall provide public access to the shoreline. Public access and ecological restoration shall be considered as potential mitigation of impacts to shoreline resources for all water-related and -dependent commercial uses consistent with all relevant constitutional and other legal limitations on the regulation of private property.



5. If there is a change in commercial use to another use, the altered use must comply with the SMP as if it were a new use.
6. Non-water-oriented commercial uses are prohibited in shoreline jurisdiction unless they meet the following criteria:
  - a) The site is physically separated from the shoreline by another property or public right of way; or
  - b) The use is part of a mixed-use project that includes an associated water-dependent use; or
  - c) Navigability is severely limited at the proposed site; or
  - d) The commercial use provides a significant public benefit in the form of public access or ecological restoration.
7. Existing non-water dependent and non-water related commercial use or development on shorelines that conform to this SMP may be permitted to expand landward, but not waterward of existing structures, provided the expansion otherwise conforms to this Program.
8. Commercial developments shall not interfere with the enjoyment of adjacent recreational or residential uses.
9. In low bank areas, commercial development including parking and loading areas shall comply with the buffer requirements of ICC 17.05A.090.D and ICC Chapters 17.02 and 17.02A.
10. Water-dependent commercial development in the High Intensity shoreline designation shall not be required to maintain a shoreline setback.
11. In geologically hazardous areas or unstable bluff areas, commercial development shall conform with the bluff standards and setback requirements established under ICC 17.02 and 17.02A as well as Chapter 11.02 ICC.
12. Commercial parking and loading areas 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 location would have less environmental impact on the shoreline.
13. Legally established existing commercial developments and activities within the shoreline jurisdiction may be maintained or expanded without a shoreline variance subject to the requirements of Chapter 17.03 ICC, and the provisions of this Program. In cases where the existing setback is less than 30 feet from the OHWM, the proposed expansion may not occur any further seaward towards the OHWM, except for water-dependent uses.
14. Design of parking and loading areas shall ensure that surface runoff does not pollute adjacent water or cause soil or beach erosion.

15. Outdoor advertising and signs shall comply with the section on Outdoor Advertising, Signs and Billboards, ICC 17.05A.100.K.
16. Applications for commercial development shall include a detailed statement explaining the nature and intensity of water orientation of the proposed activity. Such statement shall include the following:
  - a) nature of the commercial activity;
  - b) need for shoreline frontage;
  - c) special considerations being planned to enhance the relationship of the activity to the shoreline and to mitigate adverse effects;
  - d) provisions for public visual or physical access to the shoreline.

F. Forest Practices

1. To be consistent with WAC 173-26-241(3)(e), the County shall rely on the Forest Practices Act (RCW 76.09), its implementing rules, and the 1999 Forest and Fish Report as adequate management of commercial forest uses within shoreline jurisdiction, except for forest conversion activities, and in shorelines of statewide significance.
2. When forest lands are converted to another use, there shall be no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources and values such as navigation, recreation, or public access.
3. Within shorelines of statewide significance, only selective commercial timber cutting shall be allowed.
4. Selective commercial timber cutting on shorelines of statewide significance shall not exceed thirty percent (30%) of the merchantable trees in any ten (10) year period as required by RCW 90.58.150. The Shoreline Administrator may allow exceptions to the thirty percent (30%) limit with a conditional use permit in accordance with WAC 173-26-241(3)(e).
5. On shorelines of statewide significance, other timber harvesting methods may be permitted as conditional uses in those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental.
6. All allowed forest practices in shorelines shall comply with the following:
  - a) Forest practices, including construction of logging roads, on slopes that exceed thirty-five percent (35%) shall require a conditional use permit;
  - b) Forest practices within Island County's shorelines shall maintain critical area buffers consistent with ICC section 17.05A.090.D as well as ICC 17.02 and 17.02A;

- c) Disposal or removal of accumulations of slash and other debris shall be conducted in a safe manner and minimize impacts to the environment and to neighboring properties. Slash burning shall be conducted according to best management practices, including compliance with burn bans during high fire hazard conditions;
- d) For shoreline areas having scenic qualities, such as those providing a diversity of views, unique landscape contrasts or landscape panoramas, the Shoreline Administrator may restrict removal of trees to maintain the quality of scenic views;
- e) Seeding, mulching, matting, and replanting shall be required where necessary to ensure soil stability on areas that have been logged. Replanted vegetation shall be of native plants appropriate to site conditions; and
- f) All logging operations shall protect the adjacent and downstream shorelands against erosion, uncontrolled drainage, slides, pollution, excavations and fills and other factors detrimental to the environment.

#### G. Industry

- 1. Port facilities and water-dependent industrial uses are allowed in the High Intensity shoreline designation where the proposed use or activity is permitted in the underlying zone by Chapter 17.03 ICC.
- 2. Non-water-dependent industrial uses are prohibited in all shoreline environment designations.
- 3. Port and industrial uses are prohibited in the Natural, Rural Conservancy, Urban Conservancy and Shoreline Residential designations.
- 4. Water-dependent industrial structures may be allowed within required buffers to the minimum extent necessary to support the water dependent use, provided mitigation is provided in the form of buffer enhancement in a degraded buffer on nearby shorelines. Off-site mitigation may be allowed provided that a permanent easement protecting the mitigation area is secured with a record on the title to be approved by the Shoreline Administrator, and that the mitigation claimed has not also been claimed as mitigation for any other development.
- 5. Industrial development shall be located, designed, constructed and operated in such a manner as to minimize effects on aquatic life.
- 6. Industrial developments shall comply with all federal, state, regional and local requirements regarding air and water quality.
- 7. Industrial and port facilities shall be located, designed, constructed, and operated so as to avoid interference with the rights of adjacent property owners, and to minimize interference with the normal public use of the adjacent shoreline.

8. Industrial and port facilities shall not duplicate, but shall share overwater structures such as docks and piers whenever practicable. Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate fire fighting and fire prevention equipment and by such safety devices as are normally used in the handling of any such material. Such hazards shall be kept removed from adjacent activities to a distance which is compatible with the potential danger involved. Best Management Practices shall be used in the storage and handling of flammable, explosive and hazardous materials in industrial and port facilities.
  9. Industrial and port facilities shall make adequate provisions to minimize the probability of spills of fuel or other toxic substances. Provisions shall be made to handle accidental spills that do occur.
  10. Noise which is objectionable due to volume, frequency, or beat shall be muffled or otherwise controlled. Emergency warning sirens or alarms and related apparatus used solely for public purposes are exempt from this requirement.
  11. Industrial facilities shall ensure that no direct or reflected glare is visible from adjacent properties, streets, or water areas.
  12. Port and industrial facilities shall provide public access to shoreline areas when feasible, taking into consideration public safety, public health, and security.
  13. Log storage shall only be allowed in High Intensity areas and only under the following circumstances:
    - a) Where it will not interfere with navigation or other beneficial water uses; and
    - b) It will not result in a net loss of ecological functions.
  14. Whenever feasible, log storage facilities shall be located on land and properly sited to avoid fish and wildlife habitat conservation areas.
  15. Log storage facilities shall not be sited where dredging would be required in order to accommodate log storage or transport.
  16. In-water log storage shall only be allowed on a temporary basis, and shall be located where natural tidal or current flushing and water circulation are adequate to disperse polluting wastes.
  17. Log storage facilities shall be adequately maintained and repaired to prevent log escapement from the storage site.
- H. Mining - Mining is prohibited in all shoreline designations.
- I. Recreation
1. Water-oriented recreational development may be allowed when the proponent demonstrates that the use will not result in a net loss of shoreline ecological

functions or processes or have significant adverse impact on other shoreline uses, resources or values such as navigation and public access.

2. Non-water-oriented recreational facilities including playing fields or similar active uses shall be located outside of the shoreline.
3. Recreational uses that provide access to and use of the County's shorelines shall be preferred.
4. For lands designated Natural or Rural Conservancy that are operated by Washington State Parks, active recreational facilities (e.g., water access facilities, restrooms, parking areas) are an allowed use and activity, including the replacement or upgrading of such facilities, consistent with all permitting requirements.
5. Trailer spaces, camping sites, and similar facilities shall not be located on beaches and tidelands or within required buffers, with the exception of designated camping spots on marine trails.
6. Recreation facilities shall be designed to provide adequate water supply, sewage disposal, and garbage collection.
7. Screening, buffer strips, fences, and signs to prevent park overflow and to protect the value and enjoyment of adjacent or nearby private or public properties may be required when deemed necessary by the Shoreline Administrator.
8. Tree cutting and driftwood removal in public recreational areas shall be prohibited, except when conducted by the agency operating the recreational area in accordance with the vegetation management regulations of this Chapter.
9. Signs indicating the public's right to access shoreline areas shall be installed and maintained in conspicuous locations at recreational facility points of access, street ends, and public viewpoints. Signs shall be kept to the minimum number and size necessary to ensure public awareness of the recreational area and to ensure continued public control of the site.
10. When a public recreation site abuts private property or tidelands, signs and other similar markers shall indicate geographic limits of public access to minimize conflicts with adjacent use and development and to ensure continued public control of the site.
11. All-terrain vehicles for off-road use are prohibited on tidelands and beaches; except when necessary to launch or retrieve boats or to provide access in the course of emergency response.
12. Applicants for Shoreline Substantial Development permits for recreation facilities may be required to provide data to demonstrate the safety of proposed equipment and facilities.

J. Residential

1. All residential use and development should be properly managed to avoid damage to the shoreline environment and prevent cumulative impacts associated with shoreline armoring, overwater structures, stormwater runoff, septic systems, introduction of pollutants, and vegetation clearing.
2. Subdivision of property for residential development is subject to the density limits in the underlying zone described in Chapter 17.03 ICC and the following maximum density limits, whichever is more restrictive:
  - a) Aquatic - Subdivision for residential purposes is prohibited, but tidelands may be subdivided for conservation purposes or public acquisition from adjacent uplands, with no limit on lot size;
  - b) Natural - one unit per 5 acres;
  - c) Rural Conservancy - one unit per 5 acres;
  - d) Urban Conservancy - four units per acre;
  - e) Shoreline Residential - four units per acre;
  - f) High Intensity - Subdivision for residential purposes is prohibited.
3. Residential development shall not be permitted seaward of the Ordinary High Water Mark. Live-aboard vessels and houseboats licensed as vessels are restricted to approved marinas only. Floating homes are prohibited.
4. Public access to publicly owned shorelines shall be maintained. When properties are subdivided or developed with residential uses, survey markers and signage shall be placed indicating the location of any adjacent public right-of-way or easement providing access to the shoreline.
5. Subdivisions containing five (5) or more lots shall provide public access in accordance with ICC 17.05A.090.M.
6. Subdivisions and all individual residential structures, appurtenances, and accessory structures shall be designed to ensure that surface runoff does not pollute adjacent waters or cause soil or beach erosion either during or after the construction phase.
7. Subdivisions containing marshes, swamps, lagoons, portions of floodplains, or similar wetlands shall use those areas only for the purposes of parks, open space, or recreation facilities as permitted by Chapter 17.02 and 17.02A ICC.
8. Construction of residential structures, appurtenances, accessory structures and amenities shall not be detrimental to the geohydraulic processes occurring within the shoreline corridor.
9. Residential structures located on wetland areas or in areas subject to flooding or tidal inundation may be permitted only when the property qualifies for a shoreline

variance, and only where complete flood proofing measures have been provided, and then only when the location of such structures will not aggravate flooding possibilities of nearby properties.

10. Residential structures shall only be located upon geologically hazardous areas (as defined in Chapter 17.02A ICC) if in compliance with the bluff setback standards and conditions contained in Chapter 11.02 ICC or set back fifty (50) feet from the top of a bank greater than 100 feet in height, whichever is more restrictive.
11. The following shoreline setbacks shall be applied to residential development:
  - a) All residential development shall comply with the buffer requirements of ICC 17.05A.090 and the critical areas buffers established in ICC Chapters 17.02 and 17.02A.
  - b) A greater setback may be required if necessary to comply with the grading, geologically hazardous area, erosion control and drainage requirements of Chapter 11.02 ICC and Chapter 11.03 ICC and the critical areas regulations contained in Chapters 17.02 and 17.02A ICC.
12. Normal appurtenances may be located within the shoreline setback so long as they do not obstruct the water view corridor of adjacent waterfront primary residences and are not located within the standard shoreline buffer.
13. New residential development shall be designed and built in a manner that avoids the need for structural shore armoring and flood hazard reduction over the life of the development in accordance with ICC17.05A. 090.L, Flood Control Structures, and ICC17.05A.110.A, Shoreline Stabilization, of this Shoreline Master Program and other applicable plans and laws.
14. Subdivision for residential development shall provide sufficient lot depth for development to occur without the need for shoreline stabilization for the life of the development.
15. Creation of new residential lots through land division shall be designed, configured and developed to ensure that no net loss of ecological functions and processes occurs from the plat or subdivision, even when all lots are fully built out.
16. Subdivision of land within the Natural designation shall be restricted to the creation of new parcels with a minimum lot size of five (5) acres and a minimum shoreline frontage of three hundred thirty (330) feet within shoreline jurisdiction. The three hundred thirty (330) feet lot width standard may be modified to accommodate aliquot sections.
17. Building buffers and setbacks from shorelines consistent with the requirements of this Shoreline Master Program and ICC Chapters 17.03 and 17.02 shall be established as conditions of preliminary plat approval in all new waterfront subdivisions. A plat restriction shall specify the required setbacks and all building buffers and setbacks shall be shown on the face of the plat.

18. Septic drainfields which are proposed for lots upon feeder bluffs or within one hundred (100) feet of any geologically hazardous areas should be designed and located so as to discharge leachate as far as practically possible away from the bluff face.
19. Additions to legally established residences shall not be located seaward from the applicable setback and shall conform to applicable shoreline regulations as well as other applicable county and state regulations. For purposes of this section “residence” shall mean the primary residential structure on the property and attached or detached guest cottages.
20. Natural vegetation between the OHWM and the top of banks and bluffs ten feet or higher shall be retained, except for removal necessary for view enhancement consistent with section 17.05A.090.K of this Shoreline Master Program, removal of hazardous, diseased or damaged trees when they pose a threat to a permitted structure and to allow for pedestrian waterfront access. Removal of invasive non-native species is authorized.
21. In shorelines designated Natural, a 150-foot buffer shall be required wherein only limited tree limbing of no greater than twenty percent (20%) of the tree crown for view corridor purposes is allowed. The native vegetation buffer shall be designated on the site plan, approved by the Shoreline Administrator and recorded with the County Auditor.
22. Beach Access Structures for Residential Uses
  - a) Joint use beach access structures shall be preferred in areas of existing residential subdivisions located on unstable slopes, marine feeder bluffs or other geologically hazardous areas.
  - b) Beach access structures located adjacent to fish and wildlife habitat conservation areas that include over water structures, landings that require fill or shore protection structures, shall only be allowed as a shoreline conditional use.
  - c) Beach access structures located in the Natural designation shall be permitted for public use purposes and allowed as a shoreline conditional use for private access.
  - d) Normal appurtenances and beach access structures shall conform to the following criteria:
    - (i) They shall be located and designed in such a manner so as to not require shoreline stabilization over the life of the structure, including the installation of bulkheads solely for the purpose of protecting new appurtenances.
    - (ii) They are designed and located to avoid unstable slopes, eroding bluffs and other geologically hazardous areas.



- (iii) They are designed and located in such a manner to minimize the loss of existing vegetation.
- (iv) Beach access structures which require any land disturbing activity within the shoreline setback area must comply with the requirements of the County's land development standards.
- (v) They shall be designed in such a manner to minimize their impact on shoreline functions and so as to not interfere with normal littoral drift and movement of sediments to and along the shore and shall be located as far landward of the OHWM as practical.
- (vi) Beach access structure landings shall be limited in size to that necessary for minimum safe access to the beach and shall not constitute a deck.

23. Public access for residential development shall be required as follows:

- a) New multi-unit residential development, including subdivision of land into five (5) or more parcels, shall provide public access or open space for use by development residents and the public. The County may alter the recommended area threshold per constitutional limits or waive this requirement if public access is infeasible due to incompatible uses, safety, impacts to shoreline ecology or legal limitations. The County may require alternatives to on-site physical access if on-site physical access is infeasible for the reasons noted.
- b) When required for multi-lot or multi-unit residential development, the amount of public access, open space area, and improvements required shall be proportional to the scale of the proposed development and of appropriate character to the shoreline environment designation, as determined by the Shoreline Administrator. The Administrator may waive the public access requirement if public access is infeasible due to incompatible uses, risks to health or safety, impacts to shoreline ecology or legal limitations. In such cases, the Administrator may require alternatives to on-site physical access if on-site physical access is infeasible for the reasons noted.

K. Signs

- 1. Recognized or officially delineated vistas or viewpoints shall not be blocked or obstructed by signs, unless required for public safety or to identify public access.
- 2. Signs identifying shoreline public access are allowed in shoreline jurisdiction and are exempt from obtaining a shoreline substantial development permit.
- 3. Off-premise outdoor advertising, signs, and billboards shall not be permitted in the shoreline jurisdiction.
- 4. On-premise advertising signs shall be constructed against, or painted on buildings to minimize visual or access obstruction to or of the shoreline.

5. On-premise signs shall not extend in height above the highest exterior wall of the building to which the sign relates. Signs shall not be erected upon the roofs of structures.
6. Artificial lighting for signs shall be directed or beamed downward where feasible and away from the water, public street, or adjacent premises so as not to cause glare or reflection that may constitute a traffic or boating hazard or nuisance.

L. Roads and Transportation

1. Roads other than those providing access to approved shoreline uses shall be located outside of the shoreline jurisdiction, except when no reasonable alternate location exists.
2. New roadways, arterials, and railways, including expansions of these systems, should be designed and located to assure no net loss of shoreline ecological functions.
3. Transportation shall be required to make joint use of rights-of-way and to consolidate crossings of water bodies where adverse impact to the shoreline can be minimized by doing so.
4. New transportation facilities should be designed and located to avoid or minimize the need for structural shoreline protection measures.
5. When roads are permitted within shoreline jurisdiction, they shall include development of scenic view parking areas, pedestrian trails or bicycle trails. The extent of the requirement shall be proportional to the extent of roadway development in the shoreline.
6. In instances where water crossing is required, roads shall cross shoreline areas and water bodies by the shortest, most direct route feasible unless such route would cause more damage to the environment.
7. Roads shall be designed so as to control the dispersal of surface runoff from roads and exposed soils in order to minimize turbid water from draining into waterways.
8. Culverts and similar devices shall be designed consistent with WDFW fish passage guidelines and with regard to the highest annual storm frequencies and shall be designed in conformance with the requirements of Chapter 11.03 ICC (Stormwater).
9. Roads, bridges, culverts and similar devices shall afford maximum protection for fisheries resources and shall be designed in conformance with WDFW guidance to protect shoreline ecological functions and processes as well as grading and stormwater runoff control features required under Chapters 11.02 and 11.03 ICC.

10. Transportation facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials are prohibited. Preferred materials are concrete and steel.
11. Excess material shall be deposited in stable locations and not into shoreline corridors where such materials degrade water quality, impede flood waters, or alter naturally occurring geohydraulic processes.
12. When allowed, road and driveway alignments shall be designed to fit the topography of the shoreline and accommodate riparian buffers so that alterations to the natural site conditions are minimized.
13. Roads shall be set back a safe distance from the top of unstable marine bluffs and other geologically hazardous areas in accordance with the requirements of Chapter 11.02 ICC.
14. Design of proposed roads and driveways within or adjacent to a geologically hazardous area as defined in this SMP shall be subject to the requirements of Chapter 11.02 ICC.
15. Parking as a primary use shall be prohibited within shoreline jurisdiction.
16. Parking (other than parking associated with a public beach access point) shall only be permitted in shoreline jurisdiction when necessary to support an authorized use where it can be demonstrated that there are no feasible alternative locations away from the shoreline. Parking facilities shall be buffered from the water's edge and less intense adjacent land uses by vegetation, undeveloped space, or structures developed for the authorized primary use to the maximum practicable extent.
17. Parking areas shall be developed using low impact development techniques whenever possible including but not limited to the use of permeable surfacing materials.

M. Utilities

1. The following utilities are prohibited within the shoreline jurisdiction:
  - a) electric power substations
  - b) recycling centers
  - c) solid waste transfer stations

2. Utility lines shall be located outside of the shoreline wherever feasible, unless the utilities are necessary to serve shoreline uses, and should be so located as to avoid the need for shoreline stabilization.
3. When it is infeasible to locate utilities outside of the shoreline, utilities shall be located as far as feasible from the shoreline and shall be installed underground whenever feasible.
4. Utilities are required to be located in existing rights-of-ways whenever possible.
5. Utility corridors within shorelines shall be designed to provide for multiple uses such as shoreline access or recreational trails or pathways, or other utilities, unless the applicant demonstrates that shared use is not feasible or would have greater adverse impacts on the shoreline.
6. Utilities installed on beaches or upon tidal areas shall be installed in such a manner as to ensure that water quality and marine life will not suffer degradation and that no net loss of ecological function will result.
7. Utility discharges and outfalls shall be located, designed, constructed, and operated so that degradation of water quality, marine life and general shoreline ecosystems is kept to an absolute minimum, and mitigation for any unavoidable impacts is provided.
8. Utilities located in flood prone areas shall be provided adequate flood protection and shall be installed so as not to increase flood hazard or other damage to life or property.
9. Utilities shall not be installed in areas subject to geologic hazards unless a geotechnical report demonstrates that the utilities would not pose a threat to the shoreline environment in the event of a slope failure, earthquake, or other natural geologic event.
10. Sewage treatment, water reclamation, desalination, and power plants shall be located where they do not interfere and are compatible with recreational, residential, or other public uses of the water and shorelands unless no feasible alternative exists.
11. Desalination plants, including for residential use, may be allowed only if they do not cause a net loss of ecological function, including cumulative impacts from discharge of effluent.
12. Pipelines carrying hazardous materials and petroleum operations shall conform to the following requirements:
  - a) Pipelines carrying hazardous materials or petroleum shall be constructed outside of the shoreline wherever feasible, and may be allowed within the shoreline only as a conditional use;

- b) The design, construction, operation, and maintenance of pipelines carrying hazardous materials and petroleum products in liquid form shall conform to all regulations established by the United States Department of Transportation;
  - c) In order to prevent spills and other forms of pollution, owners, and operators of facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, or consuming oil shall conform to established procedures, methods and equipment, set forth by statutory and other requirements of the United States Environmental Protection Agency and the State Department of Ecology;
  - d) Offshore drilling, processing or refining of petroleum is prohibited.
13. Desalination or reverse osmosis water production processing equipment, service lines, and utility connections must be approved by the Island County Health Department or the State Department of Health.
14. Sanitary landfills or the location of solid waste disposal sites are prohibited in all shoreline designations.

#### **17.05A.110 Shoreline Modification Regulations**

##### **A. Shoreline Stabilization**

1. Regulations for all shoreline stabilization - Shoreline stabilization may be permitted only when the application demonstrates all of the following, based on a geotechnical analysis and Biological Site Assessment:
- a) The erosion creating the need for shoreline stabilization is not caused by upland conditions on the project site, such as the loss of vegetation or modification of drainage;
  - b) The proposed shoreline stabilization is designed to minimize interruption of fish and wildlife habitats through the use of the least impacting alternative type of shoreline stabilization practicable. In order of priority from least to greatest impact, subject to site-specific conditions, alternatives include but are not limited to:
    - (i) taking no action (allow the shoreline to retreat naturally);
    - (ii) upland drainage control;
    - (iii) vegetation protection, enhancement, and replacement;
    - (iv) relocation of improvements or structures;
    - (v) beach nourishment;
    - (vi) large woody material placement;

- (vii) soft shore protection methods—at least eighty percent (80%) of the project must be constructed of naturally-occurring materials used in ways that are consistent with current nearshore processes;
  - (viii) upland retaining walls;
  - (ix) bulkheads and rock revetments placed landward of the OHWM;
  - (x) individual rock placement located at the OHWM; and
  - (xi) bulkheads and rock revetments located at the OHWM.
- c) The proposed shoreline stabilization will minimize interference with hydrological and geomorphological processes normally acting in natural conditions.
  - d) New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas is prohibited.
  - e) Adequate mitigation measures will be provided to maintain existing shoreline processes and critical fish and wildlife habitat, and ensure no net loss of ecological functions.
  - f) Shoreline stabilization will not be used for the direct or indirect purpose of creating land waterward of the OHWM. When replacement fill is required behind an existing shoreline stabilization structure, it shall not extend beyond the OHWM unless otherwise permitted in compliance with this Program.
  - g) On marine feeder bluffs, shoreline stabilization may be permitted only when it is demonstrated by a professional engineer or geologist that construction will not substantially disrupt the beach feeding action or littoral drift.
  - h) Shoreline stabilization is prohibited for the purposes of leveling or extending property or creating or preserving residential lawns, yards, or landscaping.
  - i) Construction of shoreline stabilization to protect a platted lot where no primary use or structure presently exists shall be prohibited except as provided in ICC 17.05A.110.A.3.c).(vi).
  - j) Public access, consistent with ICC 17.05A.090(M), is required, where feasible, as part of any shoreline stabilization construction or replacement project on public land or using public funds.

## 2. **Existing Shoreline Stabilization**

- a) Existing shoreline stabilization, other than structures located in Canal Communities, may be replaced in kind or with soft shore stabilization consistent with ICC 17.05A.110 (A)(1)(b) if the replacement is to protect public transportation infrastructure, essential public facilities, or principal uses or structures (including wastewater disposal systems) from erosion caused by currents, tidal action, or waves and the structure complies with all of the following:

- (i) The replacement is designed, located, sized, and constructed to ensure no additional net loss of ecological functions;
  - (ii) The replacement performs the same stabilization function as the existing structure and does not require additions to or increases in size; and
  - (iii) The replacement does not encroach waterward of the Ordinary High Water Mark or existing structure unless the residence was occupied prior to January 1, 1992 and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure, and construction shall extend no further waterward of the existing bulkhead than is necessary for construction of new footings.
- b) Older structures shall be removed as new structures are put in place. Exceptions may be made by the Shoreline Administrator only in cases where removal would cause more ecological disturbance than leaving the remnant structure in place.
  - c) When a bulkhead has deteriorated such that an OHWM has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead or soft shore stabilization must be located at or near the actual OHWM.
  - d) In a Canal Community, existing bulkheads (for lots along the canals only) may be replaced with shoreline stabilization provided they meet the following:
    - (i) The replacement structure is designed, located, sized, and constructed to ensure no net loss of ecological functions;
    - (ii) The replacement structure performs the same stabilization function as the existing structure and does not require additions to or increases in size;
    - (iii) The replacement structure is aligned horizontally with the predominant line formed by other bulkheads on the same shoreline; and
    - (iv) The replacement structure is aligned vertically with the predominant height of other bulkheads on the same shoreline.
  - e) For each Canal Community, the Shoreline Administrator may approve a standard permit specifying allowable materials, structure height, backfill, and any required mitigation measures.

### 3. **New or Expanded Shoreline Stabilization**

- a) Shoreline stabilization shall be prohibited in or adjacent to lakes.
- b) Shoreline stabilization shall not be permitted on spits, hooks, bars, barrier beaches, or similar accretion terminals or accretion shoreforms; except when demonstrated that construction of the above shore defense devices are absolutely necessary for the protection of existing primary structures and

appurtenances and mitigation consistent with ICC 17.05A.090.C.7 has been accomplished.

- c) New Shoreline stabilization may be permitted and existing structural shoreline stabilization may be expanded only when at least one of the following apply:
  - (i) Where necessary to support a project whose primary purpose is enhancing or restoring ecological functions;
  - (ii) Where necessary to remediate hazardous substances pursuant to Chapter 70.105 RCW;
  - (iii) Where necessary to protect public transportation infrastructure, existing dikes, or essential public facilities and other options are infeasible;
  - (iv) Where necessary to protect a water-dependent use and other options are infeasible;
  - (v) Where there is conclusive evidence documented by a geotechnical or coastal engineering analysis that erosion from waves or currents is expected to cause damage to a primary structure or appurtenance within three years based on a trend analysis of prior rates of erosion if the shoreline stabilization is not constructed, or where waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts to ecological functions; or
  - (vi) On a lot within a designated canal community where the adjacent lots on both sides have a legally established bulkhead, structural shoreline stabilization may be permitted, provided:
    - (1) The horizontal distance between existing bulkheads does not exceed one-hundred twenty (120) feet;
    - (2) The proposed stabilization structure would be located landward of the OHWM;
    - (3) The proposed shoreline stabilization would link with the adjacent bulkheads; and
    - (4) The proposed shoreline stabilization would not adversely affect known forage fish habitat.
- d) In addition to meeting the provisions of ICC 17.05A.110.A.1, proposals for new or expanded shoreline stabilization allowed under ICC 17.05A.110.A.3.e shall demonstrate all of the following before a permit can be issued:



- (i) A geotechnical analysis is required by qualified professionals to document the impacts of shoreline modification proposals. The analysis must demonstrate that erosion from waves or currents is expected to cause damage to a primary structure or appurtenance within three years based on a trend analysis of prior rates of erosion if the shoreline stabilization is not constructed;
  - (ii) The proposal is the minimum necessary to protect the primary structure or appurtenance consistent with the requirements of ICC 17.05A.110.A.1.b;
  - (iii) Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient;
  - (iv) The shoreline stabilization complies with the flood damage prevention regulations in ICC Chapter 14.02A;
  - (v) The County shall require sufficient analysis by qualified professionals with the expertise to document the impacts of shoreline modification proposals. Such analysis may include, but not be limited to, geotechnical, hydrological, and biological studies, and should include an analysis of drift cells and stormwater drainage; and
  - (vi) Adverse impacts are fully mitigated according to the prescribed mitigation sequence in ICC 17.05A.090.C.7 such that there is no net loss of shoreline ecological functions or processes.
- e) The Shoreline Administrator shall require applicants for new or expanded shoreline stabilization to provide credible evidence, through preparation of a geotechnical analysis by a qualified professional that the primary structure or appurtenance is in danger of damage from shoreline erosion caused by tidal action, currents, or waves. The evidence shall:
- (i) Demonstrate that the erosion is not due to landslides, sloughing or other forms of shoreline erosion unrelated to water action at the toe of the slope;
  - (ii) Demonstrate a significant possibility that the primary structure or appurtenance will be damaged within three years based on a trend analysis of prior rates of erosion as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts on ecological functions;
  - (iii) Demonstrate that the shoreline stabilization would not adversely affect the property of others by changing rates of sediment, redirection of wave energy, or impoundment of or redirection of floodwater or tidal action;

Stabilization that would cause significant impacts to adjacent or down-current properties and shoreline areas is prohibited; and

- (iv) Include an assessment of on-site drainage and vegetation characteristics and their effects on slope stability.
- f) Replacement of existing shoreline stabilization shall be regulated as new stabilization.
- g) Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure or appurtenance shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. In order for structural shoreline stabilization to be authorized, the geotechnical report must conclude that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or that waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts on ecological functions. All geotechnical reports shall also identify any potential impacts to downstream or downdrift structures.

#### 4. **Applications for shoreline stabilization**

- a) Permit applications for shoreline stabilization shall provide competent technical evidence that the proposed shore defense structure will perform as designed.
- b) Applications for shoreline stabilization shall cover the following items:
  - (i) purpose of shoreline stabilization;
  - (ii) type of construction;
  - (iii) method of construction;
  - (iv) elevation of the toe and crest of the bulkhead with respect to water levels;
  - (v) direction of net longshore drift (when appropriate);
  - (vi) normal, low and high water elevations (when appropriate); and
  - (vii) technical evidence indicating the need for the shoreline stabilization consistent with the requirements of this Chapter.
- c) Applications for jetties shall also provide the following:
  - (i) Mitigation proposed for any impacts on longshore drift, such as beach feeding procedures; and
  - (ii) Provisions for pedestrian access on the top of the jetty, unless safety factors make pedestrian access infeasible, in which case a description of the safety constraints shall be provided.
- d) Applications for groins shall also provide the following:
  - (i) Source and destination of material proposed to be trapped by the groin(s); and

- (ii) Mitigation proposed for any impacts on longshore drift, such as beach feeding procedures.
- e) In order for a proposed bulkhead to qualify for the RCW 90.58.030(3)(e)(ii) exemption for bulkheads associated with a legally established single-family residence and to ensure that such bulkheads will be consistent with the SMP as required by RCW 90.58.140(1), the Administrator shall review the proposed design as it relates to local physical conditions and the Island County SMP and must find that:
  - (i) Erosion from waves or currents is expected to cause damage to a legally established primary structure located less than 100 feet from the OHWM within three years based on a trend analysis of prior rates of erosion if the shoreline stabilization is not constructed;
  - (ii) The proposed bulkhead is either located landward of the OHWM or if more than fifty percent (50%) of the functional value of an existing bulkhead is in disrepair and the OHWM has moved (e.g., due to bank erosion), repairs must be relocated to the present OHWM; and
  - (iii) The maximum height of the proposed bulkhead is no more than one foot above the elevation of extreme high water on tidal waters as determined by the National Ocean Survey published by the National Oceanic and Atmospheric Administration except in areas subject to coastal flooding as defined by FEMA and Chapter 14.02A ICC where the maximum height of bulkheads shall be no greater than necessary to resist tide, wave and floodwater action during a 100-year storm event.

## 5. **Design Regulations**

- a) Shoreline stabilization shall conform to applicable design requirements of the Washington Department of Fish and Wildlife and US Army Corps of Engineers.
- b) A professional geotechnical analysis shall be required for all new or expanded shoreline stabilization structures.
- c) Professional geologic site studies or professionally engineered designs may be required for any proposed shoreline stabilization if the County determines sufficient uncertainties or potential for damage to other shoreline properties and features exist.
- d) If a bulkhead is employed as shoreline stabilization in compliance with the policies and regulations of this SMP, the following design criteria shall be met:
  - (i) The size and quantity of the material shall be limited to only that necessary to withstand the estimated energy intensity of the shoreline hydraulic system;

- (ii) Filter cloth or adequate smaller filter rock shall be used to aid drainage and help prevent settling;
  - (iii) The toe reinforcement or protection must be adequate to prevent a collapse of the shoreline stabilization system from wave action, overtopping, scouring, and upland erosion;
  - (iv) The material used in construction shall be non-toxic to marine organisms;
  - (v) When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill; and
  - (vi) Bulkheads shall be designed to permit the passage of surface or groundwater without causing ponding or saturation of retained soil and other materials.
- e) Shoreline stabilization structures that dissipate wave energy are preferred over vertical walls or concrete slabs. Where concrete slabs with vertical waterward faces are employed, adequate tiebacks and toe protection shall be provided. Design and material of shoreline stabilization structures shall be decided and based upon an analysis of alternatives; the preferred alternative will be that which balances a minimum impact to the environment and shoreline process with a structural solution that will ensure the long term viability of the shoreline stabilization structure.
  - f) Riprap shall be constructed and maintained in a manner that does not have a negative long-term impact on water quality and fisheries habitat.
  - g) Riprap material shall consist of clean, angular quarried rock and shall be of sufficient size and weight to prevent movement by wave or current action. The use of tires, automobile bodies, scrap metal, paper products and other solid waste materials is prohibited.
  - h) Use of downed logs, snags or rock-work to enhance habitat and to provide a more natural appearance to the shoreline should be incorporated into the design where appropriate.
  - i) Stairs or other permitted structures may be built into a bulkhead but shall not extend waterward of the face of the bulkhead.
  - j) When a bulkhead is required at a public access site, provision for safe access to the water shall be incorporated into bulkhead design.

**6. Shoreline Restoration or Beach Enhancement**

- a) Restoration projects on marine and freshwater shoreline shall be allowed provided it is carried out in accordance with an approved project restoration plan and in accordance with the policies and regulations of this Program.
- b) Restoration projects shall be designed such that there are no adverse impacts on ecological resources or functions.

- c) Ecological restoration and enhancement shall be approached on a watershed basis and shall seek to promote an ecosystem or landscape approach, including integrating projects into their surrounding environments.
- d) To the greatest extent feasible, ecological restoration and enhancement projects shall be protected in perpetuity. If future development proposes to impact existing ecological restoration and enhancement sites, it must be demonstrated that there are no practicable alternatives to avoid adverse impacts, and further, that adequate mitigation is provided to address unavoidable losses.
- e) Ecological restoration and enhancement actions shall demonstrate that they are based on sound scientific principles and are compatible with the functions of nearby restoration and enhancement sites.
- f) Beach enhancement in all designations shall be undertaken only for restoration, enhancement or maintenance of natural resources, or as a means to replace an existing shoreline stabilization structure.
- g) Beach enhancement may be permitted when the applicant has demonstrated that no significant change in littoral drift will result which will adversely affect adjacent properties or habitats.
- h) Natural Beach Restoration/Enhancement design alternatives shall include the best available technology such as, but not limited to: gravel berms, drift sills, beach nourishment, natural revegetation and maintained plantings, deposition of drift logs and/or large woody organic debris to stabilize the backshore or protect the toe of eroding bluffs.
- i) Natural beach restoration/enhancement shall not:
  - (i) Detrimentially interrupt littoral drift, or redirect waves, current, or sediments to other shorelines;
  - (ii) Result in any exposed groin-like structures; provided that small “drift sill” groins may be used as a means of stabilizing restored sediment where part of a well planned community beach restoration program;
  - (iii) Extend waterward more than the minimum amount necessary to achieve the desired stabilization;
  - (iv) Result in contours sufficiently steep to impede easy pedestrian passage, or trap drifting sediments;
  - (v) Create additional dry land mass except where the additional land mass will restore degraded ecological functions; and
  - (vi) Cause irreversible long-term loss of near-shore habitat.
- j) The size and mix of new materials to be added to a beach as part of an approved beach restoration program shall be as similar as possible to the

natural beach sediment, but large enough to resist normal current, wake or wave action at the site.

- k) Beach enhancement shall be designed to minimize adverse impacts on spawning, nesting, or breeding habitat and so that littoral drift of the materials enhancement shall not adversely affect adjacent spawning grounds or other areas of biological significance.

B. Moorage Facilities (Docks, Piers, and Floats)

1. New docks, piers, and floats shall be limited to the minimum size necessary for water-dependent uses, public access, or ecological restoration.
2. New docks, piers, and floats shall be located and designed in a manner so as not to interfere with geohydraulic shoreline processes.
3. The location and design of new or replaced docks, piers, and floats, as well as the subsequent use, shall minimize adverse effects to fish, shellfish, wildlife, and water quality and shall not result in a loss of shoreline ecological function. Unavoidable impacts shall be mitigated consistent with the mitigation sequence of ICC 17.05A.090.C.7.
4. New or replaced docks, piers, and floats shall be located, designed, and operated so as not to interfere with rights of adjacent property owners, navigation, or adjacent water uses.
5. All docks, piers, and floats shall be constructed consistent with state and federal requirements.
6. New or replaced docks, piers, and floats associated with single-family residences shall not be approved unless the following information has been provided:
  - a) Demonstrate that existing shared, public or community facilities are not adequate or available for use; and
  - b) Indicate that a multiple-owner or multiple-user facility has been thoroughly investigated and is not feasible.
7. Each dock, pier, or float proposal shall be evaluated on the basis of multiple considerations, including but not necessarily limited to the potential and cumulative impacts on littoral drift, sand movement, water circulation and quality, fish and wildlife, navigation, scenic views, and public access to the shoreline and the best available background information on tidal currents, wave height, and prevailing storm wind conditions.
8. New docks, piers, and floats associated with residential uses on marine waters shall be the minimum size required to provide for moorage. Single family piers or docks shall not exceed ninety (90) feet in length measured perpendicularly from

the OHWM. Shared moorage may extend up to one hundred ten (110) feet in length if demonstrated to be necessary to provide adequate moorage.

9. New piers, docks, and floats on marine waters shall have a maximum width of four feet and a maximum walkway width of four feet. Overwater surfaces shall be constructed of unobstructed grating to provide at least fifty percent (50%) open surface area.
10. For new docks, piers, and floats associated with residential uses on lakes, the maximum waterward intrusion of any portion of any pier or dock shall not extend further waterward than the average intrusion of the piers, docks, and floats on lots abutting the location of the new dock as measured perpendicularly from the OHWM unless an alternative dimension is required to prevent impacts to critical habitat or navigation. In no circumstances shall the maximum waterward intrusion of any portion of the pier, dock, or float extend more than sixty (60) feet from the OHWM, or the point where the water depth is eight (8) feet below the OHWM, whichever is reached first.
11. New piers, docks, or floats on lakes shall have a maximum width of four (4) feet, or five (5) feet for shared docks.
12. Pier skirting is prohibited.
13. Repair of existing docks, piers, and floats shall be allowed. Repair of a dock, pier, or float in which more than fifty percent (50%) of the decking is replaced or more than half the existing piles are replaced over a five-year period shall be considered new construction and shall conform to the performance standards of this SMP.
14. Existing docks, piers, or floats that are non-conforming to the current required dimensional standards may be replaced or reconstructed to the existing dimensions, provided they are consistent with all other performance standards of this section and the standards of the U.S. Army Corps of Engineers and the Washington State Department of Fish and Wildlife and shall include measures that increase light transmission through the deck, maximize the height of piers above the water surface, reduce the overall number or size of piles, enhance the shoreline vegetation, and minimize impacts on shallow-water habitat.
15. For commercial and industrial uses, docks, piers, and floats are only allowed for water dependent uses and shall be the minimum size necessary to accommodate the proposed use.
16. Commercial and industrial docks upon which toxic or flammable materials are handled or stored shall make adequate provisions to minimize the probability of spill. Adequate provision shall be made to control accidental spills that do occur.
17. Docks, piers, or floats associated with marinas shall make adequate provisions for parking, fueling, sewage pump-out, and liquid and solid waste disposal.

18. All new or replaced docks, piers, floats, and similar devices shall be designed and located so as not to be a hazard to navigation and so marked as to prevent a hazard to navigation at any time during the day or night.
19. All floats and floating docks shall include stops to keep the floats off the tidelands at low tide.
20. For new waterfront subdivisions, planned residential developments, multi-family residences, and inns, only joint use docks and piers may be permitted.
21. Unsafe docks, piers, and floats shall be removed or repaired promptly by the owner.
22. New and replaced docks, piers and floats, with the exception of those in the Canal Communities of Lagoon Point, Sandy Hook and Mariners' Cove, shall comply with the following design standards:
  - a) Designed and constructed to avoid or, if that is not possible, to minimize shading and other impacts on nearshore habitats and processes;
  - b) Pilings must be structurally sound prior to placement in the water;
  - c) When plastics or other non-biodegradable materials are used in float, pier, or dock construction, containment features in the design of the structures shall be required;
  - d) Docks, piers, and floats shall be spaced and oriented to shoreline in a manner that minimizes hazards and obstructions to navigation, fishing, swimming, and pleasure boating;
  - e) Overhead wiring or plumbing is not permitted on piers, docks, or floats;
  - f) Dock lighting shall be designed to shine downward but not on the surface of the water, be of low wattage, and shall not exceed a height of three feet above the dock surface;
  - g) All construction-related debris shall be disposed of properly and legally. Any debris that enters the water shall be removed promptly;
  - h) Where feasible, floats shall be secured with anchored cables in place of pilings; and
  - i) Piles, floats or other members in direct contact with water shall be approved by applicable federal and state agencies for use in water and shall not be treated or coated with biocides such as paint, or pentachlorophenol. Use of arsenate compounds or creosote treated members is prohibited. Steel is preferred.
23. A local Canal Community dock master plan may be permitted as a shoreline conditional use for a duration of six years for the communities of Lagoon Point, Sandy Hook and Mariners' Cove. Once adopted, new and replaced docks, piers and floats in the Canal Communities that comply with the standards of the master



plan and are adjacent to the canal would be allowed as permitted uses. An approved master plan would be required to contain, at a minimum, the following:

- a) Dock, pier and float dimensional standards;
  - b) Standards for light penetrating materials (e.g. grating);
  - c) Standards for materials that touch the water, specifying that they must be approved by applicable federal and state agencies for use in water and not treated or coated with biocides such as paint, creosote or pentachlorophenol; and
  - d) Protections for existing shoreline ecological functions, views, and navigation.
24. Through the conditional use process, dimensional standards may be established as part of an approved Canal Community dock master plan that differ from those for docks, piers, and floats in other parts of the County as provided in ICC 17.05A.100.D.
25. Private docks, piers, and floats in the Canal Communities that face the open waters of the Puget Sound shall comply with the general requirements for docks, piers, and floats in ICC 17.05A.100.D.
26. Prior to adoption of a local Canal Community dock master plan, private docks and piers shall be permitted as conditional uses in the Canal Communities of Lagoon Point, Sandy Hook, and Mariners' Cove, provided that:
- a) New or replaced docks and piers use materials that touch the water that are approved by applicable state agencies for use in water and are not treated or coated with biocides such as paint, creosote or pentachlorophenol;
  - b) Repaired or replaced docks do not increase the total area of overwater coverage and do not extend beyond the average length of the two closest adjacent docks; and
  - c) New docks do not exceed the average overwater area of the two closest docks, and the length of the dock, pier, or float does not extend beyond the average length of the two closest adjacent docks, piers, or floats.

### C. Grading and Filling

Grading and filling must be consistent with Chapter 11.01 ICC (Land Development Standards) and Chapter 11.02 ICC (Clearing and Grading Requirements) and may be permitted in shorelines only as follows:

1. Fill may be permitted below the Ordinary High Water Mark only:
  - a) When necessary to support a water-dependent use;
  - b) To provide for public access;
  - c) When necessary to mitigate conditions that endanger public safety;

- d) To allow for cleanup and disposal of contaminated sediments as part of an interagency environmental cleanup plan;
  - e) To allow for the disposal of dredged material considered suitable under, and conducted in accordance with, the dredged material management program of the Washington Department of Natural Resources;
  - f) For expansion or alteration of transportation or utility facilities currently located on the shoreline and then only upon demonstration that alternatives to fill are not feasible; or
  - g) As part of mitigation actions, shoreline restoration, or habitat enhancement projects.
2. Fill above or below the Ordinary High Water Mark shall comply with the following regulations:
- a) The extent of filling and excavation allowed shall only be the minimum necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes;
  - b) Grading and filling shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes and mitigation shall employ the mitigation sequence in ICC 17.05A.090.C.7;
  - c) Excavation and fill shall not be permitted if it would adversely affect normal recharge of groundwater supplies, or degrade quantity or quality of groundwater;
  - d) Fill material shall be of a quality, and so placed and contained, as to not cause water quality degradation. Solid waste and other hazardous materials shall not be used as fill material;
  - e) Sanitary landfill sites are prohibited within all shoreline designations;
  - f) The perimeter of all excavation and filling areas shall be provided with means to control erosion, such as vegetation, retaining walls or other mitigation measures; and
  - g) Applications that include placement of fill as a project element shall include the following information:
    - (i) physical, chemical and biological character of fill material;
    - (ii) source of fill material;
    - (iii) method of placement and compaction; and
    - (iv) method of perimeter erosion control.

D. Dredging and Dredged Material Disposal

1. New development shall be sited and designed to avoid or, where avoidance is not possible, to minimize the need for new maintenance dredging.
2. Dredging and dredged material disposal shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes and avoid or minimize significant ecological impacts.
3. Any impacts shall be mitigated consistent with the mitigation sequence in ICC 17.05A.090.C.7.
4. Dredging and dredged material disposal below the Ordinary High Water Mark shall be permitted only:
  - a) When necessary for the operation of a water-dependent use; or
  - b) When necessary to mitigate conditions that endanger public safety or fisheries resources; or
  - c) For establishing, maintaining, expanding, relocating or reconfiguring navigation channels and basins when necessary to ensure safe and efficient accommodation of existing navigation uses when:
    - (i) Significant ecological impacts are minimized;
    - (ii) Mitigation is provided, employing the mitigation sequence in ICC 17.05A.090.C.7; and
    - (iii) Dredging is maintained to the existing authorized location, depth and width;
  - d) For restoration projects associated with implementation of the Model Toxics Control Act or the Comprehensive Environmental Response, Compensation, and Liability Act, or any enhancement or restoration project; or
  - e) For flood risk reduction projects conducted in accordance with ICC 14.02A.050.
5. Dredging is not allowed waterward of the Ordinary High Water Mark for the primary purpose of obtaining fill material.
6. Disposal of dredged material shall be done only in approved upland disposal sites and shall not be allowed within critical areas or their buffers, except as part of an approved ecological restoration or enhancement project.
7. Stockpiling of dredged material in or under water is prohibited.
8. In order to ensure that operations involving dredged material disposal and maintenance dredging are consistent with the Shoreline Master Program as required by RCW 90.58.140(1), no dredging may commence in any shoreline designation without the responsible person having first obtained the appropriate local, state and federal permits.

9. Proposals that cause substrate displacement or that involve substrate modification through dredging, trenching, or digging shall not be allowed in existing kelp or eelgrass beds without an approved mitigation plan.
10. Dredging operations shall minimize interference with navigation and normal public use of the water.
11. Dredged materials deposited on sites within the shoreline jurisdiction shall constitute fill, and shall comply with all applicable requirements of this Program, Chapter 11.01 ICC (Land Development Standards) and Chapter 11.02 ICC (Clearing and Grading Requirements), and any applicable dredge disposal plans.

E. Breakwaters, Jetties, Groins, Tide Gates and Weirs

1. Breakwaters, jetties, groins, tide gates, and weirs located waterward of the OHWM shall be allowed only where necessary to support water-dependent uses, public access, or other specific public purpose.
2. Groins and jetties may be permitted only as part of a community or public beach management program, or when necessary to support a water-dependent use.
3. Breakwaters, jetties, groins, tide gates, and weirs shall be designed, located, sized, and constructed to ensure no net loss of ecological functions.
4. Breakwaters, groins, tide gates, and weirs shall be professionally designed based on a geotechnical report and Biological Site Assessment that demonstrates the project can be constructed in a manner that:
  - a) Protects critical areas including critical saltwater habitat;
  - b) Provides for mitigation according to the sequence defined in ICC 17.05A.090.C.7;
  - c) Avoids detrimental impacts on the movement of sediment and circulation of water; and
  - d) Would not damage the property of others by changing rates of sediment, redirection of wave energy, or impoundment of or redirection of floodwater or tidal action.
5. Breakwaters, jetties, groins, tide gates, or weirs that would cause significant impacts to adjacent or down-current properties and shoreline areas are prohibited.
6. Adjacent to marine feeder bluffs, breakwaters, jetties, groins, tide gates, and weirs may be permitted only when it is demonstrated by a professional engineer or geologist that construction will not substantially disrupt the beach feeding action or littoral drift.
7. Replacement of existing breakwaters, jetties, groins, tide gates, or weirs shall be regulated as new structures.

### **17.05A.120 Shorelines of Statewide Significance**

- A. In addition to compliance with the Use Requirements which hereafter follow, developments proposed within Shorelines of Statewide Significance shall, insofar as is possible:
1. Recognize and protect the statewide interest over local interest;
  2. Preserve the natural character of the shoreline;
  3. Result in long term over short term benefit;
  4. Protect the resources and ecology of the shorelines;
  5. Increase public access to publicly owned areas of the shorelines;
  6. Increase recreational opportunities for the public in the shoreline; and
  7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.
- B. In addition to compliance with the appropriate Use Requirements of this Chapter, forest practices situated within the shoreline jurisdiction of Statewide Significance shall employ selective timber cutting so that no more than thirty percent (30%) of the merchantable trees may be harvested in any ten-year period of time; provided, that other timber harvest methods may be permitted in those limited instances where the topography, soil conditions, or silviculture practices necessary for regeneration render selective timber cutting ecologically detrimental, subject to approval of a conditional use permit for such timber harvest methods.
- C. Permit review for restoration projects shall be prioritized over other projects in the shoreline.
- D. If the County develops a fee-in-lieu program for the provision of public access, the Shoreline Administrator shall prioritize provision and improvement of public access to publicly owned shorelines of statewide significance.

### **17.05A.130 Shoreline Master Program Procedures**

- A. Shoreline Permit Applications

Any person desiring to undertake substantial development on shorelines of the state located within Island County shall apply to the Island County Planning and Community Development Department for a shoreline permit, in a format established by the County. The application shall contain, at a minimum, such information as is required by state and local rules and regulations adopted pursuant to the SMA. Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to Chapter 90.58 RCW, the Shoreline Management Act, Chapter 173-27 WAC, and this Shoreline Master Program whether or not a permit is required.

#### B. Shoreline Permit Application Requirements

A complete application for a shoreline 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. Identification of the name of the shoreline (water body) that the site of the proposal is associated with. This should be the water body from which jurisdiction of the act over the project is derived;
6. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project;
7. A general description of the property as it now exists including its physical characteristics and improvements and structures; and
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, a description of the field indicators observed and rationale for determination 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 this SMP;
- h) Where applicable, plans for development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section;
- i) Quantity, source and composition of any fill material that is placed on the site whether temporary or permanent;
- j) Quantity, composition and destination of any excavated or dredged material;
- k) A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties;
- l) Where applicable, a depiction of the impacts to views from existing residential uses and public areas; and
- 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.

#### C. Permit Review Process and Approving Authority

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

2. Shoreline exemptions are subject to a Type I application and shall be subject to the land use review process described in Chapter 16.19 ICC.
3. Unless the underlying approval is classified as a Type III decision, shoreline substantial development permits, shoreline conditional use permits, and shoreline variances, are Type II applications and shall be processed and subject to the land use review process outlined in Chapter 16.19 ICC. The Shoreline Administrator may refer a shoreline substantial development permit application, shoreline conditional use application, or shoreline variance 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 scope of the proposal.
4. Determinations of the Shoreline Administrator regarding applicability of the SMP, exemptions and application requirements shall be processed as Type I decisions pursuant to Chapter 16.19 ICC.
5. The Hearing Examiner shall conduct reviews and appeals of shoreline applications consistent with provisions of ICC 16.19.170, ICC 16.19.180 and ICC 16.19.190.
6. The Shoreline Administrator shall make decisions on applications for substantial development permits, and recommendations on applications for conditional use and variance permits based upon: The policies and procedures of the Shoreline Management Act and related sections of the Washington Administrative Code; and the Island County Shoreline Master Program.
7. A notice of application shall be issued for all shoreline permit applications as provided for in Chapter 16.19. ICC, 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).
8. All applications for a permit or permit revision shall be submitted to the Department of Ecology, as required by WAC 173-27-130 or as subsequently amended.
9. A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. A permit revision shall be consistent with provisions of WAC 173-27-100. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the Master Program and the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.
10. After County approval of a Conditional Use or Shoreline Variance permit, the County shall submit the permit to the Department of Ecology for the Department's approval, approval with conditions, or denial, as provided in WAC 173-27-200.



The Department shall transmit its final decision to the County and the applicant within thirty (30) calendar days of the date of submittal by the County.

11. Each permit issued by the County shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one (21) days from the date of filing with the Department of Ecology, per WAC 173-27-190 or as subsequently amended. "Date of filing" of the County's final decision on substantial development permits differs from date of filing for a Conditional Use permit or variance. In the case of a substantial development permit, the date of filing is the date the County transmits its decision on the permit to the Department of Ecology. In the case of a variance or Conditional Use permit, the "date of filing" means the date the Department of Ecology's final order on the permit is transmitted to the County. Construction, or the use or activity, shall commence within two (2) years after approval of the permits. Authorization to conduct development activities shall terminate within five (5) years after the effective date of a shoreline permit. The Administrator may authorize a single extension before the end of either of these time periods, with prior notice to parties of record and the Department of Ecology, for up to one (1) year based on reasonable factors.
12. 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.

D. Shoreline Master Program Review and Amendments

1. Any of the provisions of this Shoreline Master Program may be amended as provided for in RCW 90.58.120, .200 and Chapter 173-26 WAC. Amendments shall be processed as a Type IV decision pursuant to Chapter 16.19 ICC.
2. This Shoreline Master Program (SMP) 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.
3. The County's established permit tracking system, aerial photographs, review of other available data, and field observations as feasible shall be used to periodically evaluate the effectiveness of the Shoreline Master Program in achieving no net loss of shoreline ecological functions with respect to both permitting and exemptions.
4. As part of the required SMP update, an evaluation shall be conducted every eight (8) years assessing the effectiveness of the SMP in achieving no net loss and a report shall be prepared and considered in determining whether policies and regulations are adequate in achieving this requirement.
5. The SMP review and update process shall be consistent with the requirements of WAC 173-26 or its successor and shall include a local citizen involvement effort and public hearing to obtain the views and comments of the public.

6. Amendments or revisions to the Island County Shoreline Master Program, as provided by law, do not become effective until approved by the Department of Ecology.

E. Shoreline Substantial Development Permits and Exemptions

1. Permits Required

- a) Any development, use, or activity shall not be undertaken within the jurisdiction of the SMA, and this shoreline Master Program unless it is consistent with the policy and procedures of the Act, Chapter 90.58 RCW, WAC 173-27, and other applicable federal and state regulations, and the adopted Island County Shoreline Master Program.
- b) A substantial development shall not be undertaken within the jurisdiction of the SMA, Chapter 90.58 RCW, and this Shoreline Master Program unless a shoreline substantial development permit has been obtained and the appeal period has been completed and any appeals have been resolved and the applicant has been given permission to proceed by the proper authority.
- c) Any person wishing to undertake substantial development or exempt development on shorelines shall apply to the Shoreline Administrator for an appropriate shoreline permit or statement of exemption.
- d) If a development, use or activity is listed as a conditional use by the Shoreline Master Program, it shall not be undertaken within shoreline jurisdiction unless a shoreline conditional use permit has been obtained, the appeal period has been completed, any appeals have been resolved, or the applicant has been given permission to proceed by the proper authority.

2. Exemptions from Substantial Development Permit Requirements

- a) Exemptions shall be narrowly construed in accordance with WAC 173-27-040(1). A use classified as a shoreline conditional use or a use not named or contemplated is allowed only as a shoreline conditional use and is ineligible for shoreline permit exemption.
- b) Permit exemption letters shall be prepared for projects requiring Federal Rivers & Harbors Act section 10 permits and/or Federal Clean Water Act section 404 permits.
- c) Key terms used in this section are defined in the definitions sections, including: appurtenance, consumer price index, normal maintenance, normal repair, normal protective bulkhead, shoreline stabilization, and emergency.
- d) The following, as defined in WAC 173-27-040, are not considered to be substantial developments:
  - (i) Any development of which the total cost or fair market value, whichever is higher, does not exceed six thousand four hundred and sixteen dollars (\$6,416.00), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar

threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

- (ii) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. “Normal maintenance” includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. “Normal repair” means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;
- (iii) Construction of the normal protective bulkhead common to single-family residences. A “normal protective” bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the OHWM for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an OHWM has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual OHWM. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington Department of Fish and Wildlife;

- (iv) 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 this SMP. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Shoreline Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to Chapter 90.58 RCW, these regulations, or this Program, shall be obtained. All emergency construction shall be consistent with the policies of Chapter 90.58 RCW and this Shoreline Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;
- (v) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures, including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot (an animal feeding operation) of any size, all processing plants, other activities of a commercial nature, and alteration of the contour of the shorelands by leveling or filling other than that which result from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;
- (vi) Construction or modification, by or under the authority of the Coast Guard or a designated port management authority, of navigational aids, such as channel markers and anchor buoys. WAC 173-27-040(2)(f);
- (vii) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the County and state agency having jurisdiction thereof, other than requirements imposed pursuant to Chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the Ordinary High Water Mark and the perimeter of a wetland. Normal appurtenances include a garage, deck, driveway,

utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill waterward of the Ordinary High Water Mark or in any wetland. Construction authorized under this exemption shall be located landward of the Ordinary High Water Mark and shall be subject to required setbacks. Construction authorized under this exemption shall be located landward of the Ordinary High Water Mark;

- (viii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private, non-commercial use of the owners, lessee, or contract purchaser of single- 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:
  - (1) In salt waters, the fair market value of the dock does not exceed Two Thousand Five Hundred Dollars (\$2,500.00).
  - (2) In fresh waters, the fair market value of the dock does not exceed Ten Thousand Dollars (\$10,000.00), but if subsequent construction having a fair market value exceeding Two Thousand Five Hundred Dollars (\$2,500.00) occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Chapter;
- (ix) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system for the primary purpose of making use of the system waters, including return flow and artificially stored groundwater from the irrigation of lands. WAC 173-27-040(2)(i);
- (x) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water. WAC 173-27-040(2)(j);
- (xi) 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 part of an agricultural drainage or diking system. WAC 173-27-040(2)(k);
- (xii) Any project with a certification from the governor pursuant to Chapter 80.50 RCW (certification from EFSEC);
- (xiii) Site exploration and investigation activities that are prerequisite to preparation of an application for development authority under this Chapter if:

- (1) The activity does not interfere with the normal public use of the surface waters;
  - (2) The activity will have no significant adverse impact on the environment, including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
  - (3) The activity does not involve the installation of any structure, and upon completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity;
  - (4) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the County to ensure that the site is restored to pre-existing condition; and
  - (5) The activity is not subject to the permit requirements of RCW 90.58.550. WAC 173-27-040(2)(m);
- (xiv) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under Chapter 43.21C RCW;
- (xv) Watershed restoration projects as defined in RCW 90.58, in accordance with WAC 173-27-040(2)(o);
- (xvi) A public or private project that is designed to improve fish or wildlife habitat or fish passage, as provided in WAC 173-27-040(2)(p), when all of the following apply:
- (1) The project has been approved by the Washington Department of Fish and Wildlife (WDFW);
  - (2) The project has received hydraulic project approval by the WDFW pursuant to 75.20 RCW; and
  - (3) The County has determined that the project is substantially consistent with this shoreline master program;
- (xvii) Hazardous substance remedial actions, as specified in WAC 173-27-040(3); and
- (xviii) Normal appurtenances to a single-family residence are included in the permit exemption provided in 17.05A.130.E.2.d)vii. “Normal appurtenances” include a garage, deck, driveway, utilities, fence, septic tank and drainfield, and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland, or waterward of the Ordinary High Water Mark. Normal appurtenances to a single-family residence also include:

- (1) Beach access structures (i.e., stairways and tramways) and footpaths when in compliance all other provisions of this Chapter;
- (2) Gazebos and sheds located outside of the buffers required by this Chapter, not exceeding 200 square feet in total impervious footprint, and not exceeding two such structures per single-family lot;
- (3) Fill that does not exceed 250 cubic yards in total, necessary during the original construction of a single-family residence for the following purposes as described below:
  - (a) Normal landscaping, to include topsoil, rock or similar landscaping materials but not including mulch;
  - (b) Structural fill, only as necessary to comply with building code requirements related to the structural integrity of a foundation and not to include fill required for parcel flood-proofing, wetland fill or other fill activities; and
  - (c) Fill required for driveway construction, not including asphalt or concrete; and
  - (d) Fill placed entirely within a foundation wall or associated with a drainfield shall not count toward the 250 cubic yards;
- (4) Antennas and satellite dishes that are less than one meter in diameter; and
- (5) Solar arrays serving only the single-family residence.

F. Shoreline Conditional Use Permit

1. The purpose of a shoreline conditional use permit is to provide a system within the Shoreline 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 shoreline conditional use, special conditions may be attached to the permit to prevent undesirable effects of the proposed use and to ensure consistency of the project with the Act and the Island County Shoreline Master Program.
2. Uses which are classified or set forth as shoreline conditional uses in the Master Program may be authorized, provided the applicant demonstrates 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 Shoreline 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 shoreline 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 shoreline 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.

G. Shoreline Variance

1. The purpose of a variance is strictly limited to granting relief to specific bulk dimensional, or performance standards set forth in the Shoreline Master Program, and where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Island County SMP would impose unnecessary hardships on the applicant or thwart the SMA policies as stated in RCW 90.58.020.
2. Construction pursuant to a variance 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.
3. An application for a shoreline variance shall be submitted on a form provided by the County accompanied by maps, completed environmental checklist, applicable fees, and any other information specified in this Master Program or requested by the Shoreline Administrator.
4. 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.
5. 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:



- a) 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;
  - b) 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;
  - c) 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;
  - d) That the variance requested is the minimum necessary to afford relief and will not constitute a grant of special privilege not enjoyed by other properties in the area; and
  - e) That the public interest will suffer no substantial detrimental effect.
6. Variances for a development 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:
- a) That the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes all reasonable use of the property;
  - b) That the proposal is consistent with the criteria established in this SMP; and
  - c) That the public rights of navigation and use of the shorelines will not be adversely affected.
7. 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 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.
8. Variances from the use regulations of the Island County Shoreline Master Program are prohibited.

#### H. Notice of Approval or Denial

The Island County Planning & Community Development Department shall notify the following persons in writing of the final approval or denial of a shoreline permit as required by law:

1. The applicant;
2. The Washington State Department of Ecology;

3. All “parties of record” for each decision as defined in Chapter 16.19, ICC and any person who has written the planning department requesting such notice; and
4. Any affected Indian Tribe.

I. When Substantial Development May Commence

Construction pursuant to a shoreline permit shall not begin or be authorized until thirty (30) days from the date the final order granting the permit was filed with the Washington State Department of Ecology pursuant to RCW 90.58.140(6), or until all review proceedings are terminated if such proceedings were initiated within thirty (30) days from the date of such filing, except as provided in RCW 90.58.140(5), (b) and (c). Issuance of a shoreline permit shall in no way be construed as excusing the applicant from compliance with any other local, state, or federal statutes, ordinances, or regulations applicable to the proposed substantial development.

J. Appeals to Shorelines Hearings Board

After completing any administrative appeal regarding a shoreline substantial development permit pursuant to Chapter 16.19 ICC, further review may be sought by appeal to the Washington State Shorelines Hearings Board pursuant to Chapter 90.58 RCW.

No Shoreline Conditional Use Permit or Variance approval by the County is final until reviewed and approved by the Department of Ecology according to WAC 173-16-070 or as hereafter amended. Further review may then be sought by appeal to the Washington State Shorelines Hearings Board pursuant to Chapter 90.58 RCW.

K. Fees

A fee as set by the Board shall be paid to the Island County Planning & Community Development Department at the time a shoreline permit application is accepted to cover the cost of administration.

**17.05A.140 Nonconforming Development**

"Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the Act or this Master Program, or amendments thereto, but which does not conform to present regulations or standards of this Master Program. In such cases, the following standards shall apply:

- A. Residential and appurtenant structures (excluding bulkheads, overwater structures or other shoreline modifications) that were legally established and are used for a conforming use, but that do not meet current standards for density, lot size, setbacks and buffers shall be considered a conforming structure. Redevelopment, expansion, or replacement of these residential structures shall be consistent with this Shoreline Master Program, including requirements for no net loss of shoreline ecological functions. Nothing in this section: (a) Restricts the ability of this Master Program to limit redevelopment, expansion, or replacement of overwater structures located in hazardous

areas, such as floodplains and geologically hazardous areas; or (b) affects the application of other federal, state, or local government requirements to residential structures.

- B. Structures that were legally established and are used for a conforming use, but which are nonconforming with regard to setbacks, buffers, area, bulk, height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses;
- C. 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 not be enlarged or expanded, except that 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 this SMP upon approval of a conditional use permit;
- D. A use which is listed as a conditional use, but which existed prior to adoption of the Master Program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use, but which existed prior to the applicability of the Master Program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use;
- E. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities;
- F. A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:
  - 1. No reasonable alternative conforming use is practical; and
  - 2. The proposed use will be at least as consistent with the policies and provisions of the Act and the Master Program and as compatible with the uses in the area as the preexisting use.

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;

- G. A nonconforming structure which is moved any distance must be brought into conformance with the Master Program and the Act to the maximum extent feasible;
- H. If a nonconforming development is unintentionally damaged to an extent not exceeding seventy-five percent (75%) of its real valuation exclusive of foundations, it may be

reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within one year of the date the damage occurred, all permits are obtained, and the restoration is completed within two (2) years of permit issuance;

- I. If a nonconforming structure is intentionally modified and the cost of the proposed development exceeds sixty percent (60) of the fair market value of the replacement cost of the original structure, it shall be required to meet all applicable standards in the SMP;
- J. A nonconforming use that is discontinued for a period of twenty-four (24) continuous months shall not be allowed to be re-established as a nonconforming use; and
- K. An undeveloped lot, tract, parcel, site, or division of land located landward of the Ordinary High Water Mark which was established prior to the effective date of the Act or the Master Program, but which does not conform to the present lot size standards, may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the Master Program and the Act.

#### **17.05A.150 Penalties and Enforcement**

Any person who shall fail to conform to the terms of a permit issued under this Chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this Chapter shall be subject to the penalties and enforcement provisions of Section 17.03.260 ICC except the civil penalty for violation shall be as set forth in RCW 90.58.210. In addition, Island County and the Department of Ecology shall have the authority to take enforcement action pursuant to RCW 90.58.210-220, and .230, and WAC 173-27-240 through WAC 173-27-300.

#### **17.05A.160 Severability**

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of this Chapter or the application of the provisions to other persons or circumstances shall not be affected.

#### **17.05A.170 Conflict of Provisions**

Should a conflict occur between the provisions of this SMP or between this SMP and the laws, regulations, codes or rules promulgated by any other authority having jurisdiction within the County, 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 County, except when constrained by federal or state law.

#### **17.05A.180 Effective Date**

This Chapter shall take effect on \_\_\_\_\_, 2015, and shall apply to new applications submitted on, or after that date and to incomplete applications filed prior to that date.