

Attachment B: Ecology Recommended Changes to Ordinance 1-2016:

The following changes are recommended and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III):

SJCC – San Juan County Code
 CUP – Conditional Use Permit.
 UDC – Unified Development Code
 SMA – Shoreline Management Act
 WAC – Washington Administrative Code

ADA – American Disabilities Act
 SMP – Shoreline Master Program
 CAO – Critical Areas Ordinance
 RCW – Revised Code of Washington

ITEM	SMP Provision (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
1.	P. 46 Section B, Element 3, Section 3.5.D. Introduction – Exhibit A	Structural shoreline stabilization	Introduction: Structural shoreline stabilization includes both hard and soft measures to minimize erosion and/or damage caused by waves, wake action, currents, <u>and</u> wind and drainage patterns of development upslope from the SMP jurisdiction.	Recommended by county staff based on comment 151 received during the state comment period. The change is consistent with the SMA and implementing rules.
2.	P. 22 Section 4. SJCC 18.80.110	Pre-application meetings	Pre-application meetings. Pre-application meetings are required for all shoreline substantial development permits, conditional use permits, and shoreline variances, <u>and shoreline substantial development exemptions where development may involve critical areas.</u> Pre-application meetings are encouraged for all other project or development permits.	Ecology recommends extending the requirement for pre-application meetings to include permit-exempt developments where critical areas are involved. The most common forms of shoreline development in the San Juans, such as single family homes and bulkheads, are exempt from the requirement for a permit, but still must comply with applicable SMP provisions. The benefits of pre-application meetings for both the county and the applicant are just as great for these kinds of permit-exempt development as projects that require permits.
3.	P. 22	Uses and permits	1. This section includes the procedures necessary to ensure that the provisions of the Shoreline Master Program (SMP) (Element 3 of the Comprehensive Plan and Chapter 18.50 SJCC) are implemented and enforced, and that all	Recommended by county staff based on comments 27b & 27d received during the state SMP comment period. The changes add clarity.

	Section 4. SJCC 18.80.110 A.		persons affected by the SMP are treated in a fair and equitable manner. <u>See Section 66 for the table of uses and permit types by shoreline designation.</u>	
4.	P. 22 Section 4. SJCC 18.80.110 A.	References	2. This section applies to all lands and waters within the jurisdiction of the SMP and to all persons and agencies described in <u>Section 9, subsections (B) and (C) of this Ordinance.</u> Chapter 18.50 SJCC.	Recommended by county staff based on comment 27e received during the state comment period. The changes add clarity.
5.	P. 22 Section 4. SJCC 18.80.110 A.	Permits	3. The following <u>project permits</u> are referred to as “shoreline permits” and are subject to SMP procedure: a. Shoreline substantial development permits; b. Shoreline conditional use permits; and c. Shoreline variances.	Recommended by county staff based on comment 27f received during the state comment period. The changes add clarity.
6.	P. 24 Section 4. SJCC 18.80.110 F.	Exemptions	2. Developments that are exempt from a shoreline substantial development permit are established in SJCC 18.50.020 Sections 10 and 11 of this Ordinance. In making this determination, the director will consider the ultimate scope of a proposal and its consistency with the regulations of the SMP. The director may request additional information from the applicant and may make site inspections. 5. A certificate of exemption will be prepared for any proposal which is exempt from shoreline substantial development permit requirements under Chapter 18.50 SJCC whenever: a. A U.S. Army Corps of Engineers (ACOE) Section 10 permit under the Rivers and Harbors Act of 1899 is required (see WAC 173-27-050(1)(a)); b. A Section 404 permit is required under the Federal Water Pollution Control Act of 1972 (see WAC 173-27-050(1)(b)).	Recommended by county staff based on comment 27g. The deleted provisions are redundant with Section 11(B)(3).
7.	P. 26 Section 4. SJCC 18.80.110 G.	Shoreline permits - Administration	1. The director shall review development and project permit applications for consistency with the SMA and SMP, make a consistency determination, and report the results of this review and determination to the hearing examiner. The director may request additional information from the applicant and may make site inspections.	Ecology suggests retaining a provision from the previous shoreline master program that voids permit applications where applicants have not taken action for a year. This prevents the problem of lingering applications. This suggestion to add an expiration date for permits that have been submitted but are inactive is a separate issue from the deadlines in (6) and (7)

2. If no final action is taken on a shoreline permit application one year from the date of filing of the application due to inaction by the applicant, the application shall expire and be considered void. A new application and fees shall be required for continuation of the permit process.

~~2~~ 3. The director shall not issue a development or project permit that is subject to shoreline permit requirements until a shoreline permit has been granted. Development or project permits issued are subject to the conditions of approval on the shoreline permit.

~~3~~ 4. When approving a shoreline permit, the hearing examiner may attach conditions to ensure consistency with the SMA, SMP and applicable provisions of this code. The examiner shall also prepare findings of fact and conclusions of law.

~~4~~ 5. Within eight (8) days of the hearing examiner's final decision, the director will send WDOE copies of the permit application and other pertinent materials used to make the final decision (see Chapters 43.21C or 90.58 RCW), the permit, and any other written evidence related to the hearing examiner's final decision. The date of filing a shoreline substantial development permit decision is the date WDOE receives the County's decision. WDOE shall issue and transmit their decisions on conditional use and variance permits to the department and applicant within thirty (30) days of department's submittal to them. The date of filing shoreline conditional use permits or shoreline variances, is the date that WDOE transmits their permit decision to the department and applicant.

~~5~~ 6. Construction or substantial progress toward construction of a project for which a shoreline permit is granted must be undertaken within two (2) years after WDOE's date of filing. Substantial progress toward construction includes letting bids, making contracts, purchase of materials utility installation and site preparation, but does not include use or development inconsistent with the SMP or the terms of permit approval. However, the two (2) year period does not include time when

below which address the timeframes for permits *after* they are issued, consistent with WAC 173-27-090 *Time Requirements for Permits*.

			<p>development could not proceed due to related administrative appeals or litigation, nor include time necessary to obtain other required permits for the project from state and federal agencies.</p> <p>6 7. Unless specified otherwise in permit conditions, all development authorized by a shoreline permit shall be completed within five (5) years of the WDOE date of filing or the permit shall become null and void. A permittee may request a time extension before the permit expires by making a written request to the director stating the reasons. The hearing examiner will review the permit, and upon a finding of good cause:</p> <ol style="list-style-type: none"> a. Extend the permit for a period not to exceed (1) one year; or b. Terminate the permit. <p>However, nothing in this section precludes the hearing examiner from issuing shoreline permits with a fixed termination date other than (5) five years based upon a finding of good</p>	
8.	P. 28 Section 4. SJCC 18.80.110 I.	Variances and CUPs	<p>5. Requests to vary the use of a shoreline area are processed as a requests for shoreline conditional uses permit rather than a shoreline variance. Variances from the u-Uses that regulations are prohibited by the SMP may not be authorized by a variance or a conditional use permit.</p>	Recommended by county staff after reviewing public comment 27h. Ecology points out that CUPs are usually only used for use or development called out as a CUP and for use or development that is unclassified. It is the county’s choice to use them for a change of use.
9.	P. 30 Section 4. SJCC 18.80.110 J. 4.	Clarification	<p>d. The proposed use will result in no net loss of shoreline ecological functions in the shoreline designation in which it is to be located;</p>	Recommended by county staff based on comment 27i. The changes add clarity.
10.	P. 30 Section 4. 18.80.110 J.	Conditional Use Permit	<p>5. Uses that are not classified as a conditional use in this SMP may be authorized by conditional use permit, provided that the applicant demonstrates consistency with the criteria in WAC 173-27-160(1) and the SMP.</p>	Recommended by county staff. The changes are required for consistency with conditional use language in WAC 173-26-241(2)(b)(i) and WAC 173-27-160(3). This regulation is intended to clarify that “unclassified” uses (i.e., those that do not fit into a use category in the SMP), may be authorized by a CUP.
11.	P. 31	Process clarification	<p>1. When an applicant seeks to revise a shoreline permit, an application in a form prescribed by the director together with detailed plans and text describing the proposed changes must be filed with the <u>department director</u>.</p>	Recommended by county staff based on comment 27j received during the state comment period. The changes add clarity.

	Section 4. SJCC 18.80.110 K.		The director will determine whether the proposed changes are within the scope and intent of the original permit and are consistent with the SMP and the SMA. <u>The director may find P</u> proposed revisions are within the scope and intent of the original permit if all the following conditions are met:	
12.	P. 31 Section 4. SJCC 18.80.110 K. 1.	Grammatical	b. The building footprint and height are not increased by more than a maximum of ten percent (10%) from the provisions of the original permit;	Recommended by county staff based on comment 27k received during the state comment period. The changes add clarity.
13.	P. 33 Section 4. SJCC 18.80.110 N.	Vesting language clarification	3. a. If A a vested permit application that contemplates one (1) or more future uses or <u>structures permits on the property that are subject to that permit approval, then: and the application</u> a. If that permit approval contains a detailed description of the uses and improvements and a detailed site plan consistent with all laws and regulations in effect at the time the original application vested, then subsequent permit applications filed for those future use(s) are vested to the laws and regulations in effect at the time original permit application vested.	Recommended by county staff based on comment 27m received during the state comment period. The changes add clarity.
14.	P. 33 Section 4. SJCC 18.80.110 N.	Vesting language clarification	4. The County may impose conditions based on development and project permits pursuant to the State Environmental Policy, Act Chapter 43.21C RCW, Chapter 197-11 WAC and SJCC 18.80.050 to mitigate potentially adverse environmental impacts.	Recommended by county staff based on comment 27n received during the state comment period. The changes add clarity.
15.	P. 37 Section 8. A.	The Shoreline Master Program	This Chapter of the San Juan County Unified Development Code (UDC), together with Element 3 of the Comprehensive Plan, <u>the Shoreline Program Designation Map including designation points, and SJCC 16.55.040, 16.55.210(E)(2)(d) Section 2(B) figures 130-7 and 130-6 of the Eastsound Subarea plan, SJCC 18.30.480, the Eastsound Waterfront Access Plan, and SJCC 18.80.110 is the Shoreline Master Program (SMP) for San Juan County, Washington as they exist on the date of approval of this SMP.</u>	Recommended by county staff based on comment 27d. Ecology has included the Shoreline Designation Map along with the designation points, which are required to be part of the SMP per WAC 173-26-211(2)(b), WAC 173-26-191(2)(a)(i)(C) and Section 8 D. 1.

16.	P. 37 Section 8. D.	Shoreline map clarification	1. A map, known officially as the “San Juan County Comprehensive Plan Land Use and Shoreline Master Program <u>Designation Map</u> ,” (a.k.a., the “map” or “official map”) is part of the SMP. The map shows all areas of the County under the jurisdiction of the SMP and the official shoreline designations established by Element 3 of the Comprehensive Plan for all affected lands and waters.	Recommended by county staff based on comment 27d received during the state comment period. The changes add clarity.
17.	P. 39 Section 9. D.	Critical area protection	This SMP applies to all developments, uses, and structures, as well as activities regulated by <u>Section 18 of this Ordinance</u> Chapter 18.35 SJCC . Unless otherwise authorized, shoreline development without a project permit, shoreline substantial development permit, shoreline conditional use permit, shoreline variance, or certificate of exemption is prohibited.	The change adds clarity. Chapter 18.35 SJCC is the county’s critical area ordinance and only regulates shoreline jurisdiction to the extent modified by Section 18 utilizing the dated version of the ordinance. Clarifying this reference will ensure consistency with the GMA (RCW 36.70A.480) and Guideline (WAC 173-26-221(2)) requirements for critical area protection in shoreline jurisdiction, as described in SMP Finding MM.V.5.
18.	P. 39 Section 10.	Certificates of exemptions	D. The following developments, as defined in WAC 173-27-040, are not shoreline substantial developments and may require a certificate of exemption <u>when not considered as part of a larger project or development permit</u> :	Recommended by county staff based on comment 27q received during the state comment period. The change is consistent with SMA and implementing rules.
19.	P. 43 Section 11. A.2.	Critical area protection	g. The project complies with the bank stability and geologically hazardous area requirements of Section 18 of this ordinance and Chapter 18.35 SJCC .	The change adds clarity. See Row 17.
20.	P. 43 Section 11. B.	Certificate of exemption clarification	2. <u>When not part of an approved development or project permit, a A-certificate of exemption is required for:</u> a. Dredging; b. Flood hazard control structures; c. Archaeological or historic site alteration; d. Clearing, grading, fill, excavation and vegetation removal (when not part of an approved project permit); f. Dock construction, repair, replacement, or enlargement; g. Structural shoreline stabilization, repair, replacement, or enlargement;	Recommended by county staff. The changes add clarity.

			h. Any residential, commercial or industrial development project within the natural and aquatic designations (when not part of an approved project permit);	
21.	P. 44 Section 11. B.	Certificate of exemption clarification	4. A certificate of exemption is not required for residential development, including normal residential appurtenant structures, when a building project or development permit application is required. In addition to the conditional use permit required by Section 60(D)(2) of this ordinance, normal residential appurtenances that are not considered as part of original development permit are required to obtain a certificate of exemption.	Recommended by county staff based on comment 27s received during the state comment period. The changes add clarity.
22.	P. 47 Section 16.	Modification of land.	C. 1. Land clearing, grading, filling, or alteration of wetlands , natural drainage, and topography shall be limited to the area necessary for driveways, buildings, and view and solar access corridors.	Recommended by county staff based on comment 9a received during the state comment period. The change is consistent with the SMA and implementing rules.
23.	P. 47 Section 16. C.	Clearing	2. Removal of trees smaller than three (3) inches in diameter, as measured four (4) feet above grade, shall not be restricted unless there is evidence that the shoreline is unstable. The removal of smaller trees, brush, and groundcover may be restricted in unstable shorelines.	Recommended by county staff based on comment 15bb received during the state comment period. County staff state that the change will add clarity and consistency. Tree and foliage removal is subject to the critical area regulations in Section 18.
24.	P. 48 Section 16. D.	Critical area protection	3. Demonstrate how the tree protection requirements in critical area buffers and tree protection zones in Chapter 18.35 SJCC <u>Section 18</u> will be met; and	The change adds clarity. See Row 17.
25.	P. 50 Section 17.	Shoreline stabilization.	D. All new shoreline structures must be located and designed to prevent the need for shoreline stabilization and flood protection measures for the life of the structure (minimum seventy-five years (75) as determined by a qualified professional. On all non-bedrock shorelines all new structures are subject to coastal geologic buffers consistent with Section 18 of this Ordinance. <u>The required geotechnical report must:</u> <u>1. Be prepared by a qualified professional;</u> <u>2. Evaluate the potential impacts on water circulation, sand and gravel movement, erosion and accretion;</u> <u>3. Evaluate the potential impact of Sea Level Rise over the life of the structure (seventy-five (75) years); and</u> <u>4. Demonstrate that the proposed buffer will be sufficient to avoid the need for</u>	Recommended by county staff based on comment 9d received during the state comment period. The change is consistent with SMA and implementing rules.

			<u>new protective structural shoreline stabilization and flood protection measures for the life of the structure (seventy-five (75) years).</u>	
26.	P. 51 Section 18. B.	Grammatical error	6. Critical area reduced provisions for reduced water quality buffers and tree protection zones when views of the water are blocked by existing houses on adjoining waterfront parcels, do not apply in shoreline jurisdiction. Specifically SJCC 18.35.130(F) does not apply.	Recommended by county staff based on comment 27w received during the state comment period. The changes add clarity.
27.	P. 51 Section 19.	Critical area protection	A. Shoreline development, land uses, structures and activities must meet the no net loss requirement of WAC 173-26-186(8)(b). If project proposals do not comply with the critical area protections in Chapter 18.35 <u>SJCC Section 18</u> , applicants must submit a mitigation sequence analysis to the department.	The change adds clarity. See Row 17.
28.	P. 52 Section 19.D	Mitigation	<u>D. Modifications to wetlands or buffers may be exempt from the requirement to avoid impacts when the wetland is below minimum size thresholds listed in Chapter 18.35.095 provided impacts are fully mitigated according to the remaining mitigation sequence in Section 19(B).</u> <u>Note: other state or federal approval may be necessary to authorize these actions.</u>	The changes improve consistency with WAC 173-26-186(8) to ensure no net loss of ecological functions, and WAC 173-26-221(2)(c)(i)(A) which states that local government should consult Ecology's technical guidance. See Ecology's <i>Wetland Guidance for CAO Updates</i> , Western Washington Version, Publication # 16-06-001, pages 8 and 24. This regulation is intended to preserve the minimum size (modification) thresholds in the County's CAO, but clarify that mitigation of resulting impacts will be required.
29.	P. 53 Section 20. F.	Monitoring and adaptive management plans for impacts to shoreline ecological functions.	14. A monitoring and adaptive management plan appropriate for the scale and scope of the project <u>as determined by a qualified professional and approved by the decision maker (director or hearing examiner, depending on type of underlying permit).</u> The monitoring and adaptive management plan must include: a. A description of measureable indicator data to be collected. The description will demonstrate the validity of the collected data to assess the effectiveness of the project; b. A monitoring schedule. Data collection must occur at least once each calendar year. The minimum monitoring schedule is <u>five (5) years, provided the schedule can be reduced after three (3) years unless if the</u>	Ecology recommends several changes to clarify the intent of what needs to be in a monitoring plan. Other changes improve consistency with WAC 173-26-221(2)(c)(i)(A) which states that local government should consult Ecology's technical guidance documents on wetlands. (14.) The change is consistent with item #15 and puts the duration of the monitoring upfront. The duration then determines the monitoring schedule required as part of the plan. (b.) Ecology recommends adjusting the standard minimum monitoring schedule to five years, consistent with Section

		<p>director makes a written determination that the mitigation plan is successful, functioning as designed and the established performance standards have been met. If the plan is unsuccessful, the director may extend the monitoring requirements; and</p> <p>c. A <u>requirement</u> for a report submitted to the department by November 1st of each calendar year-explaining corrective actions that will be taken to address unforeseen adverse impacts.</p> <p>15. A cost estimate prepared by a qualified professional for implementing the mitigation plan and monitoring the site for a period of three (3) years, or until the qualified professional anticipates the plan to be fully completed and functional. The plan must be approved by the decision maker (director or hearing examiner, depending on type of underlying permit);</p> <p>16. Unless exempt under RCW 36.32.590, a financial guarantee and associated agreement equal to a minimum of one hundred and fifteen percent (115%) of the projected cost of implementing the mitigation and monitoring plans (i.e. cost plus fifteen percent (15%)). The maximum cost to the property owner is the original <u>final</u> cost for implementing and monitoring the project, plus fifteen percent (15%) of that cost;</p> <p>17. The financial guarantee and the associated agreement must meet the requirements of SJCC 18.80.200. For mitigation of adverse impacts to wetlands and fish and wildlife habitat conservation areas, it must initially be established to cover a <u>the</u> time period of three (3) years or until the project is anticipated to be completed and functional as determined by the qualified professional and approved by the decision-maker; and</p>	<p>(20.B) of the ordinance which requires the county to be consistent with Ecology mitigation publications. <i>Wetland Guidance for CAO Updates</i> (Western Washington Version). Washington Department of Ecology, Publication 16-06-001 and <i>Wetlands in Washington State – Volume 2: Guidance for Protecting and Managing Wetlands</i>, Publication #05-06-008. Washington Department of Ecology, Olympia, WA. The recommended changes retain the option to allow for a shorter monitoring period if after three years there is evidence the mitigation is successful. This provides an “out” for simpler projects where the mitigation obligation is minor and success is obvious after three years.</p> <p>(c.) Suggested changes clarify that report updates are a condition of the plan.</p> <p>(15.) Suggested deletions are to ensure consistency with other changes to Section 20F.</p> <p>(16.) The suggested change clarifies that the final cost will be dependent on the outcome of the project consistent with Section 21. C..</p> <p>(17.) Suggested deletions are consistent with other changes to Section 20F.</p>
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			18. A statement, signed by the property owner, agreeing to the periodic inspections established in the monitoring plan. The purpose of inspections is to determine compliance with approved plans. Inspections can be performed by either a qualified professional hired by the property owner, or a County representative. If a County representative conducts the inspection(s), they will be by appointment or following advance written notice.	
30.	P. 56 Section 22. B.	New flood control works in critical areas	2. New structural flood control works are only allowed in the shoreline jurisdiction if it is demonstrated by an engineering analysis <u>analyses prepared by qualified professionals</u> that:	Recommended by county staff based on comment 27x received during the state comment period. The changes add clarity, because some of the analysis is not related to engineering.
31.	P. 61 Section 27. A.	Critical area protection	1. In accordance with Section 18 Chapter 18.35 SJC , buffers of permanent vegetation or other suitable soil erosion controls shall be established and maintained between tilled or grazed areas and associated water bodies and wetlands. The type and extent of such vegetation and other controls shall be of a width or character sufficient to capture sediments and other compounds.	The change adds clarity. See Row 17.
32.	P. 66 Section 28. A.	Commercial geoduck applications	<u>30. Geoduck operations shall be located where sediments, topography, and land and water access can accommodate operations without significant clearing or grading.</u> <u>31. Applications shall identify management practices that will be implemented to address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.</u>	Recommended by county staff for consistency with WAC 173-26-241(3)(b)(ii)-(iv), which lists requirements for geoduck operations.

33.	P. 66 Section 28. B.	Small scale shellfish aquaculture clarification	<p>1. <u>Small scale</u> shellfish aquaculture and supplemental wildstock seeding that does not adversely impact shoreline ecological functions or aesthetic qualities is allowed in the nearshore waters with a certificate of exemption provided that it does not:</p> <p>a. Intrude into critical saltwater habitats on shorelines of statewide significance unless there is no feasible alternative, and</p> <p>b. Exceed the shoreline substantial development permit exemption criteria in Section 10 <u>(D)(1)</u> of this ordinance.</p>	Recommended by county staff based on comment 12a received during the state comment period. The change adds clarity.
34.	P. 69 Section 29. B.	Construction materials for overwater structures	<p>1. Non-toxic materials should be used in construction. Use of treated wood containing toxic compounds should be minimized and may only be used where non-toxic materials are deemed infeasible and as allowed by this subsection as follows:</p> <p>.</p> <p>.</p> <p>d. Treated wood can be used for all structural <u>framing</u> elements of the over-water structure.</p>	Recommended by county staff based on comment 28c received during the state comment period. The change adds clarity.
35.	P. 71 Section 31.	Dock dimensions	D. The <u>maximum</u> size and dimensions of single family and joint use docks, moorage and recreational floats are provided in Table X.	Recommended by county staff based on comment 27y received during the state comment period. The change adds clarity.
36.	P. 74 Section 34.	Buffers and setbacks	E. Marine railways shall be located on unaltered grade where feasible. They shall not obstruct public access to and along the shoreline or across publicly-owned tidelands. A boathouse is allowed at the landward end of a marine railway above the OHWM if it meets the required <u>critical area</u> buffers or setbacks.	Recommended by county staff based on comment 27ee received during the state comment period. The change adds clarity
37.	P. 75 Section 35. G.	Mooring buoys	Mooring buoys shall be clearly marked and labeled with the owner's name and contact information and WDNR permit <u>authorization</u> number(s).	Recommended by county staff based on comment 28d received during the state comment period. The change adds clarity

38.	P. 76 Section 38.	Dock Applications	<p>A. For all new or expanded boating facilities, docks, piers, floats, and ramps, applicants must provide a demand analysis demonstrating the need for the proposal that addresses at least the following criteria:</p> <ul style="list-style-type: none"> . . 4. Approved facilities, or pending applications, within the service range on the island of the proposed new facility. 5. Proposals for new boating facilities docks, piers, floats, and ramps shall provide documentation demonstrating that expansion of facilities <u>on the island of the proposed new facility</u> existing at the time of application is not feasible or would not be adequate to meet current demand; and 6. For new or expanded ramps: <ul style="list-style-type: none"> a. Identification of the nearest public or commercial ramp <u>on the island of the proposed new facility</u> existing at the time of application; b. Demonstration that planned expansion of existing facilities <u>on the island of the proposed new facility</u> will not meet current or future demand; and c. Any other relevant factors related to the need for safe or efficient access to public waters if that information supports justification for specific design elements. 	Recommended by county staff based on comment 43e received during the state comment period. The change adds clarity
39.	P. 78 Section 40. A.	Breakwater CUP	5. Breakwaters, Jetties, and groins require a conditional use permit except in conjunction with a project to restore ecological functions.	Under Ecology WAC 173-26-231(3)(d), breakwaters, jetties, groins, weirs, and similar structures should require a conditional use permit. Ecology’s rule defines “should” to mean it is required “unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.”
40.	P. 78 Section 40. B.	Regulations by designation	5. Breakwaters, Jetties and groins required in a <u>shoreline restoration project</u> may be allowed in all designations with a shoreline substantial development permit conditional use permit except in conjunction with a project to restore ecological functions.	As noted above, breakwaters are treated together with jetties and groins in Ecology’s guidelines. We recommend a companion change in Table X to clarify breakwaters for restoration are covered by SDP.

41.	P. 83 Section 45. C.	Grammar	2. Size and place materials so <u>Ensure</u> they will remain stable during a two (2)-year flood event and under typical currents, boat wakes and wind-driven waves including those occurring during storm events if the proposal is near a stream or drainage outlet;	Recommended by county staff based on comment 27dd received during the state comment period. The changes provide clarity.
42.	P. 90 Section 51.	Grammatical changes.	A. 3. If there is a likelihood of conversion to nonforest uses, forest practice conversions and other Class IV General forest practices shall: <ul style="list-style-type: none"> a. Result in no net loss of shoreline ecological functions; b. Maintain the ecological quality of the watershed’s hydrologic system; and c. Prevent significant adverse impacts to other shoreline uses, resources, and values; and d. Provide a benefit with respect to the objectives of the SMA <u>such</u> as navigation, recreation and public access 	Recommended by county staff based on comment 27ff received during the state comment period. The changes add clarity.
43.	P. 91 Section 52. A.	Redundant regulations	12. Solid waste disposal and liquid waste treatment facilities are prohibited. Solid and liquid wastes, biosolids, and untreated effluents discharges are prohibited. 13. New solid waste disposal and liquid waste treatment facilities with treatment capacities exceeding five thousand (5,000) gallons per day are prohibited unless there is no feasible alternative.	Recommended by county staff because the two provisions in the SMP conflict with each other. Deleting Regulation 13 provides clarity because the more protective regulation would apply even if it were retained.
44.	P. 93 Section 54. A.	Updated regulations	4. Easy-let-down devices are preferred over the free-fall dumping of logs into the water in conformance with WDNR established policy (“ <u>12.1 Log Booming and Log Storage</u> , 9/1994 or as <u>updated Special Provisions for Booming and Rafting Leases</u> ,” 17-2-72). The free-fall dumping of logs in a manner that would do avoidable damage to the shoreline ecological functions is prohibited.	Recommended by county staff based on comment 28e received during the state comment period. The changes add clarity.

45.	P. 96 Section 56. C.	Critical area protection	3. Vegetation removal in Tree Protection Zone 1 and other requirements of Chapter 18.35 SJCC <u>Section 18</u> ;	The change adds clarity. See Row 17.
46.	P. 102 Section 60. C.	Critical area protection	2. Development may also be subject to critical buffers and restrictions in Chapter 18.35 SJCC <u>Section 18</u> .	The change adds clarity. See Row 17.
47.	P. 102 Section 60. C.	Scenic setback clarification	3. <u>In conjunction with appropriate critical area protection, an aesthetic setback applies to residential development.</u> If a lot has screening vegetation within fifty (50) feet of the OHWM the aesthetic setback is fifty (50) feet from the top of the bank. In all other cases, the aesthetic setback is one hundred (100) feet from the top of the bank.	Suggested by county staff to distinguish between buffer vs setback standards. The revision provides clarity.
48.	P. 102 Section 60. C.	Minimum setback	6. If existing houses on waterfront lots adjoining the project site are closer to the top of bank or OHWM than any specified minimum setback or buffer and may potentially block the view of the proposed residential structure, a lesser setback or buffer <u>not less than 35 feet</u> may be authorized for a residential structure by the director if:	Ecology recommends clarifying the minimum width of 35 feet applies to administrative reduction of buffer and setback standards for consistency with the Zone 1 buffer established in the county's CAO. A lesser buffer may be allowed through a variance request when unique circumstances warrant a larger setback reduction.
49.	P. 103 Section 60. E.	Liveaboard standards	3. Marinas located outside of state owned tidelands that do not provide facilities for the upland disposal of sewage, oil, grey water, and solid wastes consistent with local, state and federal laws but and do not follow best management practices are allowed to use ten percent (10%) of the total number of slips for live aboard vessels.	The recommended change is intended to clarify what appears to be a scrivener's error. As written, a marina wishing to have up to 10% live aboards appears to be required not to follow BMPs. BMPs must be required for all marinas in order to meet the no net loss standard, consistent with WAC 173-26-241(3)(c)((v) and (vi).
50.	P. 103 Section 60. E.	Sewage disposal	5. Applicants providing no more than ten percent (10%) of the total number of slips in a marina for live aboard vessels demonstrate that <u>must provide a sewage pump out facility is located within one day of travel on the water if no upland restrooms are available.</u>	The recommended change clarifies when sewage pump out facilities are required. Relying on a "one day travel time" would be a challenging criterion to implement fairly and consistently since travel time varies depending on the vessel in question. All of the San Juans is within one day's travel time of a sewage pump out for most power boats. Ecology recommends clarifying that if a marina having up to 10% liveaboards does not provide upland restroom facilities, it should have a pump out available. The change provides a simpler rule to administer and is consistent with WAC 173-26-241(3)(c)(v) and (vi). WAC 332-30-137, <i>Marina and moorages</i> section, #3 states: "Upland sewage disposal

				approved by local government and appropriate state agencies is required for all vessels used as a residence.”
51.	P. 104 Section 61. A.	Setbacks and buffers	<u>5. All development and setbacks are subject to critical area regulations.</u>	Recommended by county staff based on comment 27ee received during the state comment period. The changes are consistent with SMA and implementing rules.
52.	P. 105 Section 61. G.	Float plane service.	3. Use of docks and marinas for irregularly scheduled float plane service is allowed.	Recommended by county staff based on comment 9i received during the state comment period. The changes are consistent with SMA and implementing rules.
53.	P. 112 Section 65. A.	Shoreline enhancement projects	2. Shoreline habitat and natural systems enhancement applications will not be approved unless the applicant demonstrates that the project will: a. Occur at a time of year that will not impact spawning, nesting, or breeding, shoreline habitat, and b. Increase ecological functions that have been identified as degraded at the project site. and <u>c. Is approved by DNR if it is located on state owned aquatic lands.</u>	Recommended by county staff based on comment 28f received during the state comment period. The changes are consistent with SMA and implementing rules.
54.	P. 132 Section 69.	Definitions - Clearing	“Clearing” means the destruction or removal, by hand or with mechanical means, of vegetation, such as root material or topsoil material.	The suggested change clarify what is included in “clearing.”
55.	P. 141 Section 72.	Definitions - Live aboard vessels.	“Live aboard vessel” means a vessel having a currently safety- registered with federal, state and local agencies that is used primarily as a place of residence, vacation rental, or a place of business. A live aboard vessel has a seaworthy hull design that meets the U.S. Coast Guard standards for floatation, safety equipment, fuel, and electrical and ventilation systems. It is capable of travel in open water and waterborne movement in general. It has permanent equipment for water travel, including a method for steering and propulsion, deck fittings, navigational equipment, and marine hardware.	Recommended by county staff based on comment 28g received during the state comment period. The deletion of “vacations rentals” is based on follow-up comments by the DNR which references definitions found in WAC 332-30-106, particularly (62) which specifically excludes commercial uses such as vacation rentals as a residential use.
56.	P. 113 Section 66	Shoreline developments, Uses, structures, and activities by designation	C. Legend for Table X Shoreline development, uses, structures and activities by designation:	Change proposed by county staff clarify the use of the asterisk in the table

			<p>SD = Subject to shoreline substantial development permit unless exempt per C above.</p> <p>CUP = Conditional use permit.</p> <p>No = Prohibited; the use is not eligible for a variance or conditional use permit.</p> <p>NA = Not applicable.</p> <p>* = See the specific regulations for the shoreline designation <u>or type of use</u> in Article III of this Chapter.</p>	
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(57.) SECTION 66. Shoreline developments, uses, structures and activities by designation. *(Changes to the table are justified by statements below each row or in a particular box (in italics). Ecology agrees with the proposed changes.)*

Table X Shoreline development, uses, structures and activities by designation								
	Natural	Conservancy	Rural	Rural Farm-Forest	Rural Residential	Urban	Port, Marina and Marine Transportation	Aquatic
Aquaculture								
Small scale shellfish aquaculture	SD *	SD *	SD *	SD *	SD *	CUP	No	SD *

Table X Shoreline development, uses, structures and activities by designation

	Natural	Conservancy	Rural	Rural Farm-Forest	Rural Residential	Urban	Port, Marina and Marine Transportation	Aquatic
<p><i>The county has suggested removing the SD (substantial development permit) where noted consistent with Section 28 – Aquaculture. An asterisk (*) has been added to the Rural Residential also consistent with Section 28.</i></p>								
Breakwaters, Jetties and Groins¹								
Breakwater (marine)	No	CUP*	<u>SDCUP</u> <i>Per WAC 173-26-231(3)(d) a CUP is required.</i>	<u>SDNA</u> <i>The upland designation would apply.</i>				
Forest Practices								
Commercial forestry ^{1,3}	<u>SDCUP*</u> <i>A CUP is required per WAC 173-26-211(5)(a)(ii)(D)</i>	SD	SD* <i>No special regulation found. Asterisk is deleted.</i>	SD	CUP	CUP	No	No
Transportation and Parking								

Table X Shoreline development, uses, structures and activities by designation

	Natural	Conservancy	Rural	Rural Farm-Forest	Rural Residential	Urban	Port, Marina and Marine Transportation	Aquatic
Float planes, commercial or regular use	CUP No <i>Section 61 J.3. states float plane use is prohibited.</i>	CUP	CUP	CUP	CUP	CUP	CUP	CUP
Barge landing sites, temporary ⁶	No	See foot note 6 *	See foot note 6 *					
<i>In order to simplify the table the county suggests removing all references to exemptions (footnote 6) and adds an asterisk referencing the Transportation and Parking Section.</i>								
Residential Development²								
Vacation Rentals ^{2,6} <i>The county has suggested eliminating the reference to exemptions in the table.</i>	NO*	NO	CUP*	SD	SD	SD	SD	No

Table X Notes:

1. Eastsound subarea plan prohibits:
 - a. New boating facilities, joint use and private docks;
 - b. Breakwaters, jetties and groins;
 - c. Log transfer sites and log storage areas;
 - d. Industrial development outside of the marina;
 - e. Mineral extraction;
 - f. Institutional uses;
 - g. Recreational development with commercial facilities for overnight camping; and
 - h. Fill in the conservancy shoreline designation.

2. Shaw Island subarea plan prohibits:
 - a. Recreational development with commercial facilities for overnight camping;
 - b. Residential vacation rentals by themselves or in combination with any commercial use;
 - c. Institutional uses; and
 - d. New commercial uses.

3. Subject to the general provisions of Sections 51 and 54 of this ordinance forest management activities including log handling and storage facilities are allowed in all shoreline designations on Shaw Island.

4. Shoreline habitat and natural systems enhancement projects are a shoreline conditional use within Eastsound subarea plan and are only allowed for public facility or public safety projects.

5. The replacement or expansion of structural shoreline stabilization measures is allowed but is reviewed and permitted as a new structural shoreline stabilization measure.

- ~~6. Requires a certificate of exemption.~~

67. New outfalls of a domestic or industrial sewage treatment facility within one-half (0.5) mile of a marina may be allowed as a conditional use.

58.	P. 113 Section 66 Table X Notes	Exemptions	<p>Table X Notes:</p> <ol style="list-style-type: none"> 3. Eastsound subarea plan prohibits: <ol style="list-style-type: none"> i. New boating facilities, joint use and private docks; j. Breakwaters, jetties and groins; k. Log transfer sites and log storage areas; l. Industrial development outside of the marina; m. Mineral extraction; 	<p>The county has proposed to remove the exemption reference from the table. Ecology agrees with the change given the variables involved in what is exempt from an SDP and depicting that in a simplified table. Other sections of the ordinance address exemptions.</p>
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			<p>n. Institutional uses; o. Recreational development with commercial facilities for overnight camping; and p. Fill in the conservancy shoreline designation.</p> <p>4. Shaw Island subarea plan prohibits:</p> <p>d. Recreational development with commercial facilities for overnight camping; e. Residential vacation rentals by themselves or in combination with any commercial use; f. Institutional uses; and d. New commercial uses.</p> <p>6. Subject to the general provisions of Sections 51 and 54 of this ordinance forest management activities including log handling and storage facilities are allowed in all shoreline designations on Shaw Island.</p> <p>7. Shoreline habitat and natural systems enhancement projects are a shoreline conditional use within Eastsound subarea plan and are only allowed for public facility or public safety projects.</p> <p>8. The replacement or expansion of structural shoreline stabilization measures is allowed but is reviewed and permitted as a new structural shoreline stabilization measure.</p> <p>6. Requires a certificate of exemption.</p> <p><u>67.</u> New outfalls of a domestic or industrial sewage treatment facility within one-half (0.5) mile of a marina may be allowed as a conditional use.</p>	
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