



# Skagit County Shoreline Master Program

**Public Review Draft**  
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# Shoreline Master Program

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## ReadMe » About this Document

### What is the Shoreline Master Program?

Skagit County's Shoreline Master Program ("the SMP") is a combined planning and regulatory document that contains policies, goals, and specific land-use regulations for shorelines. The SMP balances development, public access, and shoreline protection. The SMP is required by the state Shoreline Management Act ("the SMA"), which was approved by Washington voters in 1972.

### What are "shorelines"?

Shorelines are special water bodies that meet certain flow criteria, and their adjacent uplands, including:

- all marine waters
- rivers with a flow greater than 20 cubic feet per second
- [lakes 20 acres or larger]
- upland areas within 200 feet of these water bodies, and portions of the floodplains and wetlands associated with these shorelines.

**Commented [A1]:** Clarification for consistency with RCW 90.58.030

### Why do we protect shorelines?

In the early 70's, the people of the state of Washington observed a trend of development along marine, stream, and lake shores that blocked visual and physical access to public waters. Legislators and voters decided something needed to be done. Through the SMA, the Legislature determined:

- the shorelines are among the most valuable and fragile of Washington's natural resources;
- there is great concern throughout the state relating to the utilization, protection, restoration, and preservation of shorelines;
- the increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state;
- much of the shorelines and the adjacent uplands are in private ownership;
- that unrestricted construction on the privately owned or publicly owned shorelines is not in the best public interest;
- coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest;
- there is a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

In addition to the reasoning from the SMA, shorelines are important to the state's economy. We all benefit from having thriving waterfronts made up of ports, marinas, shellfish facilities, and other water-dependent businesses. Fishing, tourism, and recreation provide jobs and income. Planning for our use of shorelines helps preserve what we value, and protects lives and property.

### How is this document structured?

This document is split into two principal sections: <sup>1</sup>

- *Goals, objectives, and policies*, which fit into the Skagit County Comprehensive Plan as Chapter 6, and guide the creation of development regulations.
- *Development regulations*, which are specific rules and criteria for development, and which fit into Skagit County Code as Chapter 14.26. The chapter is divided into eight parts.

### How do I use this document?

In the electronic version of this document, you can click headings and page numbers in the text and the table of contents to jump to the part you want to read about. Follow the steps below to find out how the Shoreline Master Program affects how you can develop your property:

1. **First, does the SMP apply to your property?** “Shoreline jurisdiction” is generally within 200 feet of a shoreline, and is described fully in [SCC 14.26.140](#) Shoreline Jurisdiction. If your property is outside of shoreline jurisdiction, this SMP doesn’t apply. Also, this SMP only applies to unincorporated areas of the county; if you live in a city or town, this SMP doesn’t apply.
2. **If so, which Shoreline Environment Designation applies to your property?** Look up your property on the SMP Environment Designation maps at [www.skagitcounty.net/smp](http://www.skagitcounty.net/smp). If you want, you can read about why your property received its Shoreline Environment Designation in Chapter 6B.
3. **Then, what do you want to do?** Read [Part III](#) for general rules for development in all environment designations. Then turn to Part IV for rules for specific uses. For a quick reference as to which uses are permitted in each designation, [SCC 14.26.405](#) Uses and Modifications Matrix. For height and lot coverage limits, [SCC 14.26.310](#) Dimensional Standards.
4. **What if you just want to repair or expand an existing structure or modify an existing use?** The SMP has special rules for uses and developments that already exist within shoreline jurisdiction, especially single-family residences. See [Part VI](#).
5. **Finally, how do you get approval to do it?** [Part VII](#) describes the steps for applying for whatever type of shoreline review you might need.

**Commented [A2]:** Recommended edit for consistency with terms “use” and “developments”.

### Shoreline Review

Where this document refers to **shoreline review**, it means the use or activity needs to obtain either a “shoreline permit” or a letter of exemption from the permit requirement.

<sup>1</sup> Per RCW 36.70A.480(1), the goals and policies of a shoreline master program of a city or county are “considered an element of the county or city’s comprehensive plan” adopted under the Growth Management Act. In addition, all other portions of the shoreline master program, including use regulations, are considered part of a city or county’s development regulations.

## Shoreline Permits

There are three types of “shoreline permits” that you might need under the rules of this SMP; substantial development permit, conditional use permit, and variance permit. Proposals for development and activities within shoreline jurisdiction may require one, two or all of these permits. When a substantial development permit and a conditional use or variance permit are required for a development, if approved, the permits shall be issued concurrently.

Type of Shoreline Permit	Needed if your proposed activity or development...	Process
Substantial Development Permit	qualifies as “substantial development”; see ____	SCC 14.26.720
Conditional Use Permit	[is not classified by this SMP, or if this SMP otherwise requires a Conditional Use Permit]	SCC 14.26.730
Variance	[doesn't comply with the specific bulk, dimensional, or performance standards in this SMP]	SCC 14.26.750

**Commented [A3]:** Recommended by Ecology for implementation and consistent application of permitting requirements found in WAC 173-27.

**Commented [A4]:** Required by Ecology for internal consistency, consistency with WAC 73-27-160, and for implementation. A Shoreline Conditional Use permit cannot be used to authorize a prohibited use.

**Commented [A5]:** Required by Ecology. A shoreline Variance cannot be used to authorize prohibited uses – see WAC 173-27-170.

**Commented [A6]:** Required by Ecology. This section modified to accurately describe the exemptions and exceptions outlined in the SMA and Guidelines.

## Exceptions to the Shoreline Permits

There are two kinds of exceptions defined in state law that address the required permit process and applicability of this SMP to particular developments or activities.

- Exempt from a Shoreline Substantial Development Permit:** Some activities or developments have to comply with the rules of the SMP, but do not require a Substantial Development Permit; for example, some single-family residences (see WAC 173-27-040). You still have to obtain a “letter of exemption” for these activities. See [SCC 14.26.720](#) for information on the process.
- Developments not required to obtain shoreline permits or local reviews:** A few activities conducted under the review of State agencies do not require any shoreline permits, permit exemptions, or review by the County.

**Commented [A7]:** Per County direction, listing of WAC exemptions has been removed. The SMP will rely on WAC reference.

**Commented [A8]:** Required to be deleted per Ecology. Concepts included in other provisions.

## Guide to Acronyms, Initialisms, and other Abbreviations

Term	Expansion
BMP	best management practice
CaRD	Conservation and Reserve Development (alternative land division)
Cfs	cubic feet per second
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act (aka Superfund)
CMZ	channel migration zone
CUP	conditional use permit
Department	Skagit County Planning and Development Services Department
Director	Skagit County Planning and Development Services Department Director
Ecology	Washington State Department of Ecology
JARPA	Joint Aquatic Resources Permit Application
LAMIRD	limited area of more intense rural development
LID	low-impact development

<b>LWD</b>	large woody debris
<b>MLLW</b>	mean lower low water
<b>MTCA</b>	Model Toxics Control Act
<b>OHWM</b>	ordinary high water mark
<b>RCW</b>	Revised Code of Washington
<b>SCC</b>	Skagit County Code
<b>SEPA</b>	State Environmental Policy Act
<b>SMA</b>	Shoreline Management Act of 1971
<b>SMP</b>	this Shoreline Master Program
<b>State</b>	State of Washington
<b>UGA</b>	urban growth area
<b>WAC</b>	Washington Administrative Code
<b>WDFW</b>	Washington Department of Fish and Wildlife

# Comprehensive Plan Chapter 6

## Shoreline Master Program Element

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### 6A – Introduction

By ratifying Initiative 43B in the 1972 General Election, the people of the state approved the Shoreline Management Act (“the SMA”). Now codified at RCW 90.58.020, the SMA provides that:

The shorelines of the state are among the most valuable and fragile of our natural resources and there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition, ever-increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in their management and development. Furthermore, many of the shorelines and adjacent uplands are in private ownership; unrestricted construction on the privately owned or publicly owned shorelines is not in the best public interest; and, therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by local, state, and federal governments, to prevent the inherent harm in uncoordinated and piecemeal development of shorelines.

The SMA vests counties and cities with the primary responsibility for comprehensively planning and reasonably regulating shoreline development and use. The goals, shoreline area designations, policies, regulations, and procedures set forth in the shoreline management master program are

essential to the protection of the public health, safety, and general welfare of the people of Skagit County.

The Growth Management Act requires counties with an adopted shoreline master program to include the goals and policies of such program in the county's comprehensive plan. The shoreline master program goals and policies are to be considered an element of the comprehensive plan and the regulations are to be considered a part of the county's development regulations (RCW 36.70A.480). Therefore, the Skagit County Shoreline Master Program goals and policies, which were adopted pursuant to RCW 90.58, are included in the comprehensive plan as required. Future amendments to this chapter of the comprehensive plan must also follow the amendment procedures of RCW 90.58.

## 6A-1. Purpose

The purposes of this Master Program are:

- a. To promote the public health, safety and general welfare by providing long range, comprehensive policies and effective, reasonable regulations for development and use of Skagit County shorelines.
- b. To implement this program in a positive, effective, and equitable manner.
- c. To further assume and carry out the responsibilities established by the SMA for Skagit County, and to foster by adoption the policy contained in RCW 90.58.020 for shorelines of the state.

RCW 90.58.020 provides that:

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure [sic] the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The Department of Ecology, while adopting guidelines for shorelines of statewide significance, and local government, while developing master programs for shorelines of statewide significance, shall give preference to uses, in the following order which:

- i. recognize and protect the statewide interest over local interest;
- ii. preserve the natural character of the shoreline;
- iii. result in long-term over short-term benefit;

- iv. protect the resources and ecology of the shoreline;
- v. increase public access to publicly owned areas of the shorelines;
- vi. increase recreational opportunities for the public in the shoreline;
- vii. provide for any other element as defined in RCW 90 58 100 deemed appropriate or necessary.

In the implementation of this policy, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end, uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences, ports, and shoreline recreational uses. These recreational uses include, but are not limited to, parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or their use of the shorelines of the state, and other developments that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

## 6A-2. Overarching Shoreline Goals

In addition to the purpose stated above, the development of the Master Program was guided by the following nine goal statements pursuant to the program elements specified in RCW 90.58.100(2). These goals are intended to provide an overall, comprehensive foundation for the management of the shorelines of Skagit County and are the basis for this SMP's policies, regulations, shoreline area designations, and administrative procedures.

- a. Shoreline use—To allow for compatible uses of the shorelines in relation to the limitations of their physical and environmental characteristics. Such uses should enhance rather than detract from, or adversely impact, the existing shoreline environment.
- b. Conservation—To preserve, protect, and restore the natural resources of Skagit County's shorelines in the public interest and for future generations. These natural resources include but are not necessarily limited to fish, wildlife, vegetation, and

natural features found in shoreline regions. Only renewable resources should be extracted and in a manner that will not adversely affect the shoreline environment.

- c. Public access—To promote a comprehensive system for physical, visual, and cultural access to Skagit County shorelines.
- d. Circulation—To promote safe, adequate, and diversified transportation systems that are compatible with the shoreline environment, uses, and ecological functions necessary to sustain shoreline natural resources.
- e. Economic development—To promote and encourage the optimum use of existing industrial and economic areas for users which are shoreline dependent and shoreline related and can harmoniously coexist with the natural and human environments; and, subsequently, to create similar areas as need arises with minimum disruption of the shorelines.
- f. Recreation—To encourage the provision and improvement of private and public recreation along the shorelines of Skagit County while maintaining the physical and aesthetic qualities of natural shorelines of the state, consistent with the overall best interests of the state and the people generally.
- g. Historical/Cultural/Educational—To identify, protect, and restore those shoreline areas and facilities that are of historical, cultural or educational value. Public and private organizations should be encouraged to provide public access and protection of such areas and facilities.
- h. Restoration and enhancement—To restore and enhance those shoreline areas and facilities that are presently unsuitable for public or private access and use.
- i. Implementation process—To provide an efficient system for shoreline permit applications that would eliminate unnecessary duplication of effort or jurisdictional conflicts, yet ensure complete coordination and review. Provide a process to periodically update the inventory, goals, policies, and regulations to achieve responsiveness to changing attitudes and conditions.

## 6A-3. Profile of Shoreline Jurisdiction

### Shorelines of the State

As defined by the Shoreline Management Act of 1971, “shorelines” include certain waters of the state plus their associated “shorelands.” The water bodies designated as “shorelines of the state” are streams and rivers with a mean annual flow of 20 cubic feet per second (cfs) or greater, lakes with an area 20 acres or greater, and all marine waters.

“Shorelands” are minimally defined as:

**Commented [A9]:** Clarification for consistency with RCW 90.58.030

“those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the Ordinary High Water Mark (OHWM); floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter....” (RCW 90.58.030)

## Shorelines of Statewide Significance

The Washington State Legislature designated certain shorelines as “Shorelines of Statewide Significance” from which all of the people of the state derive benefit, and that these shorelines should, therefore, be managed with the interest of all of the people in mind. Shorelines of Statewide Significance includes;

- a. all streams and rivers downstream of a point where the mean annual flow is measured at 1,000 cubic feet per second;
- b. all lakes with a surface acreage of 1,000 acres or more measured at the ordinary high water mark;
- c. all marine saltwater areas waterward of the extreme low tide throughout Puget Sound;
- d. Skagit Bay and the adjacent area from Brown Point to Yokeko Point, along with Padilla Bay, from March Point to William Point, are also identified as specific estuarine areas and are considered Shorelines of Statewide Significance waterward from the OHWM; and
- e. all shorelands associated with the waterbodies identified above.

The SMA requires that the Master Program give preference to uses and developments that are consistent with the principle of statewide over local interest. The Legislature determined that in order to fulfill the goal of statewide public interest in Shorelines of Statewide Significance, local Master Programs must give preference to uses that are consistent with the policies applied in the following order, pursuant to RCW 90.58.020:

- a. The statewide interest should be recognized and protected over the local interest.
- b. The natural character of shorelines of statewide significance should be preserved.
- c. Uses of shorelines of statewide significance should result in long-term benefits to the people of the state.
- d. The natural resources and ecological systems of shorelines of statewide significance should be protected.
- e. Public access to publicly owned areas in shorelines of statewide significance should be increased.

**Commented [A10]:** Required by Ecology for consistency with SMA definition. Format change to allow clarification that those shorelands associated with all the above shorelines are included.

Modification suggested for consistency with RCW 90.58.030(f)

- f. Recreational opportunities for the public should be increased on shorelines of statewide significance.

## 6B – Environment Designations

### 6B-1. Aquatic

#### Purpose

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

#### Designation Criteria

- 6B-1.1 An Aquatic environment designation should be assigned to areas waterward of the ordinary high water mark.

#### Management Policies

- 6B-1.2 New overwater structures should be allowed for water-dependent uses, public access, or ecological restoration.
- 6B-1.3 The size of new overwater structures should be limited to the minimum necessary to support the structure's intended use.
- 6B-1.4 In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple uses of overwater facilities should be encouraged.
- 6B-1.5 All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation; to consider impacts to views; and to allow for the safe, unobstructed passage of fish and wildlife.
- 6B-1.6 Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and only when the impacts are mitigated following mitigation sequencing.
- 6B-1.7 Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.
- 6B-1.8 Shoreline space should be reserved for shoreline preferred uses, while considering such things as upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing shellfish protection districts and critical habitats, aesthetics, public access and views.

## 6B-2. High-Intensity

### Purpose

The purpose of the High Intensity environment is to provide for high intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been degraded.

### Designation Criteria

6B-2.1 A High Intensity environment designation should be assigned to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "limited areas of more intensive rural development," if they currently support high intensity uses related to commerce, transportation, or navigation, or are suitable and planned for high intensity water-oriented uses.

### Management Policies

6B-2.2 In regulating uses in the High Intensity environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. New nonwater-oriented uses should be allowed as part of mixed-use developments and when they do not conflict with or limit opportunities for water-oriented uses. **[New nonwater-oriented uses should be allowed on sites where there is no direct access to the shoreline for a water-dependent use.]**

6B-2.3 Full utilization of existing urban areas should be **[achieved]** prior to the expansion of intensive development.

6B-2.4 Proposals for new development in shoreline jurisdiction should be designed to result in no net loss of shoreline ecological functions.

6B-2.5 Where feasible, visual and physical public access should be provided.

6B-2.6 Aesthetic objectives should be met through signage regulations, development siting criteria, screening and landscaping standards, and maintenance of natural vegetative buffers.

**Commented [A11]:** Recommended, consistent with WAC 173-26-211(5)(d)(ii), this would provide flexibility for property that is separated from the shoreline where water-dependent uses would not be practical.

**Commented [A12]:** Consistent with WAC 173-26-21(5)(d)(ii)(B)

## 6B-3. Natural

### Purpose

The purpose of the Natural environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions. Only low intensity uses should be allowed in order to maintain the ecological functions and ecosystem-wide processes.

## Designation Criteria

- 6B-3.1 A Natural environment designation should be assigned to shoreline areas if any of the following characteristics apply:
- a. The shoreline is ecologically intact and therefore currently performing important functions or ecosystem-wide processes that would be damaged by human activity;
  - b. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational significance; or
  - c. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

## Management Policies

- 6B-3.2 Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.
- 6B-3.3 The following new uses should not be allowed in the Natural environment:
- a. Commercial uses;
  - b. Industrial uses;
  - c. Nonwater-oriented recreation;
  - d. Roads, utility corridors, and parking areas that can be located outside of Natural-designated shorelines.
- 6B-3.4 Single-family residential development may be considered as a conditional use within the Natural environment if the density and intensity of such use is limited to protect ecological functions and be consistent with the purpose of the Natural environment.
- 6B-3.5 Commercial forestry may be allowed in the Natural environment provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of the Natural environment designation.
- 6B-3.6 Low intensity agricultural uses may be allowed in the Natural environment when such use does not expand or alter practices in a manner inconsistent with the purpose of the designation.
- 6B-3.7 Scientific, historical, cultural, educational research uses, and low intensity water-oriented recreational uses may be allowed provided that no significant ecological impact on the area will result.

6B-3.8 New development or proposed vegetation removal should not reduce the capability of existing vegetation to perform ecological functions. The subdivision of property requiring significant vegetation removal or shoreline modification that may adversely impact ecological functions would not be consistent with the Natural environment designation.

## 6B-4. Rural Conservancy

### Purpose

The purpose of the Rural Conservancy environment is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas, provide for sustained resource use, achieve natural floodplain processes, and provide recreational opportunities. Examples of uses that are appropriate in a Rural Conservancy environment include low-impact outdoor recreation uses, forest production, agricultural uses, aquaculture, low intensity residential development and natural resource-based low-intensity uses.

### Designation Criteria

- 6B-4.1 A Rural Conservancy environment designation should be assigned to shoreline areas outside incorporated municipalities and urban growth areas, as defined by RCW 36.70A.110, if any of the following characteristics apply:
- a. The shoreline is 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 is currently accommodating lesser-intensity residential development outside urban growth areas and incorporated cities or towns;
  - c. The shoreline is supporting human uses but subject to environmental limitations, such as properties that include or are adjacent to steep slopes, feeder bluffs, floodplains or other flood-prone areas;
  - d. The shoreline is of high recreational value ; or
  - e. The shoreline contains unique historic or cultural resources; or
  - f. The shoreline contains low intensity water-dependent uses.

### Management Policies

6B-4.2 Uses in the Rural Conservancy environment should include those which sustain the shoreline area's physical and biological resources and uses of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area. Agriculture, commercial forestry, and aquaculture when located

on natural resource lands and consistent with provisions of this SMP are preferred by the County and allowed uses under the SMA. Low-intensity, water-oriented commercial and industrial uses may be permitted where those uses have located in the past or at unique sites in rural communities that possess shoreline conditions and services to support the use. Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline are mitigated. Mining and related activities may be an appropriate use within the rural conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-241 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

**Commented [A13]:** Required clarification per Ecology. Agricultural and Commercial Forestry are not preferred uses, but can still be allowed uses. County has clarified this language to emphasize that these uses are preferred uses by the County when on natural resource lands.

- 6B-4.3 Developments and uses that would substantially degrade or permanently deplete the biological resources of the area should not be allowed.
- 6B-4.4 Construction of new structural shoreline stabilization and flood control works should be allowed when the need exists to protect an existing structure or ecological functions. Mitigation may be necessary for such construction. New development should be designed and located to preclude the need for such work.
- 6B-4.5 Proposed residential development should be designed to ensure no net loss of shoreline ecological functions and should preserve the existing character of the shoreline consistent with the purpose of the Rural Conservancy environment.
- 6B-4.6 New shoreline stabilization, flood control measures, vegetation removal, and other shoreline modifications should be designed and managed consistent with this SMP to ensure that shoreline functions are protected. Such shoreline modification should be consistent with planning provisions for restoration of shoreline ecological functions.

## 6B-5. Rural Conservancy – Skagit Floodway

### Purpose

The purpose of the Rural Conservancy – Skagit Floodway environment incorporates the purpose of the Rural Conservancy environment. The Rural Conservancy – Skagit Floodway environment provides additional notice to map readers that all of the Rural Conservancy policies apply, but the property is also within the floodway of the Skagit River upstream from the State Route 9 bridge. Development within the floodway is significantly constrained by SCC Chapter 14.34, Flood Damage Prevention.

## Designation Criteria

- 6B-5.1 A Rural Conservancy – Skagit Floodway environment designation should be assigned to shoreline areas that would receive a Rural Conservancy designation but are located within the floodway of the Skagit River upstream from the State Route 9 bridge.

**Commented [A14]:** Per 2016 PC recommendation to include this designation for the areas upstream of the Sauk River.

## Management Policies

- 6B-5.2 The management policies of the Rural Conservancy environment also apply to Rural Conservancy – Skagit Floodway.

## 6B-6. Shoreline Residential

### Purpose

The purpose of the Shoreline Residential environment is to accommodate higher density residential development and appurtenant structures that are consistent with this SMP. An additional purpose is to provide appropriate public access and recreational uses.

### Designation Criteria

- 6B-6.1 A Shoreline Residential environment designation should be assigned to shoreline areas inside urban growth areas, incorporated municipalities, limited areas of more intense rural development, and master planned resorts, as described in RCW 36.70A.360, or existing areas of higher density residential development in unincorporated parts of the County, generally characterized by lots smaller than one acre in size.

### Management Policies

- 6B-6.2 Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality should ensure no net loss of shoreline ecological functions. Such standards should take into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.
- 6B-6.3 New residential and recreational developments should be designed to provide joint use community recreational facilities and public access, where feasible and applicable.
- 6B-6.4 Access, utilities, and public services should be available and adequate to serve existing needs and planned future development.
- 6B-6.5 New commercial development should be limited to water-oriented uses.

## 6B-7. Urban Conservancy

### Purpose

The purpose of the Urban Conservancy environment is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

### Designation Criteria

- 6B-7.1 An Urban Conservancy environment designation should be assigned to shoreline areas that are appropriate and planned for development that is compatible with maintaining or restoring the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial limited areas of more intensive rural development (LAMIRD) if any of the following characteristics apply:
- a. They are suitable for water-related or water-enjoyment uses;
  - b. They are open space, floodplain 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; or
  - e. They have the potential for development that is compatible with ecological restoration.

### Management Policies

- 6B-7.2 Uses that preserve the natural character of the area or promote preservation of open space, floodplain, or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.
- 6B-7.3 Standards for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the Urban Conservancy designation must ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
- 6B-7.4 Public access and public recreation objectives should be implemented whenever feasible and when significant ecological impacts are mitigated.

- 6B-7.5 Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.
- 6B-7.6 Mining and related activities may be an appropriate use within the Urban Conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-240 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

## 6C – Shoreline Uses and Modifications

### 6C-1. Agriculture

#### Policies

##### 6C-1.1 General

- a. [The SMP should protect existing agricultural activities on existing agricultural lands. Skagit County should identify and protect lands with agricultural capabilities for continued agricultural use.]
- b. [The SMP applies to new agricultural activities on land not meeting the definition of agricultural land, the conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.]
- c. [The SMP should allow new agricultural activities on lands not currently in agricultural use when the following are demonstrated;
  - i. the use and development is located and designed to ensure no net loss of ecological functions and that do not have a significant adverse impact on other shoreline resources and values; and
  - ii. the proposed use and development is consistent with the shoreline environment designation in which the land is located.]
- d. The creation of new agricultural lands by diking, or filling of those tidelands, tidal marshes, and associated wetlands which are potentially more productive in their long term natural state should be discouraged.

**Commented [A15]:** Required per Ecology. This provision needs to use the terms required by WAC 173-26-241 as defined in RCW 90.58.065.

**Commented [A16]:** Required per Ecology per WAC 173-26-241(3)(a)(ii)

**Commented [A17]:** Required per Ecology per WAC 173-26-241(3)(a)(v).

- e. The diversion of water for agricultural purposes should be done in accordance with water right procedures and the guidelines and regulations of the appropriate agencies.
- f. Farm management techniques, operations, and control methods should be utilized in accordance with the guidelines and standards of the Natural Resources Conservation Service.
- g. Any development on agricultural land that does not meet the definition of agricultural activities should be consistent with the shoreline environment designation, the applicable general and specific use regulations, and no net loss of shoreline ecological function standards of this SMP.
- h. New agricultural uses and development in support of agricultural uses on existing agricultural lands, should be located and designed to ensure no net loss of ecological functions and no significant adverse impact on other shoreline resources and values.

**Commented [A18]:** Required per Ecology for consistency with WAC 173-26

**Commented [A19]:** Required per Ecology for consistency with WAC 173-26-241(3)(a)(v)(B)

#### 6C-1.2 Water Quality

- a. Appropriate farm management techniques should be utilized by agricultural operators to prevent contamination of nearby water bodies by fertilizer and pesticide use and application.
- b. Animal feeding operations, retention and storage ponds, feed lot waste storage, and manure storage should be located to prevent contamination of water bodies and degradation of the shoreline environment.

6C-1.3 Buffer Areas: Agricultural activities should implement best management practices to protect the shoreline and aquatic environments from bank failure, erosion, siltation, and surface runoff, consistent with critical area regulations.

#### 6C-1.4 Drainage

- a. New, existing, and natural drainage systems and outlets should be utilized, maintained, and protected to allow for continued agricultural production.
- b. Vegetation management along drainage ditches should be allowed and should be conducted in accordance with this SMP as well as the guidelines and regulations of appropriate state and regional agencies (e.g. Northwest Clean Air Agency).

## 6C-2. Aquaculture

### Policies

- 6C-2.1 Aquaculture is an activity of statewide interest and should be encouraged. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Shellfish aquaculture provides ecosystem services such as wildlife habitat and improved water quality through filtration.
- 6C-2.2 Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area.
- 6C-2.3 Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind and storm protection, commercial navigation, and, in marine waters, salinity. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Some latitude in the development of new harvest methods and growing practices will be afforded operators in the development of the use as well as its potential impact on existing uses and natural systems.
- 6C-2.4 In areas with high aquaculture resource potential, including but not limited to areas within Samish, Padilla, and Skagit Bays, priority should be given to aquaculture uses, and aquaculture uses should be protected from degradation by other types of land and water use. Padilla Bay tidelands owned by the National Estuarine Research Reserve (about 95% of the bay), are open for recreational shellfish harvest (consistent with State Department of Health and State Department of Fish and Wildlife rules for harvest), but are not open for commercial aquaculture.
- 6C-2.5 The County should strengthen and diversify the local economy by encouraging appropriate aquaculture uses.
- 6C-2.6 [deleted]
- 6C-2.7 New or expanded aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adverse impacts to eelgrass and macroalgae, <sup>or</sup> significant conflicts with navigation and existing water-dependent uses. Impacts to ecological functions should be mitigated according to the mitigation sequence described in [SCC 14.26.305\(4\)](#).
- 6C-2.8 Development or uses upland of either aquaculture uses or areas with a high potential for aquaculture uses should not degrade water quality. Maximum effort to protect and restore water quality should be made in areas with existing aquaculture or with a high potential for aquaculture.

**Commented [A20]:** Recommended by Ecology for internal consistency with implementing regulations. See WAC 173-26-241(3)(b)(i)(C).

- 6C-2.9 Intensive residential uses, industrial and commercial uses, and uses unrelated to aquaculture should avoid or minimize conflicts, including water quality impacts, with existing shellfish beds and aquaculture operations.
- 6C-2.10 Consideration should be given to the impacts proposed aquaculture activities will have on established and historic uses of the aquatic environment, including but not limited to navigation; moorage; sport or commercial fishing; recreational boating; log towing, rafting, and storage; underwater utilities; native fish and shellfish resources; and active scientific research.
- 6C-2.11 Commercial geoduck aquaculture should only be allowed where sediments, topography, land and water access support geoduck operations without significant clearing and grading.
- 6C-2.12 Restoration projects involving shellfish aquaculture and community shellfish projects should be encouraged. The County should consider establishing a program utilizing shellfish aquaculture to offset anthropogenic nutrient inputs to shoreline areas.

### 6C-3. Boating Facilities, Mooring Structures, and Recreational Floats

#### Policies

- 6C-3.1 Recognize that boating facilities, mooring structures, and recreational floats (including all in-water and overwater structures and uses that facilitate the launching or mooring of vessels in marine or fresh waters, including all docks serving five or more single-family residences, marinas, mooring buoys, launch ramps, and recreational floats; hereinafter “facilities”) are water-dependent uses. When facilitating public access or providing an opportunity for substantial numbers of people to enjoy the shoreline, these uses should be given priority for shoreline location.
- 6C-3.2 Plan and coordinate marinas regionally. Regional needs for marina and boat launch facilities should be carefully considered in reviewing new proposals as well as in allocating shorelines for such development. New facilities should be located only at sites where suitable environmental conditions, shoreline configuration, access, and neighboring uses are present. Such facilities should be coordinated with park and recreation plans and local and state agencies and, where feasible, collocated with other compatible water-dependent uses to efficiently provide recreational resources, avoid unnecessary duplication, and minimize adverse impacts to shoreline ecological functions and processes.
- 6C-3.3 Minimize shoreline modifications. Facilities that minimize the amount of shoreline modification, in-water structure, and overwater cover are preferred. In support of this,

**Commented [A21]:** Recommendation per Ecology to clarify that this section does not apply to docks serving four or fewer single-family residences consistent with WAC 173-26-241(3)(c).

joint-use and community structures are encouraged to prevent proliferation of single-user structures.

- 6C-3.4 Limitations on accessory uses. Accessory uses should be limited to water-oriented uses, or uses that provide physical or visual shoreline access for substantial numbers of the general public. Nonwater-dependent accessory uses should be located outside of shoreline jurisdiction or outside of the shoreline buffer whenever possible.
- 6C-3.5 Minimize impacts to adjacent uses and users. Facilities should be located, designed, constructed and maintained to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; impacts to navigation; and impacts to public access to the shoreline.
- 6C-3.6 No net loss of ecological functions. Facilities should be located and designed to ensure no net loss of ecological functions or other significant adverse impacts, and should, where feasible, enhance degraded or scarce shoreline features.

## 6C-4. Breakwaters

### Policies

- 6C-4.1 Breakwaters should be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or another specific public purpose.
- 6C-4.2 Multiple-use concepts are to be strongly encouraged in the construction of both private and public breakwaters on public waters.
- 6C-4.3 Breakwater design and construction should be such that disruption to the movement of sand, circulation of water, and biological communities are minimized and mitigated. In general, floating, portable, or submerged breakwaters are preferred over traditional breakwater designs that have greater adverse effects on shoreline processes and functions.

## 6C-5. Commercial Development

### Policies

- 6C-5.1 Space and Location
  - a. Because of the space requirements of some commercial developments and the limited amount of shoreline, commercial developments should be encouraged to locate inland from shoreline areas unless water oriented.

- b. If proposed commercial developments are water-dependent or water-related and if they are anticipated to have minimal adverse impact upon the shoreline, then such developments should be allowed.

6C-5.2 Commercial developments should be encouraged to utilize existing transportation corridors to minimize points and areas of access.

6C-5.3 Design

- a. Waste and Effluent Disposal: Waste and effluent generated by commercial developments should not be allowed to enter any bodies of water or to be discharged onto the land.
- b. Accessory use facilities, such as restrooms, access roads, and parking areas should be located upland of water oriented uses.
- c. Surface runoff:
  - i. Commercial developments should minimize the quantity and impact of surface water runoff from the affected site.
  - ii. Where possible and feasible, roads and parking areas should be constructed of permeable materials to allow the infiltration of rain and other surface runoff waters.
- d. The design of commercial developments should be compatible with the existing shoreline uses and environment. Commercial development, if permitted on shorelines, should not significantly damage, diminish, or adversely affect shoreline ecological function, natural resource uses, archaeological and historic sites, or important scenic vistas.
- e. Water-related or water-dependent commercial development should consider public access and ecological restoration as potential mitigation of impacts to shoreline resources and values unless such improvements are demonstrated to be infeasible or inappropriate.
- f. Water-related and water-enjoyment commercial uses should include design, layout, and operation elements that demonstrate the project meets the definition of water-related or water-enjoyment uses.

**Commented [A22]:** Required per Ecology per WAC 173-26-241(3)(d).

6C-5.4 Conflicts and Impacts

- a. Proposed shoreline commercial developments should be compatible with adjacent and surrounding land and water uses and should minimize environmental impacts to the shoreline environment.

- b. In design review of proposed commercial enterprises, consideration should be given to the development's potential impact on scenic views significant to the area and to other shoreline users.

## 6C-6. Institutional Development

### Policies

- 6C-6.1 Skagit County should promote water-oriented institutional development such as scientific research facilities.
- 6C-6.2 Nonwater oriented institutional development should be discouraged from locating in shoreline jurisdiction, unless no feasible alternative exists and it provides a public benefit consistent with the SMA such as public access and restoration.
- 6C-6.3 Skagit County should apply Commercial Development policies and regulations to institutional developments.
- 6C-6.4 Essential public facilities may locate in shoreline jurisdiction consistent with institutional development policies and regulations, provided that they should be consistent with any Countywide Planning Policies and Skagit County siting requirements. Such essential public facilities should demonstrate a need for a shoreline location or infeasibility of other locations and provide a public benefit consistent with the SMA such as public access and restoration.

## 6C-7. Industry

### Policies

- 6C-7.1 General
- a. Feasibility. Proposals for either new port facilities with water-related industries or substantial additions to existing facilities should document they are part of a comprehensive regional feasibility analysis and plan. Such an analysis and plan should be coordinated with all affected local, state, and federal agencies and their programs and plans.
  - b. Port industries. Port facilities should be limited to shoreline and water-dependent or related industries and activities.
  - c. Existing facilities. Development or redevelopment and multiple use of existing port areas, facilities, and services should be encouraged over the addition and location of new or single-purpose port use facilities.

- d. Ports and water-related industry proposals should mitigate adverse impacts to new developments. New port development proposals should include, where feasible, the cooperative use of docking, parking, cargo handling, storage facilities, and other related services.
- e. Public access. Port facilities should make available public access opportunities consistent with Public Access goals, policies, and standards, providing such access will not unduly interfere with port operations, endanger public health and safety, or impose an economic or physical liability to the owner.

6C-7.2 Location and Design.

- a. Ports and water-related industry should be located and designed to minimize the need for initial and continual dredging, filling, spoil disposal, and other harbor and channel maintenance activities.
- b. Ports and water-dependent or water-related industry should be located at existing developed port and harbor areas and/or on Department of Natural Resources designated first class shorelands and harbor areas if consistent with this Master Program.
- c. Ports and water-related industry should occur in areas that do not have high environmental, agricultural, cultural, recreational, or historical value.
- d. All port and water-related industrial facilities, equipment and works should be located, designed, and maintained to avoid, or if necessary, withstand 100-year flood frequency flooding and/or storm tides or surges without becoming hazards and without the placement of flood hazard reduction measures or other hard structural shoreline stabilization.
- e. Hazardous areas. Port and industrial developments should not be located on accreting, eroding, slumping, or geologically unstable shorelines and where extensive shore defense and/or flood protection structures would be necessary.
- f. Industrial development and redevelopment should be located where environmental cleanup and restoration is possible.
- g. Water-related and water-dependent industrial development should consider public access and ecological restoration as potential mitigation of impacts to shoreline resources and values unless such improvements are demonstrated to be infeasible or inappropriate.
- h. Water-related and water-enjoyment industrial uses should include design, layout, and operation elements that demonstrate the project meets the definition of water-related or water-enjoyment uses.

Commented [A23]: Required per Ecology per WAC 173-26-241(3)(f)

- 6C-7.3 Port and water related industry operations and practices should adhere to the water quality guidelines, policies, standards, and regulations of water quality management programs and appropriate regulatory agencies. Pollution controls and best management practices should be implemented.
- 6C-7.4 Log Storage and Transport
- a. Water storage of logs should be discouraged, while marine water transport of logs should be allowed
  - b. Log storage on land within the shorelines jurisdiction should utilize all practical techniques to prevent all debris, and site surface runoff from entering water bodies.
  - c. Log storage and all associated equipment, works, and structures should be able to withstand flooding without becoming hazards and without the placement of flood hazard reduction measures or other hard structural shoreline stabilization.
  - d. Log storage, if allowed on shorelines, should occur in areas that do not have high environmental, agricultural, cultural, recreational, or historical value.
  - e. Water quality maintenance programs for log storage and rafting areas should be initiated and implemented.

## 6C-8. Dredging and Dredge Material Disposal

### Policies

- 6C-8.1 Dredging and dredge material disposal proposals should be consistent with the plans, policies, guidelines, and regulations of applicable federal, state, and local agencies.
- 6C-8.2 Dredging and dredge material disposal proposals should demonstrate that they will not be detrimental to public uses of shoreline areas or public health and safety.
- 6C-8.3 Dredging and dredge material disposal should be done in a manner that avoids or minimizes significant ecological impacts. Impacts that cannot be avoided should be mitigated in a manner that ensures no net loss of shoreline ecological functions.
- 6C-8.4 New development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
- 6C-8.5 Dredge material disposal on land is generally preferred over open water disposal. The disposal of dredge material on shorelands or wetlands within a river's floodplain should be discouraged.
- 6C-8.6 Dredge material disposal on uplands should not adversely affect or diminish:

**Commented [A24]:** Per County recommendation since CMZ mapping is not complete.

- a. Estuaries, natural wetlands, and marshes;
- b. Prime agricultural land;
- c. Natural resources, including sand and gravel deposits, timber, or natural recreational beaches and waters;
- d. Designated wildlife habitat and concentration areas;
- e. Water quality, quantity, and drainage characteristics; or
- f. Public access to publicly owned shorelines and water bodies.

6C-8.7 If alternatives for land disposal are not available or infeasible, open water disposal sites should be identified and meet the following criteria:

- a. The site is in an area protected from significant storms, tidal and submarine currents, stratification, and turbulence that would cause shifting and dispersal of the spoils;
- b. The area is proven to be biologically, chemically, and physically degraded by past spoil depositing and other aquatically degrading activities; water quality will not be degraded further;
- c. Disposal will not interfere with geohydraulic processes;
- d. The dredge spoils have been analyzed by qualified personnel and found to be minimal or nonpolluting;
- e. Spoil disposal will not impede water and tidal current flows or adversely affect floodwater flows and capacities;
- f. Aquatic and aquatic-related life will not be adversely affected; and
- g. The site and method of disposal meet all requirements and qualifications of applicable regulatory agencies and are designated with their cooperation.

## 6C-9. Fill, Excavation, and Grading

### Policies

6C-9.1 Fill, excavation, and grading should only be allowed when necessary to accommodate an approved shoreline use or development, when the proposed extent is the minimum necessary, and with assurance of no net loss of shoreline ecological functions and processes.

- 6C-9.2 Fill, excavation, and grading should not:
- a. Adversely alter natural drainage patterns, currents, or river and tidal flows;
  - b. Interfere with, or adversely affect, floodwater flows and capacities;
  - c. Be detrimental to the public interest and uses of the shoreline and water body; or
  - d. Create conditions that would endanger public health and safety.
- 6C-9.3 Fill should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity.

## 6C-10. Forest Practices

### Policies

- 6C-10.1 Forest practices, including road construction, timber harvesting, and debris disposal, which meet or exceed established regulatory provisions should be allowed.
- 6C-10.2 Skagit County should rely on the Forest Practices Act and implementing rules for management of commercial forest uses within shoreline jurisdiction.
- 6C-10.3 Forest practices should minimize, where feasible, adverse impacts on scenic views of, and from, Skagit County shorelines. Areas providing a diversity of views, unique landscape contrasts and panoramas, and recreational resources within forest practice areas should be identified and maintained where possible.
- 6C-10.4 A forest practice that only involves timber cutting is not a development under the SMA and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the SMA and may require a substantial development permit. In addition, this SMP applies to Class IV-general forest practices where shorelines are being converted or are expected to be converted to nonforest uses.
- 6C-10.5 The County will designate "forest lands" pursuant to RCW 36.70A.170 as either "natural" or "rural conservancy" environment designation.

## 6C-11. Instream Structural Uses

### Policies

- 6C-11.1 The location, design, construction, and maintenance of instream structures should give due consideration to the full range of public interests; watershed processes, including prevention of damage to other properties and other shoreline resources from

alterations to geologic and hydrologic processes; and ecological functions, with special emphasis on protecting and restoring priority habitats and species.

- 6C-11.2 Non-structural and non-regulatory methods to protect, enhance, and restore shoreline ecological functions and processes and other shoreline resources should be encouraged as an alternative to instream structures. Non-regulatory and non-structural methods may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.
- 6C-11.3 New or expanding development or uses in the shoreline, including subdivision of land, that would likely require structural flood control works within a stream, river, floodplain, or floodway should not be allowed.
- 6C-11.4 Instream structure proposals should incorporate native vegetation to enhance ecological functions, create a more natural appearance, improve ecological processes, and provide more flexibility for long-term shoreline management. Such features include vegetated berms; vegetative stabilization including brush matting and buffer strips; and retention of existing trees, shrubs and grasses on stream banks, if possible.

**Commented [A25]:** Per County recommendation since CMZ mapping is not complete.

## 6C-12. Jetties and Groins

### Policies

- 6C-12.1 Jetties and groins located waterward of the OHWM should be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
- 6C-12.2 Jetties and groins should be allowed only for water-dependent uses when the benefits to the region outweigh short-term resource losses from such works, and only where mitigated to provide no net loss of shoreline ecological functions and processes.
- 6C-12.3 Recognize that jetties and groins permanently interfere with ecosystem-wide processes, and may require ongoing and costly dredging or beach supplementation to alleviate adverse effects on shoreline functions or users, and thus should be discouraged.

## 6C-13. Mining

### Policies

- 6C-13.1 Recognizing that certain earth materials are in demand, yet limited in quality and quantity, and that shorelines are a valuable and limited resource where mining can have irreversible impacts, mining activities should primarily be encouraged to take place outside of shoreline areas.

- a. Mining activities, if allowed, should not occur in shoreline areas of high environmental, cultural, recreational, or historical value.
  - b. Recognizing the limited quantity and quality of natural marine and lake shores, especially accretion shoreforms, and recognizing the increasing demand for other uses of these shorelines and the existence of alternative sources of earth materials, mining activities should be limited on these shorelines.
  - c. Surface mining of river and stream point bars for sand and gravel or other materials should be allowed provided there is annual accretion and replacement of these materials.
- 6C-13.2 Mining activities should be sited, designed, conducted, and completed to result in no net loss of shoreline ecological functions and processes.
- a. Mining should not be approved where it could interfere with shoreline ecological functions or processes, or cause irreparable damage to shoreline resources or features.
  - b. Application of this policy should include avoidance and mitigation of adverse impacts during the course of mining and reclamation.
  - c. The determination of whether there will be no net loss of ecological function should be based on an evaluation of the reclamation plan required for the site and must consider impacts on ecological functions during operation.
  - d. Preference should be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.
- 6C-13.3 Mining activities should avoid or minimize hazardous conditions, use conflicts, visual and aesthetic impacts, and impacts to other shoreline and water users.
- 6C-13.4 Mining sites in shoreline areas should be restored to conditions that meet or exceed regulatory standards and are compatible with adjacent land, shoreline, and water uses.
- 6C-13.5 Recreation mining should be allowed when consistent with the Washington Department of Fish and Wildlife's Gold and Fish Pamphlet.

## 6C-14. Recreational Development

### Policies

- 6C-14.1 Location and Access

- a. Skagit County should give shoreline recreational development priority within shoreline jurisdiction, and such recreation should be related to enjoyment of, access to, and use of the water.
- b. Skagit County should recognize that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public.
- c. Active shoreline recreational access, developments, and opportunities should be allowed to expand only in those areas already used for such purposes or on those shorelines environmentally capable of supporting such activities.
- d. Passive shoreline recreational access and opportunities should minimize the concentration of users at specific points or portions of shoreline areas. This may be accomplished, where appropriate and feasible, by a combination of shoreline trails or easements tied in with a series of public parking or access points.
- e. When private developments, whether recreational, residential, or commercial, are proposed along or around publicly owned shorelines or public water bodies, such developments should provide access to these shorelines and waters consistent with Public Access policies and regulations.

#### 6C-14.2 Unique and Fragile Shoreline Areas

- a. Accretion shoreforms, marshes, estuaries, and wetlands that are susceptible to damage from more intensive recreational development should be protected and preserved for less intensive forms of recreation.
- b. Point bar beaches, sand bars, and other accretion shoreforms should be protected and preserved for more passive forms of recreation.

#### 6C-14.3 Design

- a. Sewage Disposal
  - i. Solid and liquid wastes and untreated effluent should not be allowed to enter any bodies of water both on and off the recreation site.
  - ii. Skagit County should ensure that recreation facilities are designed to protect public health and water quality such as ensuring adequate restrooms, trash cans, pet waste disposal, and similar measures.
- b. Auxiliary use facilities, such as restrooms, recreation halls and gymnasiums, commercial services, access roads, and parking lots, should be located inland from shoreline areas, unless it can be shown that such facilities are essentially shoreline dependent or no other feasible location outside of shoreline jurisdiction exists.

- c. Skagit County should include best management practices and facilities to protect water quality.
  - d. Variations in modes of travel along, between, and to shoreline areas and access points should be encouraged. These might include trails, pathways, or corridors for walking, bicycling, horseback riding, and other pedestrian means of transport.
  - e. Recreational motor vehicles should be limited in location except in designated areas.
  - f. Recreational or access development should be designed to protect and preserve scenic views and aesthetic values of the shoreline environment.
- 6C-14.4 Partner and coordinate shoreline education and awareness programs with facilities such as those at the Padilla Bay and Tommy Thompson Trails, and the Padilla Bay National Estuarine Research Reserve.
- 6C-14.5 Link the regional or countywide multiuse trails with city or local trails that increase urban and rural resident access to parks, recreational areas, schools, public facilities, commercial, and employment areas.
- 6C-14.6 Shoreline recreation development, activities, and accesses should minimize adverse environmental impacts. Review of proposed recreation developments should consider:
- a. Impact of the activities and development on the existing shoreline environment.
  - b. Impact of the activities and development on the adjacent and nearby shoreline environment and land and water uses.
  - c. Demand for recreation. Developments should estimate growth projections and evaluate level-of-service standards established by the comprehensive plan or parks, recreation, and open space plan.
  - d. The necessity and extent of alteration of the shoreline environment to meet design objectives and requirements.
  - e. The proximity to and impact upon required public utilities and services.

## 6C-15. Residential Development

### Policies

- 6C-15.1 Where allowed by this SMP, residential development should not significantly damage, diminish, or adversely affect shoreline ecological function, natural resource uses, archaeological and historic sites, or important scenic vistas.

- 6C-15.2 Residential development and accessory uses should be located, designed, constructed, and maintained to avoid, or if necessary, withstand 100-year frequency flooding and storm tides or surges without becoming hazards and without the placement of extensive flood hazard management facilities or hard shoreline stabilization.
- 6C-15.3 Residential development should be located:
- so as not to interfere with geohydraulic processes and shoreforms.
  - inland from feeder bluffs, drift sectors, and accretion shoreforms.
  - to avoid the need for hard shoreline stabilization and flood hazard management facilities.
  - to utilize and protect the integrity of the shore resources for the benefit of present and future residents and users.
- 6C-15.4 Skagit County should recognize single-family uses as a preferred use when developed without adverse impacts to ecological functions.
- 6C-15.5 Floating and over the water residential uses should be prohibited. Liveaboards in marinas having adequate facilities may be allowed.
- 6C-15.6 Cluster development should be encouraged wherever feasible to minimize shoreline impacts by residential development, to maintain both onsite and offsite aesthetic appeal, and to minimize disruption of the natural shoreline.
- 6C-15.7 Residential developments should provide public access opportunities to publicly owned shorelines or public water bodies. Such access should be of a mode and size appropriate to the site, size, and general nature of the development. New residential development of more than four units, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance with policies in 6E, Public Access.
- 6C-15.8 Residential development should have adequate provision for wastewater disposal, storm drainage, water supply, and access in order to minimize harmful effects on shorelines.
- 6C-15.9 Recreation-oriented developments should provide adequate, diverse recreation opportunities to serve resident members and other users.
- 6C-15.10 Unless clearly shoreline dependent (such as docks and floats), accessory uses should be set back from shoreline areas, be reasonable in size and purpose, and be compatible with onsite and adjacent structures, uses, and natural features.

**Commented [A26]:** Required by Ecology for consistency with WAC 173-26-241(3)(j)(iii):

6C-15.11 Residential development should be arranged and designed to retain views and vistas to and from shorelines and water bodies.

## 6C-16. Shoreline Stabilization

### Policies

6C-16.1 Limit use of hard structural stabilization measures to reduce shoreline damage.

6C-16.2 Design, locate, size, and construct new or replacement structural shoreline protection structures to minimize and mitigate the impact of these modifications on shoreline ecological functions.

6C-16.3 Offer incentives and regulatory flexibility to encourage salmon-friendly shoreline design during new construction and redevelopment, and to encourage voluntary replacement of hard armoring with soft armoring.

6C-16.4 Construction of new structural shoreline stabilization should only be allowed where there is a documented need to protect an existing structure, allowed use, or ecological functions and mitigation is applied, consistent with WAC 173-26-231.

**Commented [A27]:** Required by Ecology: WAC 173-26-221(2)(c)(ii)(C)

## 6C-17. Utilities

### Policies

6C-17.1 General

- a. Existing use areas. Utilities, specifically power, communications, and fuel lines and pipelines, should utilize existing rights-of-way and corridors and should avoid duplication and construction of new or parallel corridors.
- b. Joint use. Utilities should coordinate with government agencies and private interests in developing or utilizing joint or common use rights-of-way and corridors in shoreline areas unless it can be shown to be infeasible.
- c. Multiple use. Utility development should provide for compatible, multiple use of sites and rights-of-way. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, endanger public health and safety, or impose an economic or physical liability on the owner.
- d. Natural resources, processes, and other uses. Utility development, including upland and in-water facilities, should not significantly damage, diminish, or adversely affect the following resources by providing appropriate mitigation sequencing:

- i. Designated lands of long-term commercial significance for agriculture.
- ii. Natural resources such as sand and gravel deposits, timber, or recreational beaches.
- iii. Fish, shellfish, and wildlife habitats and migratory routes.
- iv. Geohydraulic processes.
- v. Water quality.
- vi. Public access to publicly owned shorelines and water bodies.

#### 6C-17.2 Location

- a. The following components of utilities, essentially shoreline dependent, should be allowed on shorelines, provided they are located to cause no adverse impacts to the shoreline environment and other users:
  - i. Water system intake facilities and outfall pipes and hydropower tail races.
  - ii. Sewage treatment and stormwater system outfall pipes and diffusers.
  - iii. Waterborne firefighting facilities and equipment.
  - iv. Nonpetroleum/nonchemical pipelines and electrical cable crossings.
  - v. In association with hydropower facilities, dams, weirs, and other impoundment and diversion structures, including sediment transport and fisheries enhancement features, and associated flow-line segments.
  - vi. Tidal and wave energy facilities
- b. The following utilities and their components that are essentially not shoreline dependent, should not be located on shorelines unless it can be shown that non-shoreline alternatives are infeasible:
  - i. Water system treatment plants.
  - ii. Sewage system lines, interceptors, pump stations, and treatment plants.
  - iii. Electrical energy generating plants (except for dam sites), substations, lines and cables.
  - iv. Petroleum and gas pipelines.
  - v. Accessory uses and administrative structures for utilities.

c. Solid Waste

- i. Facilities for processing, storing, and disposing of solid waste on shorelines should not be permitted.
- ii. Indiscriminate, random disposal of solid waste, including pet waste, on shorelines should not be permitted.
- d. Hazardous areas. Utilities and their associated structures should be located, designed, and maintained to avoid, or if necessary, withstand 100-year frequency flooding or storm tides and surges without becoming hazards and without the placement of massive flood hazard reduction facilities or hard shoreline stabilization measures.
- e. Petroleum/chemical pipelines and electrical transmission cables.  
Petroleum/chemical pipelines and above ground electrical transmission lines should not be located parallel to shoreline areas and water bodies. Such utilities should be allowed to cross shoreline areas and water bodies only if it can be shown that non-shoreline alternatives are infeasible and that the proposed crossing site is consistent with this master program.

6C-17.3 Design

a. Installation and maintenance

- i. During installation of utility components and corridors on shorelines, appropriate measures should be taken to prevent and/or control all runoff and erosion from the affected area.
- ii. After installation, the affected shoreline area should be regraded to the natural terrain (if necessary), replanted with compatible, self-sustaining vegetation, and maintained until such vegetation is established.
- iii. Adequate buffer areas and/or setbacks should be designed and utilized for all utility development in shoreline areas.
- iv. Handling and application practices for fertilizers and pesticides should adhere to the guidelines and regulations of applicable regulatory agencies.
- v. Where necessary, hydropower facilities may exceed thirty-five feet above average grade level where it can be demonstrated that there are overriding considerations of the public interest, and where the views of substantial numbers of residences or from public properties would not be impaired.

b. Underground utilities

- i. Whenever existing overhead or above ground utility distribution facilities along shorelines require replacement or upgrading, or when new systems are planned for new or existing residential developments, commercial areas, and other developmental shoreline uses, such utilities should be placed underground.
- ii. Electrical and communication transmission lines should be placed underground whenever technological developments make this technique feasible.
- c. Impacts. Utility development proposals, if allowed on shorelines, should take all feasible measures to mitigate adverse impacts to the shoreline and aquatic environment and to adjacent and nearby land and water users.

## 6D – Economic Development

### 6D-1. Generally

#### Policies

- 6D-1.1 Skagit County should encourage commercial and industrial activities directly related to or dependent on local aquatic resource areas in shoreline areas.
- 6D-1.2 Skagit County should encourage economic development that supports a sustainable natural resource industry, protects valued open space and environmental quality, and enhances the community's overall quality of life.
- 6D-1.3 Skagit County should encourage the Washington State Ferry System to maintain ferry services from Anacortes to the San Juan Islands and Vancouver Island, B.C., in order to provide for commerce and tourist trade in and through Skagit County.
- 6D-1.4 Skagit County should support the Port of Anacortes in its efforts to more fully utilize the Port's deep draft marine terminal for trade, commerce, and related economic development.
- 6D-1.5 Skagit County should support the marine-based economy of the county.

## 6E – Public Access

### Policies

- 6E-1.1 In conjunction with federal and state agencies, Skagit County should ensure safe, convenient, and diversified public access to publicly owned shorelines without infringing upon the personal or property rights of adjacent residents. Such access should not have an adverse impact upon the environment.
- 6E-1.2 Skagit County should promote public access as part of private shoreline development in accordance with shoreline public access plans, the natural shoreline character, property rights, constitutional limitations, public rights under the Public Trust Doctrine, and public safety.
- 6E-1.3 Applicants for shoreline development activities should demonstrate that public access improvements do not result in a net loss of shoreline ecological functions.
- 6E-1.4 Where appropriate, Skagit County should ensure that proposed shoreline developments are designed to preserve, maintain, consolidate, enhance, and create opportunities for physical or visual shoreline contact at the ends of roads, streets, alleys, and similar rights-of-way abutting bodies of water. Vacations of roads, streets, and alleys should be discouraged and only allowed in strict compliance with RCW 35.79.035 (Streets and Alleys) or RCW 36.87.130 (County Roads).
- 6E-1.5 Skagit County should seek willing property owners to participate in public access projects, such as through voluntary conservation easements and trail easements.
- 6E-1.6 Skagit County should require that public access facilities protect public health and water quality by providing adequate restrooms, trash and recycling disposal, pet waste disposal, and similar measures.
- 6E-1.7 Skagit County should strive to:
- a. Provide a network of pedestrian, biking, and horse trails that access interpretive and scenic resources and that offer safe and direct routes.
  - b. Provide opportunities for linking privately-owned open space systems to the overall public access network.
  - c. Protect existing scenic landscapes, especially those that exemplify unique features visible from open space viewpoints. Protect scenic landscapes that are prominent features of protected areas such as Padilla and Skagit Bays.

- d. Protect scenic roads, rivers, and shorelines by preserving rural and marine land uses and activities, natural environments and vegetation, and scenic or visual features along road and shoreline edges especially including the established SR-11 and SR-20 scenic byway corridors.
- e. Protect and enhance scenic viewpoints that look upon scenic landscapes including prominent high points, as well as strategic overlooks or look-into places alongside the Baker and Skagit Rivers, Gages Slough, Nookachamps Creek, and Swinomish Channel.
- f. Design public access facilities and structures that respect unique, fragile, and scenic elements and protect existing views from public lands or large numbers of residences, through the application of flexible design standards regarding height, bulk, scale, setbacks, lighting, and view corridors.
- g. Where public access is determined to be incompatible due to reasons of safety, security, or impact to the shoreline, consider alternate methods of providing public access, such as offsite improvements, viewing platforms, separation of uses through site planning and design and restricting hours of public access. Offsite public access improvements may be preferable, if such improvements would provide a greater public benefit and reduce safety and environmental impacts.
- h. Promote access to hand-carry and other nonmotorized watercraft routes that flow alongside and through countywide and UGA open spaces on the Baker River, Skagit River including the North and South Forks, Samish River, Swinomish Channel, and Samish, Padilla, Fidalgo, Burrows, Similk, and Skagit Bays.
- i. Ensure public access is usable by those with physical disabilities similar to what has been provided on the Tommy Thompson, Padilla Bay, and Cascade Trails, designed with consideration of environmental conditions and the Americans with Disabilities Act.

## 6F – Circulation (Transportation and Parking)

### Policies

- 6F-1.1 Multi-Modal Circulation Systems. Skagit County should promote safe, reasonable, and adequate multi-modal circulation systems to, and through or over shorelines where necessary and otherwise consistent with this Master Program. Circulation system planning should include systems for pedestrian, bicycle, ferry, air travel, and public

transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with this Master Program.

- a. Geohydraulics
  - i. Transportation facilities should be located, designed, and maintained to avoid adverse impacts to, or if necessary, protect the active geohydraulic processes operating along Skagit County's shorelines.
  - ii. Transportation facilities should be located and designed to minimize the need for shoreline stabilization.
- b. Joint Use. Transportation corridors should be jointly used by other related uses, such as utilities, whenever feasible.
- c. Multiple Use/Public Access. Transportation facilities should provide for appropriate public point or linear access along the corridors to publicly or privately owned shorelines and water bodies. Shoreline trails, viewpoints, rest, and picnic areas are examples of public access.
- d. Natural Resources, Processes, and Other Uses. Transportation facility development, if permitted within shoreline jurisdiction, should not significantly damage, diminish, or adversely affect:
  - i. Estuaries, natural wetlands, and marshes.
  - ii. Designated lands of long-term significance for agriculture or forestry.
  - iii. Natural resources such as, but not limited to, sand and gravel deposits, or natural recreational beaches.
  - iv. Fish, shellfish, and wildlife habitats and migratory routes.
  - v. Water quality and quantity.
  - vi. Public access to publicly owned shorelines and water bodies.
- e. Hazardous Areas. Transportation facilities and corridors should be located, designed, and maintained to avoid, or if necessary, withstand 100-year frequency flooding, storm tides, storm surges, and near-term sea-level rise without becoming hazards and without the placement of massive flood hazard management facilities or hard shoreline stabilization.
- f. Non-Motorized Transportation. Safe pedestrian and non-motorized vehicle paths and trail systems, along shoreline areas and along abandoned, existing, or proposed railroad, roadway, dikes, and utility shoreline rights-of-way should be encouraged.

- g. Water Quality. Transportation facility design, construction, and maintenance activities should adhere to water quality management programs and regulations.
- h. Shoreline permit applicants should demonstrate sensitivity to scenic resources by demonstrating how proposed location, design, setback, and construction are intended to minimize impacts to views.

#### 6F-1.2 Location, Design, and Construction

- a. Comprehensive Plans, which include Shoreline Master Programs, may not preclude the siting of essential public facilities, which include state or regional transportation facilities, as defined in RCW 47.06.140.
- b. Major highways, freeways, and railways should be located away from shoreline jurisdiction wherever feasible. When transportation facilities must be located along shorelines, efforts should be made to minimize the amount of land consumed. ]
- c. Parking areas for all types of vehicles and for all forms of shoreline activity should not be permitted over water and should be located outside shoreline jurisdiction whenever feasible. ]
- d. All transportation facilities should be designed and constructed to comply with Skagit County standards.

**Commented [A28]:** Modified and moved relevant policies to transportation regs, per County recommendation

**Commented [A29]:** Modified and incorporated into transportation regs, per County recommendation

## 6G – Conservation

### 6G-1. Environmental Protection

#### Policies

- 6G-1.1 Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts, both on site and to the extent that impacts may propagate, off site, so that the resulting ecological condition does not become worse than the current condition. This means ensuring no net loss of ecological functions and processes relative to the existing condition, protecting shoreline critical areas and their buffers, and protecting additional shoreline buffers in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.
  - a. Shoreline ecological functions that should be protected include, but are not limited to: fish and wildlife habitat, food chain support, and water temperature maintenance.

- b. Shoreline ecological processes that should be protected include, but are not limited to: water flow; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation and maintenance.

- 6G-1.2 Development standards (e.g. setbacks, impervious surface coverage limitations) should protect existing shoreline ecological functions and processes.
- 6G-1.3 In assessing the potential for net loss of ecological functions or processes, project specific and cumulative impacts should be considered.

## 6G-2. Critical Areas

### Policies

- 6G-2.1 Conserve and protect critical areas within shoreline jurisdiction from loss or degradation.
- 6G-2.2 Locate and design development, including public access, within and adjacent to critical areas to ensure that ecological functions are not adversely impacted.
- 6G-2.3 Protect and manage shoreline-associated wetlands, including maintenance of sufficient volumes of surface and subsurface drainage into wetlands, to sustain existing vegetation and wildlife habitat.
- 6G-2.4 Manage development to avoid erosion and adverse water quality impacts to shoreline water bodies, as well as to avoid risk and damage to property and loss of life from hazardous geological conditions.
- 6G-2.5 [In reaches where channel migration is evident, limit development and shoreline modifications that would result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements or result in a net loss of ecological functions associated with the shoreline water body.]
- 6G-2.6 Protect and restore critical freshwater and saltwater habitat and other areas that provide habitat for endangered, threatened, or sensitive fish and wildlife species.
- 6G-2.7 Protect basic riparian forest functions that influence instream, marine, and lake habitat quality.
- 6G-2.8 Limit new development in floodplains.
- 6G-2.9 Regulate development within the 100-year floodplain to avoid adverse impacts to shoreline ecological functions and to avoid risk and damage to property and loss of life.

**Commented [A30]:** Modified to acknowledge that channel migration may always be possible, but we need to regulate based on evidence and where evident to be possible.

- 6G-2.10 Identify practices, alternatives, and mitigation measures that can minimize the adverse impacts of proposed projects.
- 6G-2.11 Ensure adequate design, construction, management, and operations to protect groundwater quality and quantity.
- a. Existing and future beneficial uses of groundwater should be maintained and protected.
  - b. Wherever groundwater is determined to be of a higher quality than the criteria established for said waters, the existing water quality should be protected, and contaminants that will reduce the existing quality thereof should not be allowed.

### 6G-3. Shoreline Vegetation Conservation

#### Policies

- 6G-3.1 Maintain healthy trees and vegetation to support habitat, aesthetics, and recreational values.
- 6G-3.2 Plan and design new development or substantial redevelopment to retain or provide shoreline vegetation. Retention and planting of conifers is particularly desired as a source of future large woody debris recruitment.
- 6G-3.3 The protection of existing and the establishment of new native vegetation is preferred.
- 6G-3.4 Prohibit the introduction of invasive plant species along shorelines, and encourage the removal of noxious and invasive weeds.

### 6G-4. Water Quality, Stormwater, and Nonpoint Pollution

#### Policies

- 6G-4.1 Do not degrade waters. The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and groundwater over the long term.
- 6G-4.2 Assess and mitigate stormwater impacts. New developments or expansions or retrofits of existing developments should assess the effects of additional stormwater runoff volumes and velocities, and mitigate potential adverse effects on shorelines through design and implementation of appropriate stormwater management measures.
- 6G-4.3 Low-impact development. Use of low-impact development (LID) techniques for minimization of impervious surfaces and management of stormwater runoff is encouraged.

- 6G-4.4 Minimize need for synthetic chemical applications. Shoreline use and development, including invasive or noxious weed control, should employ techniques designed and approved to prevent contamination of surface and ground water, and soils and adverse effects on shoreline ecological functions and values.
- 6G-4.5 Existing development. For existing development, implementation of management plans that minimize or avoid the need for chemical treatments of vegetation in shoreline buffers is encouraged. When lands owned by the County are leased to private parties, a vegetation management plan should be negotiated during lease renewal.
- 6G-4.6 Public education. Promote public education efforts to protect and improve water quality.

## 6H – Historic, Cultural, Scientific, and Educational

### Policies

- 6H-1.1 Due to the limited and irreplaceable nature of archaeological, historic, and scientific resources, the destruction of or damage to any site having such resources, as identified by the appropriate authorities, should be prevented.
- 6H-1.2 Proposals for shoreline development or use adjacent to or near archaeological, historic, or scientific resources should not conflict with or adversely impact such resources.

## 6I – Flood Hazard Reduction

### Policies

- 6I-1.1 Plans, regulations, and programs related to flood hazard reduction should be coordinated and integrated. Related plans, regulations, and programs include watershed management plans, comprehensive flood hazard management plans, comprehensive plans, storm water management plans, floodplain regulations, critical areas regulations; ordinances and comprehensive plans, and the National Flood Insurance Program.
- 6I-1.2 Where feasible, non-structural flood hazard reduction measures are preferred over structural measures. When evaluating alternate flood control measures, the removal or relocation of structures in flood-prone areas should be considered.

- 6I-1.3 Flood hazard protection measures should result in no net loss of ecological functions and ecosystem-wide processes associated with rivers and streams.
- 6I-1.4 River and stream processes should be returned to a more natural state where feasible and appropriate, including:
  - a. Removal of artificial restrictions to natural channel migration; and
  - b. Restoration of off-channel hydrological connections.

## 6J – Restoration

### Policies

- 6J-1.1 Restoration and enhancement of shorelines should be designed using principles of landscape and conservation ecology and should restore or enhance chemical, physical, and biological watershed processes that create and sustain shoreline habitat structures and functions.
- 6J-1.2 Restoration and enhancement actions should improve shoreline ecological functions and processes and should target meeting the needs of sensitive plant, fish and wildlife species as identified by Washington Department of Fish and Wildlife, Washington Department of Natural Resources, National Marine Fisheries Service, and U.S. Fish and Wildlife Service.
- 6J-1.3 Skagit County should, and private entities are encouraged to, seek funding from State, Federal, private, and other sources to implement restoration, enhancement, and acquisition projects, particularly those that are identified in the Restoration Plan of this SMP or the local watershed plans.
- 6J-1.4 Restoration and enhancement projects should be coordinated with local public utility and conservation districts.
- 6J-1.5 Skagit County should develop processing guidelines that will streamline the review of restoration-only projects.
- 6J-1.6 Skagit County should allow for the use of tax incentive programs, mitigation banking, grants, land swaps, or other programs, as they are developed, to encourage restoration and enhancement of shoreline ecological functions and to protect habitat for fish, wildlife, and plants.

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## Part I: Authority, Purpose, and Jurisdiction

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### 14.26.110 Authority

- (1) The Shoreline Management Act of 1971, RCW Chapter 90.58, is the authority for the enactment and administration of this Shoreline Master Program. ~~Shoreline Management Permit and Enforcement Procedures under this authority are contained in WAC 173-27.~~
- (2) SCC Chapter 14.26 constitutes the implementing development regulations for the Skagit County Shoreline Master Program.

**Commented [A31]:** Recommendation per Ecology to add a reference to WAC 173-27 as this contains many applicable permit process, exemption, and exception criteria referenced or duplicated in the SMP.

### 14.26.120 Purpose

The purposes of this SMP are:

- (1) To promote public health, safety, and general welfare by providing comprehensive policies and effective, reasonable regulations for development, use and protection of jurisdictional shorelines; and
- (2) To further assume and carry out the local government responsibilities established by the SMA in RCW 90.58.050 including planning and administering the regulatory program consistent with the policy and provisions of the SMA in RCW 90.58.020; and
- (3) To provide a high quality shoreline environment where:
  - (a) Recreational opportunities are abundant;
  - (b) The public enjoys access to and views of shoreline areas;
  - (c) Natural systems are preserved, restored, or enhanced;
  - (d) Ecological functions of the shoreline are maintained and improved over time;
  - (e) Water-oriented uses are promoted consistent with the shoreline character and environmental functions; and

- (4) To condition uses to ensure they are consistent with the control of pollution and prevention of damage to the natural environment
- (5) To discourage uses that are not unique to or dependent upon use of the state's shoreline; and
- (6) To ensure no net loss of shoreline ecological functions.

#### 14.26.130 Applicability

- (1) All proposed uses, activities, or development occurring within shoreline jurisdiction must conform to the intent and requirements of the SMA and this SMP even when a permit or other form of authorization is not required. .
- (2) The shoreline permit procedures, policies, and regulations established in this SMP apply countywide to all nonfederal uses, activities, and development.
- (3) This SMP applies to lands subject to nonfederal ownership, lease, or easement, even though such lands may fall within the external boundaries of federal ownership. The following subsections guide the determination of SMP applicability on federal lands:
  - (a) Federal agency activities, including uses and development on land owned or leased by the federal government is not subject to this SMP;
  - (b) Non-federal uses and development undertaken on land owned or leased by the federal government is subject to this SMP.
- (4) As recognized by RCW 90.58.350, the provisions of this SMP do not affect treaty rights of Indian Nations or tribes.

**Commented [A32]:** Recommended per Ecology per WAC 173-27-060

#### 14.26.140 Shoreline Jurisdiction

- (1) The Shoreline Master Program jurisdiction applies to all shorelines of the state and their associated shorelands. This includes:
  - (a) all marine waters;
  - (b) rivers and streams with 20 cubic feet per second or greater mean annual flow (Appendix 1);
  - (c) lakes and reservoirs 20 acres or more in area (Appendix 1);
  - (d) shorelands adjacent to these water bodies, typically within 200 feet of the OHWM;
  - (e) associated wetlands; and

**Commented [A33]:** PC wanted terms defined, but they will be highlighted in the code as it appears on web. No change made

**Commented [A34]:** Clarification for consistency with RCW 90.58.030

- (f) floodways and contiguous floodplain areas extending 200 feet from the floodway;
- (2) Extension of shoreline jurisdiction. Shoreline jurisdiction also extends to buffers necessary to protect critical areas that are located wholly within shoreline jurisdiction, with the exception of forest practices described in RCW 90.58.030(2)(d).

#### 14.26.150 Relationship to Other Codes, Plans, and Ordinances

- (1) All applicable federal, state, and local laws apply to properties in the shoreline jurisdiction.
- (2) When conflict occurs within the provisions of this SMP or between this SMP and the laws, regulations, codes, or rules promulgated by any other authority having jurisdiction, the provision that is most protective of shoreline resources must be applied, except when constrained by federal or state law, or where specifically provided otherwise in this Program.
- (3) All local development regulations including, but not limited to, zoning, flood damage prevention, stormwater management, and subdivision rules apply in addition to this SMP, except that regulation of critical areas is accomplished exclusively by this SMP; see Part V, Critical Areas.

**Commented [A35]:** Suggested edit to provide clarity

**Commented [A36]:** Ecology suggested edit to provide a soft reference to the flood development regulations and the stormwater manual.

#### 14.26.160 Liberal Construction

As provided for in RCW 90.58.900, the SMA is exempted from the rule of strict construction. The County must, therefore, in interpreting this SMP, consider not only the regulations but also the purposes, goals, and policies of this SMP and the SMA.

**Commented [A37]:** Added for clarification per Ecology

#### 14.26.170 Effective Date

This SMP was adopted by the Skagit County Board of Commissioners on \_\_\_\_\_, 2021. This SMP and any amendments become effective fourteen days after final approval by the State Department of Ecology. (RCW 90.58.090(7))

## Part II: Shoreline Environment Designations

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### 14.26.200 Overview

- (1) Defined. Shoreline environment designations are classifications of shoreline areas that reflect local shoreline conditions, including ecological functions and shoreline development. WAC 173-26-191(1)(d) notes that environment designations provide “the framework for implementing shoreline policies and regulatory measures specific to the environment designation.” Environment designations are the principal tools for applying and tailoring the Shoreline Management Act’s general policies to local shorelines. Classifying shorelines into specific designations provides the means of adapting broad policies to shoreline reaches with distinctively different conditions and resources.
- (2) Components. For each environment designation:
  - (a) The **purpose statement** (in Comprehensive Plan Chapter 6B) describes the unique shoreline management objectives of the designation in a manner that distinguishes it from other designations.
  - (b) **Designation criteria** (in Comprehensive Plan Chapter 6B) describe the basis for assigning the particular designation to specific sections of the shoreline.
  - (c) **Management policies** (in Comprehensive Plan Chapter 6B) are the basis for the environment regulations and should be sufficient in detail to assist in their interpretation.
  - (d) **Regulations** (in SCC Chapter 14.26, including [14.26.405 Use and Modifications Matrix](#)) impose requirements on uses and modifications specific to each environment designation.
- (3) Map. Shoreline jurisdiction, shoreline environment designations, and use environments in unincorporated areas and pre-designated use environments in urban growth areas are shown on the Shoreline Environment Designation map available at [www.skagitcounty.net/smp](http://www.skagitcounty.net/smp).

**Commented [A38]:** Edit per Ecology recommendation to identify environment designation regulations.

### 14.26.210 Interpretation.

- (1) Any areas within shoreline jurisdiction that are not mapped or designated due to mapping inaccuracies in the lateral extent of shoreline jurisdiction from the shoreline water body

related to site-specific surveys of OHWM are automatically assigned the category of the contiguous waterward shoreline environment designation.

- (2) If there is an environment designation mapping error, the Administrative Official may use the environment designation criteria in SMP Part II to establish an appropriate shoreline environment designation. [If the County determines that such a discrepancy exists, the County must amend the SMP to reflect the appropriate designation within three years of the discovery.]
- (3) Areas mapped in shoreline jurisdiction that do not meet the applicability criteria in [SCC 14.26.140](#), Shoreline Jurisdiction are not subject to the requirements of this SMP. The actual location of the OHWM must be determined at the time a development is proposed.
- (4) All other areas that were not mapped in shoreline jurisdiction, but which do meet criteria in [SCC 14.26.140](#) Shoreline Jurisdiction, must be assigned a Rural Conservancy designation until the shoreline can be [formally] designated through an SMP amendment.
- (5) [Alterations of the existing conditions of shorelines and wetlands of the state which affect the boundary or volume of those water bodies, whether through authorized development or natural causes, shall warrant a review of the designation of those shorelines and their associated wetlands.]

**Commented [A39]:** Required per Ecology for consistency with WAC 173-22-055

**Commented [A40]:** For clarification, such an area had no previous designation and therefore cannot be re-designated.

**Commented [A41]:** Required per Ecology for consistency with WAC 173-22-052

#### 14.26.220 Boundary Line Determination.

- (1) Where uncertainty or a conflict exists in determining the location of a jurisdiction boundary, or an environment designation boundary, the Administrative Official may resolve the uncertainty by applying the environment designation criteria and the following:
  - (a) [Boundaries indicated as approximately following roads and railroads must be respectively construed to follow the nearest right-of-way edge.]
  - (b) [Boundaries indicated as approximately following platted lot lines must be construed as following such lot lines.]
  - (c) [In the event of a physical change in a shoreline or wetland feature, boundaries must be construed as moving with the actual shoreline, floodway, or floodplain.]
  - (d) Boundaries indicated as parallel to or an extension of features indicated in subsections (a) through (c) must be so construed.
  - (e) Boundaries may be determined by field survey conducted by a State of Washington licensed surveyor of the features described and delineated above, at the discretion of the Administrator.

**Commented [A42]:** Per TWC recommendation. This edit will avoid splitting designations along road centerlines and other right of ways.

**Commented [A43]:** The County does not have an official CMZ map

- (2) [Where resolution is not possible using the criteria above, the Administrative Official in consultation with the Washington State Department of Ecology, is authorized to determine the boundaries.]

**Commented [A44]:** Required per Ecology per RCW 90.58.030(2)(d)

**Commented [A45]:** Unnecessary and therefore, removed. Regulations are contained within the Use and Modifications Matrix and throughout the development regulations.

### Part III: General Regulations

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#### 14.26.300 Applicability

All shoreline uses and modifications must comply with the relevant regulations in this Part, as well as the sections in Part IV specific to the use or modification, and with the critical areas regulations in Part V.

**Commented [A46]:** No longer necessary with inclusion within Part V

#### 14.26.305 Environmental Protection

- (1) No Net Loss of Ecological Functions. Uses and developments on Skagit County shorelines must be designed, located, sized, constructed, and maintained to achieve no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.
- (2) Protection of critical areas. Critical areas protection standards are located in SMP Part V.
- (3) Protection of Buffers. Critical area buffers and shoreline buffers must be protected in accordance with the provisions of SMP Part V, Critical Areas.
- (4) Mitigation Requirement. If a proposed shoreline use or modification is entirely addressed by specific, objective standards (such as setback distances, pier dimensions, or materials requirements) contained in this SMP, then the mitigation sequencing analysis described in SCC 14.26.305(5) is not required. In the following circumstances, the applicant must provide a mitigation sequencing analysis as described in 14.26.305(5):
  - (a) If a proposed shoreline use or modification is addressed in any part by discretionary standards (such as standards requiring a particular action if feasible or requiring

**Commented [A47]:** Per TWC, revised title for consistency with WAC

**Commented [A48]:** Provided for added clarity

- the minimization of developmental size) contained in this Chapter, then the mitigation sequencing analysis is required for the discretionary standard(s);
- (b) When a water-oriented or shoreline access use or development is proposed within a critical area, critical area buffer, shoreline buffer or vegetation management area;
  - (c) When an action requires a Shoreline Conditional Use Permit or Shoreline Variance Permit; or
  - (d) When specifically required by regulations contained in Parts III, IV, or V of this SMP.
- (5) Mitigation Sequence. In order to ensure that development activities contribute to meeting the no net loss provisions by avoiding, minimizing, and mitigating for adverse impacts to ecological functions or ecosystem-wide processes, an applicant required to complete a mitigation analysis pursuant to SCC 14.26.305(3) must describe how the proposal will follow the sequence of mitigation as defined below:
- (a) Avoid the impact altogether by not taking a certain action or parts of an action;
  - (b) Minimize the 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) Rectify the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;
  - (d) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
  - (e) Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
  - (f) Monitor the impact and the compensation projects and take appropriate corrective measures.
- (6) Mitigation Plan. All proposed alterations to shoreline areas or associated buffers require mitigation sufficient to provide for and maintain the functions and values of the shoreline area or to prevent risk from a critical areas hazard and must give adequate consideration to the reasonable and economically viable use of the property. The applicant must develop and implement a mitigation plan prepared by a qualified professional. Mitigation in excess of that necessary to ensure that development will result in no net loss of ecological functions will not be required by Skagit County, but may be voluntarily performed by an applicant. In addition to any requirements found in Part V, Critical Areas Regulations in Shoreline Jurisdiction, a mitigation plan must include:

**Commented [A49]:** Required per Ecology to specifically require mitigation sequencing even when water dependent development is proposed at water's edge.

- (a) An inventory and assessment of the existing shoreline environment including relevant physical, chemical and biological elements;
  - (b) A discussion of any federal, state, or local management recommendations which have been developed for critical areas or other species or habitats located on the site;
  - (c) A discussion of proposed measures which mitigate the adverse impacts of the project to ensure no net loss of shoreline ecological functions;
  - (d) A discussion of proposed management practices which will protect fish and wildlife habitat both during construction, and after the project site has been fully developed;
  - (e) Scaled drawings of existing and proposed conditions, materials specifications, and a minimum five-year maintenance and monitoring plan, including performance standards;
  - (f) A contingency plan if mitigation fails to meet established success criteria; and
  - (g) Any additional information necessary to determine the adverse impacts of a proposal and mitigation of the impacts.
- (7) Alternative Mitigation. To provide for flexibility in the administration of the ecological protection provisions of this SMP, alternative mitigation approaches may be approved within shoreline jurisdiction where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this SMP and are scientifically supported.
- (8) New development and uses must be designed to mitigate significant adverse impacts on other shoreline uses and values.

**Commented [A50]:** Per TWC recommendation to bring mitigation requirements, sequencing and plan development into the SMP rather than cross-reference the critical areas regulations located in Appendix 2.

**Commented [A51]:** Per TWC and County, reworded for clarity.

#### 14.26.310 Dimensional Standards

- (1) To preserve the existing and planned character of the shoreline consistent with the purposes of the shoreline environment designations, dimensional standards are provided in Table 14.26.310-1. In addition, shoreline developments must comply with all other dimensional requirements of SCC Chapter 14.16.
- (2) When a development or use is proposed that does not comply with the dimensional standards of this SMP, such deviations from the SMP bulk, dimensional, or performance standards can only be authorized by approval of a Shoreline Variance. If a proposal meets requirements allowing administrative reductions or modifications, it is considered compliant with the SMP and does not require a Shoreline Variance.

**Commented [A52]:** Required per Ecology for consistency with WAC 173-27-170. Modifications to use standards cannot be authorized with a variance.

- (3) Buffers are measured from the OHWM.
- (4) Water-dependent uses, shoreline access, and shoreline restoration may be authorized within the required buffer without a Shoreline Variance provided mitigation sequencing is applied and the project demonstrates adequate compensatory mitigation to achieve no net loss of shoreline ecological functions.

**Commented [A53]:** Required per Ecology as they note that the shoreline or critical area must provide a buffer, but some uses and developments, such as shoreline access or water-dependent uses, may be allowed within this buffer with appropriate application of mitigation sequencing.

**Table 14.26.310-1 Dimensional Standards**

The following table sets out minimum buffer widths and other dimensional standards for each shoreline environment designation. For other dimensional standards, see [SCC 14.26.420](#) Boating Facilities and Related Structures and Uses.

Dimensional Standard	Shoreline Environment Designation					
	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity	Aquatic
<b>Buffers for Upland Uses<sup>1</sup></b>						
from marine or lake shorelines	200 ft	150 ft	150 ft	100 ft	140 ft	n/a
from river or stream shorelines	200 ft	200 ft	200 ft	200 ft	200 ft	n/a
<b>Height Limits for Residential Development<sup>2</sup></b>						
for uses waterward of the OHWM	n/a	n/a	n/a	n/a	n/a	n/a
for upland uses within required buffer	25 ft	25 ft	25 ft	25 ft	25 ft	n/a
for upland uses outside required buffer	35 ft	35 ft	35 ft	35 ft	35 ft	n/a
accessory structures on Guemes Island	15 ft	15 ft	15 ft	15 ft	15 ft	n/a
<b>Height Limits for All Other Uses<sup>2</sup></b>						
for uses waterward of the OHWM	n/a	n/a	n/a	n/a	n/a	5 ft
for upland uses within required buffer	25 ft	25 ft	25 ft	25 ft	25 ft	n/a
for upland uses outside required buffer	35 ft	35 ft	35 ft	35 ft	35 ft	n/a
<b>Hard Surface Limits</b>						
for all commercial and industrial upland uses	n/a	30%	70%	n/a	70%	n/a
recreational uses	5%	25%	30%	30%	40%	n/a
for all other upland uses	5%	30%	30%	30%	40%	n/a
<b>Signs and Outdoor Advertising</b>						
Max Height	n/a	5 ft	5 ft	10 ft	25 ft	5 ft

Dimensional Standard	Shoreline Environment Designation					
	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity	Aquatic
Max sign area per side	n/a	15 sq ft	15 sq ft	20 sq ft	100 sq ft	6 sq ft

Footnotes:

1. Water-dependent developments are allowed within the buffer provided mitigation sequencing is applied per [SCC 14.26.305](#) to avoid, minimize, and mitigate adverse impacts to result in no net loss of shoreline ecological function.

2. Additional height for utility facilities, bridges, and industrial uses may be approved when necessary for the functions of a permitted use, provided such structures must be designed to minimize obstruction of views. For such heights proposed over 35 feet above average grade the applicant shall demonstrate that it will not obstruct the view of a substantial number of residences and overriding consideration of the public interest will be served.

**Commented [A54]:** Added footnotes for further clarity

**Commented [A55]:** Required change per Ecology to recognize that buffers still exist, but such uses may be allowed within the buffer.

**Commented [A56]:** Required change added per Ecology to add limitations per RCW 90.58.320

**14.26.320 General Provisions Applicable Upland of the OHWM**

- (1) Location of upland development.
  - (a) New development must be located and designed to avoid the need for future shoreline stabilization to the extent feasible.
  - (b) Land divisions must be designed to ensure that future development of the created lots will not require shoreline stabilization for reasonable development to occur or cause foreseeable risk from geological conditions.
  - (c) New development on steep slopes or bluffs must be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical site assessment and supported by the best scientific and technical information available, in accordance with [SCC 14.26.475](#), [14.26.485](#), and [14.26.540](#).
  - (d) New development that would require shoreline stabilization which causes potential significant adverse impacts to adjacent or down-current properties and shoreline areas is not allowed.
- (2) Design features for compatibility. Shoreline use and development must be designed to complement the character and setting of the property, minimize noise and glare, and avoid impacts to view corridors, where feasible.
- (3) Screening.
  - (a) Building mechanical equipment must be incorporated into building architectural features, such as pitched roofs, to the maximum extent possible. Where mechanical

- equipment cannot be incorporated into architectural features, a visual screen must be provided consistent with building exterior materials that obstructs views of such equipment.
- (b) Outdoor storage must be screened from public view. Screening techniques may include landscaping, berming, fencing, or other equivalent measures.
- (4) Preference for water-oriented facility location. Shoreline developments must locate all nonwater oriented facilities landward of water-oriented uses, or outside shoreline jurisdiction, unless no other location is feasible.
- (5) Changes to topography. To the extent feasible, proposed new shoreline development must conform to natural contours.
- (6) Soil disturbance.
- (a) Development must minimize disturbance to soils and native vegetation and natural features.
  - (b) Any disturbed area must be restored and protected from erosion using vegetation and other approved means to permanently stabilize soil exposed during construction.
  - (c) For any proposed grading activity, a [temporary](#) erosion and sedimentation control plan must clearly indicate the construction sequence for establishment of all erosion and sedimentation control work, both temporary and permanent.
  - (d) Stream bank erosion control BMPs must be selected, designed, and maintained according to the Stormwater Management Manual.
- (7) View preservation. Development that complies with dimensional standards is assumed to be protective of shoreline views and view corridors.
- (8) Lighting. Interior and exterior lighting must be designed and operated to avoid illuminating nearby properties or public areas; prevent glare on adjacent properties, public areas or roadways to avoid infringing on the use and enjoyment of such areas; and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening. Lighting must be directed away from critical areas, unless necessary for public health and safety.
- (9) Development near aquaculture. Applicants proposing development in upland areas must address potential impacts and conflicts with existing aquaculture or areas with a high potential for aquaculture.

- (a) New development or redevelopment within the shoreline jurisdiction adjacent to areas with existing aquaculture or areas with a high potential for aquaculture must practice strict pollution control procedures to ensure water quality will not be adversely impacted.
- (b) New residential development adjacent to a water body supporting aquaculture operations must install drainage and stormwater treatment facilities to prevent any adverse impact to aquaculture operations. Such measures include but are not limited to vegetated swales, retention ponds, and use of artificial or natural wetlands, provided no adverse impacts to the receiving wetlands would occur.
- (c) New residential development dependent on a septic system must be conditioned for routine inspection and maintenance of such system.
- (d) New marinas that provide overnight or long-term moorage must not be located in areas with recreational or commercial shellfish beds.
- (e) Site preparation in the vicinity of aquaculture operations must not result in any offsite erosion, siltation, or reductions in water quality.

#### **14.26.330 General Provisions Applicable Waterward of the OHWM**

- (1) Siting and design requirements. In-water structures and activities must be sited and designed to avoid the need for future shoreline stabilization activities and maintenance dredging, giving due consideration to watershed functions and processes, with special emphasis on protecting and restoring priority habitat and species. Modifications and uses located in the Aquatic environment must be the minimum size necessary.
- (2) Buffers. Water-dependent in-water structures, activities, and uses are not subject to the shoreline buffers established in this SMP provided mitigation sequencing is applied per [SCC 14.26.305](#) to avoid, minimize, and mitigate adverse impacts to result in no net loss of shoreline ecological function.
- (3) Required permits. Projects involving in-water work must obtain all applicable local, state, and federal permits or approvals, e.g. those from the U.S. Army Corps of Engineers, Washington Department of Ecology, Washington Department of Fish and Wildlife, Washington Department of Natural Resources.
- (4) Timing restrictions. Projects involving in-water work must comply with timing restrictions as set forth by state and federal project approvals.
- (5) Structure removal. Removal of existing structures must be accomplished so the structure and associated material does not re-enter the water body.
- (6) Disposal of waste material.

Commented [A57]: Clarification required per Ecology

- (a) Waste material, such as construction debris, silt, excess dirt, or overburden resulting from in-water structure installation, must be deposited outside of shoreline jurisdiction in an approved upland disposal site.
  - (b) Proposals to temporarily store waste material or re-use waste materials within shoreline jurisdiction may be approved provided that use of best management practices is adequate to prevent erosion or water quality degradation and that an onsite location outside of shoreline jurisdiction is not available.
- (7) Hazardous materials.
- (a) Extreme care must be taken to ensure that no petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or deleterious materials are allowed to enter or leach into the water body during in-water activities.
  - (b) Necessary refueling of motorized equipment, other than watercraft, must be conducted outside of shoreline buffers.
  - (c) Appropriate spill clean-up materials must be onsite at all times, and any spills must be contained and cleaned immediately after discovery.
- (8) Prevent siltation of adjacent areas.
- (a) In-water work must be conducted in a manner that causes little or no siltation to adjacent areas.
  - (b) A sediment control curtain must be deployed and maintained in a functional manner during the project installation in those instances where siltation is anticipated.
- (9) Excavations. Any trenches, depressions, or holes created below the OHWM must be backfilled prior to inundation by high water or wave action.
- (10) Concrete.
- (a) Fresh concrete or concrete by-products must not be allowed to enter the water body at any time during in-water installation.
  - (b) All concrete forms must be completely sealed to prevent the possibility of un-cured concrete entering the water body.
- (11) Protection of bank and vegetation.

- (a) Alteration or disturbance of the bank and bank vegetation must be limited to that necessary to perform the in-water work.
  - (b) All disturbed areas must be restored and protected from erosion using vegetation or other means.
- (12) Trash and unauthorized fill removal required.
- (a) All trash and unauthorized fill, including concrete blocks or pieces, bricks, asphalt, metal, treated wood, glass, and paper, found below the OHWM at the time of project implementation must be removed if the project includes use of equipment suited for that purpose.
  - (b) Where the trash or fill is visibly providing some habitat function, consultation with Washington Department of Fish and Wildlife or the U.S. Army Corps of Engineers, or both, should occur before removal.
  - (c) Disposal should occur in an approved upland disposal location, outside of shoreline jurisdiction if feasible, but at a minimum landward of the OHWM and the floodplain. See [SCC 14.26.435](#) Dredging and Dredge Material Disposal and [SCC 14.26.440](#) Fill, Excavation and Grading for potentially applicable policies and regulations regarding dredging, fill and disposal.
- (13) Notification when fish harmed. If at any time, as a result of in-water work, fish are observed to be in distress or killed, immediate notification must be made to any appropriate local, state, or federal agency.
- (14) Notification of water quality problems. If at any time, as a result of in-water work, water quality problems develop, immediate notification must be made to any appropriate local, state, or federal agency.
- (15) Natural features. Natural in-water features such as snags, uprooted trees, or stumps must be left in place unless it can be demonstrated that they are actually causing bank erosion, higher flood stages, a hazard to navigation or human safety, or interfering with otherwise authorized aquaculture activities.
- (16) Flotation materials.
- (a) Flotation material (e.g., floats, buoys) must be encapsulated within a commercially manufactured shell, including polyethylene, encapsulated concrete, or another material specifically approved by applicable federal or state agencies for use in aquatic environments, that prevents breakup or loss of the flotation material into the water, and is not readily subject to damage by ultraviolet radiation or abrasion.

Commented [A58]: Per County recommendation since CMZ mapping is not complete.

- (b) During maintenance, existing un-encapsulated flotation material must be replaced.
- (17) Tire use. Tires are prohibited as part of above- or below-water structures or where tires could potentially come in contact with the water (e.g., flotation, fenders). Existing tires used for flotation must be replaced with inert or encapsulated materials such as plastic or encased foam during maintenance or repair of the structure.
- (18) Anchors. Floats, rafts, mooring buoys, and navigational aids, such as channel markers or buoys, must use helical screw anchors or other embedded anchors and midline floats or other technologies to prevent anchors or lines from dragging or scouring, if feasible given local conditions and water depths. Floats and rafts may also be anchored with piles as provided in [SCC 14.26.420](#) Boating Facilities and Related Structures and Uses.
- (19) Maintain safe structures.
  - (a) All over and in-water structures must be constructed and maintained in a safe and sound condition.
  - (b) Abandoned or unsafe structures or materials, including treated wood, pilings, derelict structures, vessels, buoys, and equipment must be repaired promptly by the owner or removed after obtaining any necessary permits or approvals.
- (20) Lighting. Lighting associated with over and in-water structures must be beamed, hooded, or directed to avoid causing glare on adjacent properties or water bodies. Illumination levels must not exceed the minimum necessary for safety.
- (21) Aquatic weed control is allowed only where the presence of aquatic weeds will adversely affect native plant communities, fish and wildlife habitats, or an existing water-dependent recreational use or as required by state law to control noxious weeds. Aquatic weed control efforts must comply with all applicable laws and standards. Removal using mechanical methods is preferred over chemical methods.

**Commented [A59]:** Added per recommendation from Ecology to ensure consistency with noxious weed removal requirements.

#### **14.26.340 Archaeological, Historic, and Scientific Resources**

- (1) Stop work and notification. Whenever resources of potential archaeological, historic, or scientific value are uncovered during shoreline development or use, developers and property owners must immediately stop work and notify Skagit County. Additionally, if archaeological resources are uncovered, developers and property owners must also immediately notify the Washington Department of Archaeology and Historic Preservation and affected Indian tribes.
  - (a) Skagit County will notify appropriate agencies or qualified personnel and request an immediate site evaluation and determination of significance. If a positive

determination is not received within ten days of receipt of such request, or if a negative determination is received, stopped work may resume.

- (b) If a positive determination of significance is found, provisions must be made for appropriate evaluation, recovery, or preservation of materials with arrangements established for compensation due to work, materials or property loss.
- (2) Compliance with other applicable laws. Proposals for shoreline development or use must comply with all applicable laws related to archaeological, historic, or scientific resources. Archaeological sites are subject to RCW 27.44, Indian graves and records, and RCW 27.53, Archaeological sites and resources, and development or use that may impact such sites must comply with WAC 25-48, Archaeological excavation and removal permit, as well as the provisions of this SMP.
  - (3) Site inspection and evaluation. Proposals for shoreline development or use in or on areas documented to contain archaeological, historic, or scientific resources require site inspection and evaluation by qualified personnel prior to any development activity in or on the site. In areas documented to contain archaeological resources, site inspection and evaluation must be performed by a professional archaeologist in coordination with affected Indian tribes.
  - (4) Adverse impacts. Proposals for shoreline development or use in or on areas documented to contain archaeological, historic, or scientific resources that would adversely impact such resources are prohibited, with the following exception:
    - (a) Such proposals may be approved through a Shoreline Conditional Use Permit if documentation from qualified personnel indicates that the resources are recoverable and transferable, and that no adverse impacts to either the resources, the site, or value of the resources and site when considered together will result.
  - (5) Adjacent and nearby development. Proposals for shoreline development or use adjacent to or nearby areas documented to contain archaeological, historic, or scientific resources must be located, designed, and operated to not adversely affect the purpose, character, or value of such resources.
  - (6) Enhancement. Proposals to enhance areas documented to contain archaeological, historic, or scientific resources (e.g. interpretive facilities, preservation and restoration activities) may be approved through a Shoreline Conditional Use Permit.
  - (7) Archaeological excavations. Archaeological excavations may be approved through a Shoreline Conditional Use Permit.

#### 14.26.350 Flood Hazard Reduction

(1) Applicability

- (a) This section applies to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures include nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and stormwater management programs, and structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.
- (b) Although some flood hazard reduction measures may serve a dual function as shoreline stabilization, their primary purpose is to control the location of floodwaters directly. Alternatively, the primary purpose of shoreline stabilization measures is to prevent erosion of land from currents and waves originating in the shoreline water body (rather than upland sources of erosion), which is a more indirect control of the location of flood and non-flood waters. Shoreline stabilization is addressed in SMP Part IV.

(2) Application Requirements. In addition to the general application requirements, all applications for new structural flood hazard reduction measures in shoreline jurisdiction must demonstrate all of the following:

- (a) That the measures are necessary to protect existing development and that nonstructural measures are not feasible, as documented in a scientific and engineering analysis;
- (b) That potential adverse impacts on ecological functions and priority species and habitats can be successfully mitigated;
- (c) That appropriate vegetation conservation actions will be undertaken consistent with the Shoreline Vegetation Conservation provisions of [SCC 14.26.370](#); and
- (d) That structural flood hazard reduction measures are consistent with any adopted comprehensive flood hazard management plan approved by Ecology that evaluates cumulative impacts to the watershed system.

(3) Development Standards.

- (a) New development or uses in shoreline jurisdiction, including the subdivision of land, are prohibited when it is reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the floodplain or floodway during the life of the development or use.

**Commented [A60]:** PC recommended adding a definition of "flood hazard reduction" to Part VIII, Definitions, to include dikes and levees. However, the description in 1.a includes those aspects. No change made.

- (b) The following uses and activities may be authorized where appropriate and necessary within the floodplain or floodway, provided they comply with the regulations of SCC 14.34, Flood Damage Prevention:
- (i) Actions that protect or restore the ecosystem-wide processes or ecological functions, including development with a primary purpose of protecting or restoring ecosystem-wide processes or ecological functions;
  - (ii) Forest practices in compliance with the Forest Practices Act and its implementing rules;
  - (iii) Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur;
  - (iv) Mining when conducted in a manner consistent with the environment designation and [SCC 14.26.465](#) Mining;
  - (v) Bridges, utility lines, outfalls, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate costs. Where such structures are allowed, mitigation must address impacted functions and processes in the affected section of the watershed or drift cell;
  - (vi) Development in incorporated municipalities and designated urban growth areas where structures exist that prevent active channel movement and flooding; and
  - (vii) Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.
- (c) New structural flood hazard reduction measures must be placed landward of associated wetlands and designated shoreline buffers, except for actions that increase ecological functions, such as wetland restoration; provided that such flood hazard reduction projects may be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of, feasible alternatives to structural improvements must be documented through a geotechnical and hydrological analysis.
- (d) New public structural flood hazard reduction measures, such as dikes and levees, must provide public access when required by [SCC 14.26.360](#).

**Commented [A61]:** Per County recommendation since CMZ mapping is not complete.

- (e) The removal of gravel for flood management purposes must be consistent with SCC Chapter 14.34, Flood Hazard Reduction, and the Dredging and Dredge Material Disposal provisions of this SMP, and be allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

#### 14.26.360 Outdoor Advertising and Signs

- (1) **Applicability.** This section applies to “outdoor advertising” including all publicly displayed messages such as signs, billboards, placards, pennants, or posters, whose purpose is to provide official or commercial information, direction, or advertising.
- (2) **When Allowed.** Outdoor advertising is allowed in all Environment Designations except:
  - (a) **Natural.** Outdoor advertising is prohibited in the Natural Environment Designation except for official signs necessary for trail or boat launch markings, hazard warnings, public facilities, or educational and interpretive purposes. Such signs shall be limited in number, size, and design so as to adequately fulfill their stated purposes within minimal impact to the Natural Environment Designation.
  - (b) **Aquatic.** Outdoor advertising is prohibited except for one flush-mounted wall sign is allowed for shoreline dependent uses.
  - (c) **Off-premises advertising** is prohibited, except that a limited number of consolidated, community gateway identification or direction signs may be allowed by a Conditional Use Permit.
  - (d) **Freestanding signs** must be located upland of rights-of-way and roadways in shoreline jurisdiction except for on premise signs for enterprises located waterward of roadways and rights-of-way.
  - (e) **Roof-mounted signs** are prohibited.
- (3) **Application Requirements.** In addition to the general application requirements, applications for outdoor advertising must demonstrate:
  - (a) Applications for freestanding signs must demonstrate that it is unfeasible to mount the sign on an exterior wall of the applicant's building.
- (4) **Development Standards.**
  - (a) **Number.** A public or private enterprise, development, or service may have no more than two on-premises advertising devices or signs, except:

- (i) Temporary signs may be posted on private property by the owner up to 3 months per year except that no such sign may exceed four square feet in area.
- (b) Height. On-premise signs and advertising, whether freestanding or wall-mounted, must comply with the Dimensional Standards in [SCC 14.26.330](#) and may not extend in height above the highest exterior wall of the building to which the sign relates. Measurement is taken from the average elevation occupied by the structure to sign top.
- (c) Total sign area. The maximum sign area for each face of a double or single-faced sign is provided in the Dimensional Standards in [SCC 14.26.330](#).
- (d) Lighting. Outdoor advertising may not move or fluctuate in lighting or position in any manner.
- (e) Setbacks. Freestanding signs allowed in shoreline areas and other on-premises outdoor advertising must be setback the same distance from OHWM and side property lines as the building or development to which it relates.

#### **14.26.370 Public Access**

- (1) Applicability.
  - (a) This section applies to the following shoreline uses and activities, which are required to provide shoreline public access:
    - (i) Water-enjoyment, water-related, and nonwater-dependent uses;
    - (ii) Commercial and industrial development proposed on land in public ownership.
    - (iii) Land divisions creating five or more lots;
    - (iv) Development that involves five or more multi-unit residential dwelling units;
    - (v) Development by public entities, including local governments, port districts, state agencies, and public utility districts;
    - (vi) Marinas when water-enjoyment uses are associated with the marina;
    - (vii) Recreation pursuant to [SCC 14.26.470](#);
    - (viii) New public structural flood hazard reduction measures, such as new dikes and levees, where access rights can be secured.

- (b) Exceptions. This section does not apply to the following shorelines uses and activities, which are ~~not required to provide public access~~:
- (i) agriculture;
  - (ii) aquaculture;
  - (iii) a use, activity, or development that involves four or fewer multi-unit residential dwelling units;
  - (iv) a subdivision of land into four or fewer lots;
  - (v) a development that has previously provided public access through other permit processes.

**Commented [A62]:** Per Ecology, in order to avoid confusion, rephrased to avoid the use of the term "exempt"

(2) Types of public access.

- (a) The Administrative Official must determine the nature of the public access required for a project. The public access required must be proportional to the demand and impacts created by the use. For a private development, the Administrative Official must make the following findings:
- (i) the proposed project will increase demand for public access to the shoreline (nexus);
  - (ii) the public access to be provided is reasonably consistent with the nature and type of demand created (proportionality); and
  - (iii) the public access to be provided is reasonably necessary at this location or an approved offsite location to mitigate the incremental demand created by the project.
- (b) Order of preference. The types of public access are listed below in descending order of preference. The development must provide the most preferred type of public access that the Administrative Official determines is feasible.
- (i) physical access onsite;
  - (ii) physical access offsite;
  - (iii) physical access restricted to a community (available only for land divisions);
  - (iv) visual access onsite;
  - (v) visual access offsite.

- (c) How to determine feasibility. Public access is feasible unless the applicant demonstrates to the satisfaction of the Administrative Official that one or more of the following apply:
    - (i) public access would result in unavoidable public health or safety hazards that cannot be prevented by any practical means;
    - (ii) public access is not feasible due to inherent security requirements of the use that cannot be satisfied through the application of alternative design features or other solutions;
    - (iii) public access is not feasible as part of an ecological restoration project such as a levee setback;
    - (iv) public access would result in significant adverse environmental impacts that cannot be mitigated;
    - (v) public access would result in significant undue and unavoidable conflict with proposed use or adjacent uses that cannot be mitigated;
    - (vi) public access is not feasible because the subject site is separated from the shoreline water body by intervening public or private improvements such as highways, railroads, existing structures, or similar significant improvements;
    - (vii) the cost of providing the public access is unreasonably disproportionate to the total long-term cost of the proposed development;
    - (viii) public access is deemed detrimental to threatened or endangered species under the Endangered Species Act and the Administrative Official has consulted with governmental agencies or authorities with jurisdiction in making that determination.
  - (d) Public access must consist of a dedication of land or easement and a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means of view, or physical approach, or both to public waters and may include interpretive centers and displays.
- (3) Public access design standards and other requirements.
- (a) Public access must incorporate the following design features:
    - (i) Access easements must be at least 10 feet wide, unless the Administrator determines that undue hardship would result. In such cases, easement widths

- may be reduced only to the extent necessary to relieve the demonstrated hardship.
- (ii) Where feasible, public access must be designed to connect to existing or future public access features on adjacent or abutting properties, or to existing public rights-of-way or access easements.
  - (iii) Trails and pathways must be located, designed, and constructed to protect bank stability.
  - (iv) Trails and public parks must be designed consistent with the County's Comprehensive Parks and Recreation Plan.
  - (v) Public access must define the separation between public and private space, e.g. with natural elements such as logs, vegetation, and elevation separations.
  - (vi) Minimize the removal of onsite native vegetation.
  - (vii) Minimize the impact on views of shoreline water bodies from public lands or substantial numbers of residences.
- (b) Public access must include:
- (i) materials appropriate to the urban or rural character of the property and vicinity and environmental condition;
  - (ii) barrier-free designs consistent with the Americans with Disabilities Act, wherever feasible;
  - (iii) auxiliary facilities such as parking and restrooms, if necessary based on expected demand;
  - (iv) trash and recycling receptacles and pet waste receptacles, to promote appropriate waste disposal and protect water quality, where applicable;
  - (v) signage with any appropriate agency logo and hours of access;
  - (vi) signage as necessary to assist first responders and police; and
  - (vii) landscaping using native vegetation.

**Commented [A63]:** From PC: "Require legal markers at public access points to assist the sheriff and first responders."

- (c) Availability, dedication, and maintenance.
  - (i) Public access must be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
  - (ii) Public access must run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat. Such legal instruments must be recorded with the Auditor prior to the time of building permit approval or occupancy or with plat recording, whichever comes first.
  - (iii) Public access must be maintained over the life of the use or development. Future actions by successors in interest or other parties may not diminish the usefulness or value of required public access areas and associated improvements.
  - (iv) Maintenance of the public access facility must be the responsibility of the owner or homeowner's association, unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the Auditor.
- (d) Offsite public access:
  - (i) must allow public access, in descending order of preference, at a site physically separated from, but capable of serving, the project area; or at a site on the same water body; or at a site within the same watershed;
  - (ii) may include, but is not limited to:
    - (A) enhancing an adjacent public property (e.g. existing public recreation site; existing public access; road, street or alley abutting a body of water);
    - (B) providing, improving, or enhancing public access on another property under the control of the applicant; or
    - (C) a similar measure approved by the Administrative Official.
- (4) **Shoreline Public Access Plan.**
  - (a) The Skagit Countywide UGA Open Space Concept Plan and the Skagit County 2020 Comprehensive Parks and Recreation Plan provide for a connected network of parks, open space, and trails, and together constitute Skagit County's Shoreline Public Access Plan, which provides more effective public access concepts than individual project requirements for public access.

**Commented [A64]:** PC recommended removing this section. Retaining it is consistent with the Guidelines (WAC 173-26-221(4)(c)). County staff recommends retention.

See Policy 6E 1.2 which refers to the development of shoreline public access plans. Note, the Comprehensive Parks and Recreation Plan was updated in 2020

- (b) Shoreline public access as required by this section should be consistent with the concepts in the Shoreline Public Access Plan.

#### 14.26.380 Vegetation Conservation

##### (1) Applicability.

- (a) [This section applies to all activities except those Forest Practices (other than conversions) covered under the Washington State Forest Practices Act described in WAC 173-26-221(5).
- (b) Vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.]
- (c) [If the standards in this section conflicts with other sections of this SMP (e.g. SMP Part V, Critical Areas), the most restrictive and protective of shoreline and critical areas functions shall apply.]

**Commented [A65]:** Ecology recommended edits for consistency with WAC 173-26-21 (5)(a)

**Commented [A66]:** Recommended revision by Ecology to not include references to code that is outside the purview of the SMA (i.e. flood damage prevention and NFIP requirements). Additional recommendation to clarify what is "most restrictive."

##### (2) Application requirements. In addition to the requirements in [SCC 14.26.710](#) Applications, an application must include a vegetation retention plan that includes all of the following:

- (a) location, size, species, and driplines of all existing healthy significant trees within the shoreline jurisdiction;
- (b) existing and proposed contours;
- (c) trees and other vegetation to be retained;
- (d) designation of a disturbance-free area beyond the tree dripline for all significant trees to be retained;
- (e) a description of protection techniques to be utilized during construction, including but not limited to five-foot-high chain-link or plastic-net fencing around tree driplines, tunneling instead of trenching, stump grinding instead of stump pulling, and routing of traffic to prevent excessive soil compaction;
- (f) removal of any noxious weeds and replacement with native plants.

##### (3) Development Standards.

- (a) Vegetation clearing must be limited to the minimum necessary to accommodate approved shoreline development, including staging areas.
- (b) Shrubs and ground cover must be replaced in all disturbed areas by a mixture of native shrubs, groundcovers and other plant material intended to provide 85% surface coverage within two years of planting.
- (c) Development or uses must be designed and located to avoid the following in descending order of priority:
  - (i) Native significant trees;
  - (ii) Non-native significant trees;
  - (iii) Native non-significant trees;
  - (iv) Other native vegetation;
  - (v) Other non-native vegetation.
- (d) Significant tree retention.
  - (i) Within critical areas or their buffers, unless otherwise allowed by SMP Part V, Critical Areas, or other sections of this SMP, significant tree retention must be 100 percent.
  - (ii) Outside critical areas or their buffers, significant trees must be retained using the preferences specified in subsection (b) above, as a guide and consistent with the following percentages, based on shoreline environment designation:

Environment Designation	Retention (%)
Natural	90
Urban Conservancy	65
Rural Conservancy	65
Shoreline Residential	25
High Intensity	25

- (iii) A significant tree designated for retention must not have the soil grade altered within its dripline or within 15 feet of its trunk, whichever is greater, unless an alternative tree retention method is approved by the County.
- (iv) A tree retention plan may provide for the retention of fewer significant trees than required in this subsection only if the additional trees to be removed are replaced at a ratio of three to one.

- (v) Replacement trees. When replacement trees are required, the following requirements apply:
  - (A) Replacement trees must replicate the vegetation appropriate to the site in species types and densities.
  - (B) Replacement trees may be placed in other locations on the property, as approved by the Administrative Official.
  - (C) Where conditions allow, native replacement trees should be placed in onsite wetlands or wetland, stream or shoreline buffers if doing so would improve function of the critical area or its buffers.
  - (D) A tree retention plan must be prepared and meet the requirements for restoration plans set forth in (f)(ii)(A), (B), and (C) of this section.
- (vi) Significant trees that are part of a grouping or that otherwise provide mutual support during strong winds must be preserved to prevent blow down of on and offsite trees with particular emphasis on trees that support adjacent wildlife habitat areas.
- (vii) The County may require site plan alterations to achieve maximum tree retention.
- (e) Tree pruning.
  - (i) Topping of trees is prohibited, unless a tree poses a documented safety risk associated with overhead utilities.
  - (ii) Selective pruning of trees is allowed, but must maintain the existing percent canopy cover. Selective pruning of trees does not include removal of understory vegetation.
  - (iii) Where a tree poses a significant safety hazard, it may be removed or converted to a wildlife snag if the hazard cannot be eliminated by pruning, crown thinning, or other technique that maintains some habitat function. If a safety hazard cannot be easily determined by the County, a written report by a certified arborist or other qualified professional is required to evaluate potential safety hazards.
- (f) Restoration.
  - (i) When required. In addition to enforcement pursuant to SCC Chapter 14.44, restoration is required whenever any of the following events occur:

Commented [A67]: Revision per PC recommendation

Commented [A68]: Per County, added for clarity

- (A) Vegetation designated to be retained pursuant to an approved retention plan is damaged or dies prior to issuance of occupancy permits or release of any performance assurance bonding;
- (B) Vegetation is removed without County authorization.
- (ii) Restoration must be done consistent with a restoration plan approved by the Administrative Official.
  - (A) The restoration plan must be prepared by a qualified professional.
  - (B) The restoration plan must address the utilization of native vegetation, compensation for temporal loss of function through the proposed design, and the restoration of specific functions adversely impacted by the unauthorized vegetation removal.
  - (C) The restoration plan must meet or exceed the development standards in this section.
  - (D) Removed trees must be replaced at a ratio of three to one, consistent with the requirements for replacement trees in the vegetation retention plan requirements.
  - (E) The Administrative Official may determine a reasonable timeline for implementation of the restoration plan.

#### 14.26.390 Water Quality, Stormwater, and Nonpoint Pollution

- (1) Shoreline use and development must incorporate measures to protect and maintain surface and groundwater quantity and quality in accordance with the control of pollution and prevention of damage to the shoreline. In addition, to the applicable standards of this SMP, shoreline uses and development may be subject to other local, state, and federal authorities outside the SMA and this SMP, including but not limited to:
  - (a) SCC Chapter 14.32, Stormwater Management
  - (b) SCC Chapter 12.05, Onsite Sewage Code
  - (c) RCW Chapter 70.118B, Large Onsite Sewage Disposal Systems, as administered by state departments of Health and Ecology
  - (d) RCW Chapter 76.09, Forest Practices, as administered by the State Department of Natural Resources

**Commented [A69]:** Recommendation by Ecology to distinguish which provisions are considered part of the SMP or not.

- (e) RCW Chapter 77.55, Construction Projects in State Waters, as administered by State Department of Fish and Wildlife
- (2) Construction materials. All development that may come in contact with surface or ground water must be constructed of materials that will not adversely affect water quality or aquatic plants or animals, such as untreated or approved treated wood, concrete, approved plastic composites, or steel. Decking or other structural materials must be used consistent with state or federal standards for contact with water to avoid discharge of pollutants from leaching, wave splash, rain, or runoff. Wood treated with creosote or pentachlorophenol is prohibited in shoreline water bodies and other waters.

## Part IV: Shoreline Uses and Modifications

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### 14.26.400 General Provisions.

- (1) **Applicability.** This section applies to all shoreline uses, shoreline modifications, and shoreline development.
- (2) **When Allowed.**
  - (a) A use or modification is allowed when:
    - (i) allowed by [SCC 14.26.405](#) Uses and Modifications Matrix or by (d); and
    - (ii) allowed by the underlying zoning.
  - (b) Where there is a conflict between the matrix and other provisions of this SMP, the other provisions control.

- (c) Existing uses may continue consistent with Part VI, Legally Established Pre-Existing Uses and Structures.
- (d) The Administrative Official may determine that a proposed use or modification that is not specifically listed in [SCC 14.26.405](#) Uses and Modifications Matrix:
  - (i) is substantially similar to a use that is prohibited in the matrix, and is therefore prohibited in shoreline jurisdiction;
  - (ii) is substantially similar to, and no more intense than, a use that is allowed in the matrix, and therefore requires shoreline review consistent with the similar use; or
  - (iii) is not addressed by (i) or (ii) and may be authorized as a conditional use provided the applicant can demonstrate consistency with the requirements of [SCC 14.26.730](#) Conditional Use Permit.

**(3) Application requirements.**

- (a) A use or modification permitted in the shoreline environment designation it is proposed within, may be allowed either outright or with a Conditional Use permit. Associated development requires a Shoreline Substantial Development Permit or, if applicable, may be authorized through an exemption from the Shoreline Substantial Development permit process.
- (b) If any part of a proposed activity, use, modification, or development within shoreline jurisdiction is not eligible for an exemption as provided for in WAC 173-27-040, then a Substantial Development Permit is required for the entire proposal within shoreline jurisdiction.
- (c) If any part of a proposed activity, use, or modification within shoreline jurisdiction requires a Conditional Use Permit, then that component of the project is subject to the Conditional Use Permit approval criteria, but the entire proposal within shoreline jurisdiction will be considered as part of the project shoreline review.
- (d) Deviations from the SMP bulk, dimensional, and performance standards (i.e. buffers, impervious surface, or tree retention) can only be authorized through a Shoreline Variance permit.
- (e) Accessory or appurtenant uses are subject to the same shoreline review process as their primary use.
- (f) When a specific use or modification extends into the Aquatic environment and an abutting upland environment without clear separation (e.g., private moorage

**Commented [A70]:** Required per Ecology for consistency with WAC 173-27.

facility, shoreline stabilization), the most restrictive permit process applies to that use or modification.

- (4) **Development standards.** A use or modification:
- (a) is subject to all applicable sections in [Part III General Regulations](#); and
  - (b) is subject to all applicable sections in [Part IV Shoreline Uses and Modifications](#).

**14.26.405 Uses and Modifications Matrix**

- (1) Table 14.26.405 indicates which shoreline activities, uses, developments, and modifications are permitted or prohibited in shoreline jurisdiction within each shoreline environment designation. Activities, uses, developments, and modifications are classified as follows:
- (a) “SD/E” indicates the proposed development requires a Shoreline Substantial Development Permit or may be authorized through an exemption from the Shoreline Substantial Development Permit.
  - (b) “CU” indicates the use requires a Shoreline Conditional Use Permit.
  - (c) “X” indicates the use is prohibited.
  - (d) “NA” indicates the use is not applicable or possible in the environment designation.
  - (e) “Upland” means the use is regulated consistent with the upland environment designation.
- (2) For shoreline regulations governing Rural Conservancy - Skagit Floodway, refer to the Rural Conservancy column. But see SCC 14.34.190, which may more severely restrict development opportunities in RC-SF.

**Commented [A71]:** Required per Ecology for clarification referencing “exemption to SDP process” pursuant to WAC 173-27-040

**Table 14.26.405-1. Shoreline Use and Modifications Matrix**

Shoreline Use	Shoreline Environment Designation					
	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity	Aquatic
<b>Agriculture (see SCC 14.26.410)</b>						
Ag activities, facilities, and accessory uses	SD/E	SD/E	SD/E	SD/E	SD/E	NA
<b>Aquaculture (see SCC 14.26.415)</b>						
General aquaculture	CU	SD/E	SD/E	SD/E	SD/E	upland

**Commented [A73]:** This column has been updated to reflect clarifications per County

**Commented [A72]:** Per Ecology recommendation to distinguish between Ag Activities on Ag lands versus new or expanded Ag

Shoreline Use	Shoreline Environment Designation					
	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity	Aquatic
Non-commercial freshwater hatcheries	CU	CU	SD/E	SD/E	SD/E	upland
Net-pens	CU	CU	CU	CU	CU	upland
Commercial geoduck aquaculture	CU	CU	CU	CU	CU	upland
<b>Boating Facilities and Related Structures and Uses (see SCC 14.26.420)</b>						
Dock, individual	X	SD/E	SD/E	SD/E	SD/E	upland
Dock, joint-use	X	SD/E	SD/E	SD/E	SD/E	upland
Dock, community	X	SD/E	SD/E	SD/E	SD/E	upland
Dock, commercial/industrial	X	CU	CU	X	CU	upland
Float plane moorage	X	CU	CU	CU	CU	upland
Launch ramp	X	CU	CU	CU	SD/E	upland
Marina	X	CU	CU	CU	CU	upland
Mooring buoy	SD/E	SD/E	SD/E	SD/E	SD/E	upland
Piling	SD/E	SD/E	SD/E	SD/E	SD/E	upland
Recreational float	X	SD/E	SD/E	SD/E	SD/E	upland
<b>Breakwaters, Groins, and Jetties (see SCC 14.26.425)</b>						
[Breakwaters, Groins, and Jetties installed for ecological restoration]	SD/E	SD/E	SD/E	SD/E	SD/E	upland]
All Breakwaters on Lakes	X	X	X	X	X	X
Fixed Breakwaters on Marine/Rivers	X	X	X	CU	CU	upland
Floating Breakwaters on Marine/Rivers	X	CU	CU	CU	CU	upland
Groins and Jetties, Lakes	X	X	X	X	X	X
Groins and Jetties, Marine/Rivers	X <sup>1</sup>	X <sup>1</sup>	X <sup>1</sup>	CU	CU	upland
<b>Commercial Development (see SCC 14.26.430)</b>						
Water-dependent uses	X	SD/E	SD/E	SD/E	SD/E	upland
Water-related uses	X	SD/E	SD/E	SD/E	SD/E	upland
Water-enjoyment uses	X	SD/E	SD/E	SD/E	SD/E	upland
Mixed-use commercial	X	SD/E	SD/E	X	SD/E	X
Mixed-use residential	X	SD/E	SD/E	SD/E	SD/E	X
Nonwater-oriented uses	X	X	X	X	SD/E	X
Institutional, water-oriented	CU	SD/E	SD/E	SD/E	SD/E	upland
Institutional, nonwater-oriented	X	CU	CU	CU	CU	X
Essential public facilities	X	CU	CU	CU	CU	X
<b>Dredging and Dredge Material Disposal (see SCC 14.26.435)</b>						
Dredging	X	SD/E	SD/E	SD/E	SD/E	upland
Dredge material disposal, in-water	NA	NA	NA	NA	NA	CU
Dredge material disposal, upland outside floodplain	X	SD/E	SD/E	SD/E	SD/E	NA
[Dredge material disposal, upland inside floodplain]	X	CU	CU	CU	CU	NA

**Commented [A74]:** Added row to allow such structures with SD/E when installed for ecological restoration. All other structures, when allowed, would only be allowed with a CUP

**Commented [A75]:** Modified per County recommendation as CMZ mapping is not complete

Shoreline Use	Shoreline Environment Designation					
	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity	Aquatic
Dredging or dredge material disposal associated with restoration	SD/E	SD/E	SD/E	SD/E	SD/E	SD/E
<b>Fill, Excavation, and Grading (see SCC 14.26.440)</b>						
Fill	X	SD/E	SD/E	SD/E	SD/E	CU
Excavation, grading	X	SD/E	SD/E	SD/E	SD/E	see dredging
<b>Flood Hazard Reduction (see SCC 14.26.350)</b>						
Dikes, levees	X	SD/E	SD/E	SD/E	SD/E	upland
<b>Forest Practices (see SCC 14.26.445)</b>						
[A1]2.3	CU	SD/E	SD/E	SD/E	SD/E	X
<b>Industrial development (see SCC 14.26.450)</b>						
Water-dependent uses	X	SD/E	SD/E	X	SD/E	upland
Water-related uses	X	CU	CU	X	SD/E	X
Nonwater-oriented uses	X	X	X	X	CU	X
<b>Instream Structures (see SCC 14.26.455)</b>						
All	CU	SD/E	SD/E	SD/E	SD/E	SD/E
<b>Mining (see SCC 14.26.460)</b>						
Mining	X	CU	CU	X	CU	[X4]
<b>Outdoor Advertising and Signs (see SCC 14.26.360)</b>						
All	SD/E	SD/E	SD/E	SD/E	SD/E	X
<b>Recreational Development (see SCC 14.26.465)</b>						
Water-oriented	CU	SD/E	SD/E	SD/E	SD/E	upland
Nonwater-oriented	X	CU	CU	SD/E	SD/E	X
<b>Residential Development (see SCC 14.26.470)</b>						
Single-family	CU	SD/E	SD/E	SD/E	SD/E	X
Multi-family	X	CU	SD/E	SD/E	SD/E	X
Land division, four or fewer lots	CU	SD/E	SD/E	SD/E	SD/E	X
Land division, five or more	CU	CU	CU	CU	SD/E	X
Residential appurtenant structures	CU	SD/E	SD/E	SD/E	SD/E	X
Overwater, Floating, and Liveaboard	NA	NA	NA	NA	NA	X
<b>Shoreline Habitat and Natural Systems Enhancement Projects (see SCC 14.26.475)</b>						
All	SD/E	SD/E	SD/E	SD/E	SD/E	upland
<b>Structural Shoreline Stabilization (see SCC 14.26.480)</b>						
New hard structural shoreline stabilization	X	CU	CU	CU	CU	upland
New soft structural shoreline stabilization	CU	CU	CU	SD/E	SD/E	upland
Replacement: hard with hard	CU	SD/E	SD/E	SD/E	SD/E	upland
Replacement: hard with soft	SD/E	SD/E	SD/E	SD/E	SD/E	upland

**Commented [A76]:** Required: for consistency with RCW 90.58.150, WAC 173-26-241(3)(e), and WAC 173-26-211(5)(a)(ii)(D).

**Commented [A77]:** Footnote added per Ecology recommendation. For consistency with Section 14.26.460(2)(c) Mining, which allows mining waterward of the OHWM in limited situations for river and streams.

Shoreline Use	Shoreline Environment Designation					
	Natural	Rural Conservancy	Urban Conservancy	Shoreline Residential	High Intensity	Aquatic
<b>Transportation Facilities (including Parking) (see SCC 14.26.485)</b>						
Airports	X	X	X	X	CU	X
Bridges or culverts	CU	SD/E	SD/E	SD/E	SD/E	upland
Landing fields	X	CU	CU	CU	CU	X
Ferry terminals	X	CU	CU	CU	CU	upland
Parking, accessory use	CU	SD/E	SD/E	SD/E	SD/E	X
Railroads	CU	SD/E	SD/E	SD/E	SD/E	upland
Roads	CU	SD/E	SD/E	SD/E	SD/E	NA
Trails <sup>5</sup>	SD/E	SD/E	SD/E	SD/E	SD/E	SD/E
<b>Utilities (see SCC 14.26.490)</b>						
Small utilities	CU	SD/E	SD/E	SD/E	SD/E	CU
Large utilities	CU	CU	CU	CU	CU	CU
Hydropower facilities, new	CU	CU	CU	CU	CU	CU
Tidal and wave energy facilities, new	CU	CU	CU	CU	CU	CU
Maintenance, existing utilities	SD/E	SD/E	SD/E	SD/E	SD/E	SD/E

Footnotes:

1. Prohibited, except groins are allowed for shoreline enhancement or protection with a Conditional Use Permit.
2. Forest Practice activities that only involve timber cutting are not development and do not require a shoreline substantial development permit.
3. Selective commercial timber cutting along shorelands associated with shoreline of statewide significance shall be limited to no more than thirty (30) percent of the merchantable trees in any ten (10) year period of time. Exceptions to this thirty (30) percent standard can only be authorized through a conditional use permit.
4. Mining waterward of the OHWM may be allowed in limited circumstances in river and streams per [SCC 14.26.460\(2\)\(c\)](#).
5. Minor fill, excavation, and grading associated with trail development is considered part of the trail development.

**14.26.410 Agriculture**

- (1) **Applicability.** This SMP does not require the modification of or limit ongoing agricultural activities occurring on existing agricultural lands. New agricultural activities on land not meeting the definition of agricultural lands and development on agricultural lands not meeting the definition of agricultural activities are considered new agricultural uses and are subject to the agriculture use policies and regulations of this SMP. The conversion of agricultural lands to other uses is also subject to this SMP.

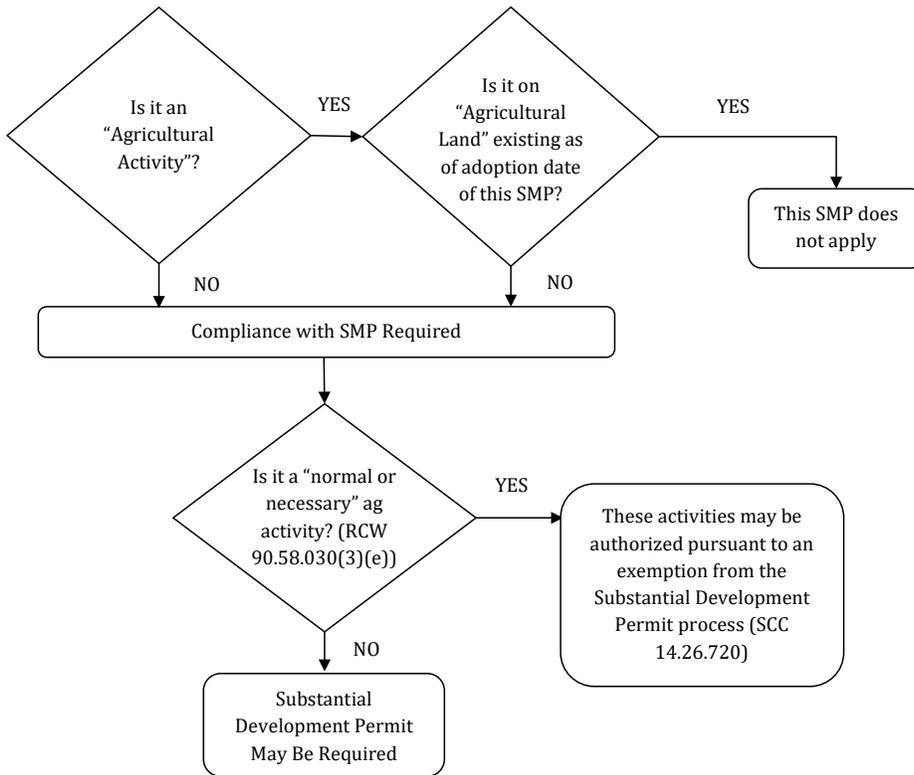
**Commented [A78]:** Footnote clarifications required per Ecology. Separated into two footnotes (2, 3).

**Commented [A79]:** Per Ecology recommendation, added for consistency with 14.26.460

**Commented [A80]:** Required per Ecology. "Agricultural ACTIVITIES are a subset within "AGRICULTURAL" uses.

All changes to 14.26.410 are based on Ecology's recommendations and County modified language.

Flow chart has been modified accordingly but not shown as a tracked change.



- (a) Exception for Existing Agriculture. The SMA includes definitions to clarify the application of guidelines and this SMP for agriculture. More specifically, for agricultural activities, agricultural products, agricultural equipment and agricultural land, as defined in RCW 90.58.065 and Part VIII of this SMP.
  - (i) For activities that qualify as “agricultural activities” on “agricultural land,” as defined in RCW 90.58.065 and Part VIII of this SMP, and that existed as of the date of adoption of the SMP, the provisions of this SMP, including subsections (b)-(c) below, do not apply and no shoreline permit is required. These activities include, but are not limited to:
    - (A) Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops;
    - (B) Allowing land used for agriculture to lie fallow or dormant for certain reasons;

- (C) Maintaining, repairing, and replacing agricultural facilities includes modernization and replacement of existing facilities;
  - (D) Maintaining, repairing and replacing agricultural equipment.
- (b) Development and Uses Subject to this Section. Unless the activity qualifies for the exception in (1)(a)(i) above, all other agricultural uses and developments are subject to these substantive SMP provisions.
- (i) The agriculture policies and development standards of this SMP along with the permit requirements identified in Table 14.26.405-1 Shoreline Uses and Modifications Matrix are applicable to the following:
    - (A) new agricultural activities on land not meeting the definition of agricultural land;
    - (B) expansion of agricultural activities onto non-agricultural lands or the use of non-agricultural lands for agricultural activities;
    - (C) conversion of agricultural lands to other uses;
    - (D) replacement of agricultural facilities closer to the shoreline than the original facility or the construction of new agricultural facilities;
    - (E) other development on agricultural land that does not meet the definition of agricultural activities. ]
  - (ii) All agricultural development and uses not addressed in provision (1)(a)(i) above must comply with the provisions of Part V, Critical Areas. ]
- (c) Exemptions. If an activity is subject to the agriculture use policies and development standards of this SMP and does not qualify for the exception described in paragraph (1)(a) above, it may still qualify for an exemption from the requirement to obtain a shoreline Substantial Development Permit under [RCW 90.58.030\(3\)\(e\)](#) and [WAC 173-27-040\(2\)](#). Pursuant to WAC 173-27-040(1), such exemptions are to be construed narrowly, and an exemption from the substantial development permit process is not an exemption from compliance with the SMP. For example, the following construction and practices normal or necessary for farming, irrigation, and ranching activities may be authorized through a shoreline substantial development permit exemption:
- (i) agricultural service roads and utilities on shorelands;
  - (ii) construction of a barn or similar agricultural structure;

**Commented [A81]:** Moved to (1)(a)(i)(C) above

**Commented [A82]:** Moved to (1)(b)(i)(D) above

**Commented [A83]:** Removes reference to ongoing Ag, formerly in CAO, as existing Ag is covered above in subsection (1).

- (iii) construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels;
  - (iv) operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;
  - (v) operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
- (2) **Development Standards.** In addition to any applicable provisions of Part V, Critical Areas, the following standards apply:
- (a) **No Net Loss of Ecological Function.** Agricultural uses and development in support of agricultural uses must be located and designed to ensure no net loss of ecological functions and no significant adverse impact on other shoreline resources and values.
  - (b) **Erosion control.** Agricultural practices, excluding riprap and levees/dikes, must prevent and control erosion of soils and bank materials within shoreline areas. Control measures must conform to guidelines and standards of the US Department of Agriculture Natural Resources Conservation Service.
  - (c) **Pesticides and herbicides.** Pesticides and herbicides must be handled, applied, and disposed of in accordance with provisions of the Washington Pesticide Application Act (RCW 17.21) and the Washington Pesticide Control Act (RCW Chapter 15.58).
  - (d) **Feedlots, manure storage.** Feedlot operations and animal waste retention and storage areas must not be located within shoreline areas unless direct manure runoff is prevented.
  - (e) **The bulk disposal of inorganic farm wastes, chemicals, fertilizers, and associated containers and equipment within shorelines areas is prohibited.**

#### **14.26.415 Aquaculture**

- (1) **Applicability.**
- (a) This section applies to “aquaculture,” meaning 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.

(b) Upland finfish rearing facilities constitute “agriculture” and are not regulated by this section.

(2) **When shoreline review is required.**

(a) New aquaculture. Shoreline review is required for the initial siting, construction, planting, or stocking of a facility or farm.

(b) Existing aquaculture.

(i) Determination of existing aquaculture area.

(A) Determination of the existing aquaculture area is made by the Administrative Official.

(B) The Administrative Official may determine that an area that was previously cultivated has been abandoned and no longer constitutes “existing aquaculture.” In its determination, the Administrative Official must consult with the aquaculture operator and may consider such factors as whether the property was acquired under the Bush or Callow Acts of 1895, the use of crop rotation and fallowing, state or federal permit requirements, pest infestations, seed or juvenile availability, market fluctuations, and pollution of the farm site from other uses or developments.

(ii) [Ongoing maintenance, harvest, replanting, changing culture techniques or species does not require shoreline review unless cultivating a new species or using a new culture technique that has significant adverse environmental impacts (if not allowed by an existing shoreline permit).]

(iii) Expansion of existing aquaculture.

(A) [For aquaculture without an existing shoreline permit, a shoreline permit is required for any expansion.]

(B) For aquaculture permitted under this SMP, a shoreline permit is required when the activity expands beyond the permitted area.

(C) For aquaculture permitted under a previous version of this SMP, a shoreline permit is required when the activity expands more than 10%, or one acre, whichever is less, beyond the area cultivated on the effective date of this SMP, or when the expansion creates unmitigated impacts to native plant and animal populations.

**Commented [A84]:** PC recommended the following language: “Ongoing maintenance, harvest, replanting, changing culture techniques or species does not require shoreline review unless cultivating a new species in the waterbody or using a new culture technique, and that new species or culture technique has significant adverse environmental impacts (if not allowed by an existing shoreline permit).”

County staff would prefer to keep the original proposed language to reduce confusion

**Commented [A85]:** PC recommended the following: Revise proposed SCC 14.26.415(2)(b)(iii) to require “shoreline review,” not necessarily a “shoreline permit.”

County staff would prefer to keep the original proposed language and discuss with the PC, if necessary. This situation depends on what is considered expansion. The PC recommended language would allow a lot of leeway and discretion on staff for operations that have not been permitted to date.

- (3) **Shoreline Review.** A letter of exemption is required for aquaculture activities that require shoreline review and that do not constitute substantial development or otherwise require a Conditional Use Permit.

Commented [A86]: Per PC recommendation.

Commented [A87R86]: Language modified per Ecology requirement

(4) **General requirements.**

- (a) Aquaculture operations must be designed and located to:
- (i) prevent the spread of disease to native aquatic life;
  - (ii) prevent the establishment of new nonnative species which cause significant ecological impacts;
  - (iii) minimize impact to the aesthetic qualities of the shoreline, with consideration given to height, color, uniformity, and arrangement;
  - (iv) avoid significant conflict with navigation and other water-dependent uses.
- (b) Upland structures accessory to an aquaculture use that do not require a waterside location or have a functional relationship to the water must be located landward of the shoreline buffers required by this SMP.
- (c) Impacts to ecological functions must be mitigated according to the mitigation sequence described in [SCC 14.26.305\(4\)](#).
- (d) An assessment and mitigation plan in accordance with [SCC 14.26.305\(5\)](#) is required. The standards found in [SCC 14.26.550](#) for critical saltwater habitats must also be addressed in the assessment.
- (e) Aquaculture operations must be designed, located, and managed to minimize impacts to native eelgrass and macroalgae.
- (i) Aquaculture operations are not required to avoid impacts on eelgrass or macroalgae that colonizes an aquaculture operation.
  - (ii) Aquaculture operations are not required to avoid impacts on non-native eelgrass.
- (f) The harvesting of aquaculture products is subject to all applicable state and federal health regulations, as determined by applicable state and federal agencies.
- (g) Chemicals used in aquaculture operations must be used in accordance with state and federal regulations, as determined by applicable state and federal agencies.

- (h) Predator control measures used in aquaculture may not include those intended to kill or injure ~~wildlife~~. **Invasive species control and predator control methods must comply with federal and state regulations, as determined by applicable federal and state agencies.**
  - (i) Project applicants must obtain all required state and federal approvals to ensure compliance with established water quality standards and regulations relating to the introduction or transfer of aquatic organisms into or within the County's salt or fresh waters.
  - (j) All aquaculture proposals requiring a shoreline permit must be accompanied, when applicable, by a Joint Aquatic Resources Permit Application (JARPA) and SEPA checklist.
  - (k) The County must, to the greatest extent possible, minimize redundancy in the permit process and rely on documentation submitted by the project applicant to federal or state agencies.
- (5) Floating, hanging, and suspended aquaculture.
- (a) Floating, hanging, and suspended aquaculture must not be located in or interfere with existing navigation lanes or channels. Such structures and facilities in navigable waters must be marked in accordance with U.S. Coast Guard requirements.
  - (b) Floating, hanging, or suspended aquaculture must not have permanent structures that exceed eight feet in height above the water's surface. The Administrative Official may approve hoists and similar equipment that permanently exceeds eight feet in height when there is a clear demonstration of need. The eight-foot height limit does not apply to support vessels, barges, or platforms not permanently moored at the facility.
  - (c) Floating, hanging, or suspended aquaculture that require attaching structures to the bed or bottomlands must use anchors that minimize disturbance to substrate, e.g. helical anchors.
- (6) Shorelines of Statewide Significance.
- (a) Applications for new aquaculture within Shorelines of Statewide Significance must address the policies of RCW 90.58.020.
  - (b) Mechanical disturbance of bottom materials for shellfish harvest is prohibited on Shorelines of Statewide Significance, except the traditional mechanical (drag)

**Commented [A88]:** PC recommendation: Revise to allow control of invasive species.

dredge shellfish harvest method may be allowed as a conditional use. All hydraulic harvest methods require a Conditional Use Permit.

- (7) Net pens.
- (a) In addition to the General requirements, a net pen application must include:
    - (i) Site characterization survey:
      - (A) Bathymetric survey (bottom features)
      - (B) Hydrographic survey (current velocity and direction, drogue tracking, vertical profiles of temperature, salinity and dissolved oxygen)
      - (C) Underwater photographic survey (presence of critical habitat)
    - (ii) Baseline benthic survey conducted once the net pens are in place, but before they are stocked with fish:
      - (A) Sediment chemistry
      - (B) Infauna sampling
  - (b) A net pen application must demonstrate:
    - (i) that the native fish and wildlife resources will not be significantly impacted; and
    - (ii) that state parks, wildlife refuges or reserves, or habitats of local importance found in Part V, Critical Areas, will not be significantly impacted.
  - (c) A net pen facility must be located at least 1,500 feet from the OHWM, except a lesser distance may be authorized through a Shoreline Variance if a visual impact analysis demonstrates a lesser distance will not result in a significant adverse impact to aesthetic qualities of the shoreline.
- (8) Geoduck aquaculture.
- (a) A Conditional Use Permit is required for new commercial geoduck aquaculture.
  - (b) Geoduck aquaculture should be located where sediments, land and water access, and topography support geoduck aquaculture without significant clearing or grading.

- (c) A single application for a Conditional Use Permit may be submitted for multiple geoduck aquaculture sites within an inlet, bay, or other defined feature, provided the sites are all under control of the same applicant and within Skagit County.
- (d) An application for geoduck aquaculture must include:
  - (i) a narrative description and timeline for all anticipated geoduck planting and harvesting activities;
  - (ii) a baseline ecological survey of the proposed site, including surveys of existing shellfish resources, potential finfish habitat, substrate composition, and aquatic vegetation;
  - (iii) management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations;
  - (iv) whether the proposal involves placing nursery tanks, holding pools or other impervious materials directly on the intertidal sediments;
  - (v) whether the proposal involves the use of motorized vehicles below the OHWM;
  - (vi) specific periods when limits on activities are necessary to protect priority habitats and associated species ~~and avoid conflicts with neighboring uses~~;
  - (vii) any required alterations to the natural conditions of the site, including significant removal of vegetation or rocks and regrading of the natural slope and sediments;
  - (viii) whether the proposal involves marking property corners such that they are visible at low tide during planting and harvesting;
  - (ix) the proposed use of predator exclusion devices and timing of planned removal of such devices;
  - (x) planned methods of minimizing turbid runoff during harvest;
  - (xi) the number and duration of barges or vessels that will be moored or beached at the site;
  - (xii) whether the proposal will affect navigation;
  - (xiii) how the prevention of marine debris accumulation will be addressed; and

**Commented [A89]:** PC recommends deletion of this phrase.  
This has not been deleted so as to maintain consistency with state guidelines.

- (xiv) whether the site contains existing public access to publicly-owned lands.
- (e) A Conditional Use Permit for geoduck aquaculture:
  - (i) may include conditions to avoid or limit impacts from geoduck aquaculture siting and operations;
  - (ii) must identify that the permit entails a right to harvest planted geoduck;
  - (iii) must include mitigation measures as necessary to ensure no net loss of ecological functions;
  - (iv) must include reasonable monitoring and reporting requirements to verify the permitted activity is in compliance with permit conditions. The County may rely on documentation submitted by an aquaculture operator to federal or state agencies to satisfy any monitoring or reporting requirement.
- (f) Notice of an application for geoduck aquaculture must be provided to all property owners within 300 feet of the proposed project boundary and to tribes with usual and accustomed fishing rights to the area.

#### 14.26.420 Boating Facilities and Related Structures and Uses

##### (1) Applicability.

- (a) [This section applies to:
  - (i) “Dock,” meaning structures generally built from the shore and extending over the water to provide moorage for watercraft or float planes or for water-oriented recreation use. Docks may either be anchored to and floating or permanently fixed to pilings. Docks include any of the following types:
    - (A) “Individual dock,” meaning a dock that serves a single lot or single-family residence.
    - (B) “Joint-use dock,” meaning a dock that serves two, three, or four residential units, whether on adjacent lots as single-family residences or as multi-family units, or by a homeowner’s association.
    - (C) “Community dock,” meaning a dock that serves five or more residential units or a public park or recreation area.
    - (D) “Commercial/industrial dock,” meaning a dock associated with a commercial or industrial operation.

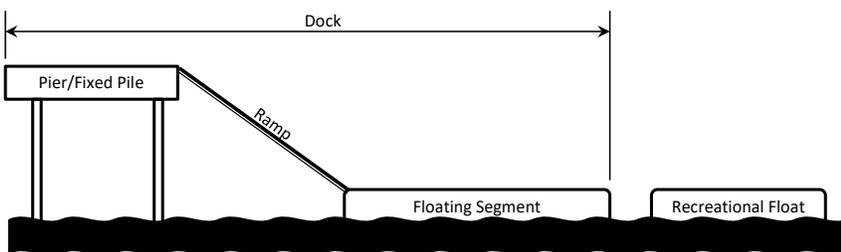
**Commented [A90]:** PC recommendation: Add definitions for pier, ramp, and float from WAC 220-660-140(1) to Part VIII and this subsection.

Moving the diagram to this Applicability section provides clarity. These specific descriptions have not been added to the definitions section.

- (ii) "Launch ramp," meaning a slab, set of pads, planks, or graded slope used for launching boats with trailers or by hand.
  - (iii) "Marina," meaning a public or private facility that provides vessel storage (wet or dry), launch areas, supplies, and services for recreational or commercial vessels. Moorage facilities for recreational subdivisions that provide no other services besides moorage are considered community docks.
  - (iv) "Mooring buoy," meaning an accessory used for the offshore moorage of pleasure craft.
  - (v) "Piling," meaning a heavy post installed to support a structure or moor a vessel.
  - (vi) "Recreational float," meaning a platform structure, not part of a dock, that is anchored for water recreational purposes such as swimming or water skiing, including jump ramps. A recreational float may serve as a temporary moorage (not overnight) and is not considered a dock or mooring buoy.
- (b) This section does not apply to:
- (i) long-term commercial boat storage located landward of the OHWM, which is regulated under [SCC 14.26.430](#) Commercial Development;
  - (ii) net pens, which are regulated under [SCC 14.26.415](#) Aquaculture; or
  - (iii) overwater homes and floating homes, including liveaboards, which are prohibited.

Commented [A91]: Per County. Revised per WAC 220-660-160

**Figure 14.26.420-1. Illustration of dock components**



Commented [A92]: Per PC recommendation. Moved into applicability subsection from subsection (4)(b)

- (2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in SCC 14.26.405 Uses and Modifications Matrix.

- (3) **Application Requirements.** In addition to the requirements in [SCC 14.26.710](#) Applications, an application must include the following:
- (a) For all new or expanded uses, including all residential docks, applicants must provide the following:
    - (i) an assessment of potential impacts to existing ecological processes, including but not limited to sediment transport, hydrologic patterns, and vegetation disturbance;
    - (ii) a slope bathymetry map (when the Administrative Official deems beneficial for the review of the project proposal);
    - (iii) an assessment of existing water-dependent uses in the vicinity and documentation of potential impacts to those uses and proposed mitigation measures.
  - (b) For all new or expanded marinas, launch ramps, and commercial or industrial docks, other than residential docks, applicants must provide an assessment of need and demand, including, but not limited to, the following:
    - (i) existing approved similar facilities, or pending applications, within the service range of the proposed new facility and their current levels of use;
    - (ii) the expected service population and boat ownership characteristics of the population, if that information supports justification for specific design elements related to facility length or width or necessary water depth.
- (4) **Development Standards.**
- (a) Generally, Structures and uses must:
    - (i) minimize the area of water covered;
    - (ii) minimize hazards and obstructions to navigation;
    - (iii) minimize obstructions to the use of neighboring docks or recreational floats;
    - (iv) minimize the need for new or maintenance dredging;
    - (v) minimize impacts on public swimming beaches, valuable public fishing areas, or aquaculture facilities;
    - (vi) avoid blocking or obstructing lawfully existing or planned public shoreline access;

- (vii) avoid the need for new shoreline stabilization, or where stabilization is demonstrated as necessary by a study prepared consistent with [SCC 14.26.480](#) Structural Shoreline Stabilization, and minimize to only that necessary to adequately protect facilities, users, and watercraft from floods or destructive storms;
  - (viii) design the facility so that any moored boats must be located in water deep enough to prevent prop scour, unless the applicant can demonstrate that prop scour will not adversely impact aquatic vegetation or increase suspended sediment loads;
  - (ix) on lakes with anadromous fish, a floating structure's landward edge must be at least 7 feet above the lake bottom when measured at ordinary low water;
  - (x) use open frameworks for any safety railings (which do not count toward the height limit) that do not unreasonably interfere with shoreline views;
  - (xi) mark structures with reflectors or other devices to prevent hazardous conditions for other water surface users;
  - (xii) prevent grounding of floating structures or objects (using float stoppers as needed);
  - (xiii) use a generally non-reflective exterior finish when necessary to reduce glare;
  - (xiv) avoid use of any new skirting;
  - (xv) avoid use of any overhead wiring or plumbing;
  - (xvi) provide and maintain garbage and recycling receptacles at locations convenient to users;
  - (xvii) provide utilities (e.g. water, electricity, sewer) for the use concurrent with the development unless situated where they are already available.
- (b) Docks.
- (i) Docks are allowed only for water-dependent uses or public access. A dock associated with a single-family residence is a water-dependent use provided that it is designed and intended as a facility for access to watercraft and otherwise complies with the provisions of this section.
  - (ii) Standards for all docks.
    - (A) Structure type.

- (I) On lakes and marine waters, only docks that are fixed-piling and floating, or some combination of the two, are allowed.
- (II) On rivers, only floating docks are allowed.
- (B) Minimum height.
  - (I) The bottom of any piers or the landward edge of any ramp must be the maximum practical height from the ground, but not less than 1.5 ft above the OHWM.
  - (II) The freeboard height on all floating segments must be at least 10 inches.
- (iii) Preference for joint use.
  - (A) Only one dock is allowed per platted or subdivided shoreline lot or unplatted shoreline tract owned for residential purposes.
  - (B) For all new residential development of two or more waterfront dwelling units or subdivisions or other divisions of land, only joint-use or community docks are allowed.
  - (C) For existing lots, individual docks are only allowed if the applicant can demonstrate that all other reasonable community or joint-use options have been investigated and found infeasible.
  - (D) For commercial/industrial docks, joint use is preferred.
- (iv) Additional standards for community docks associated with subdivisions.
  - (A) A site for shared moorage at a community dock must be owned in undivided interest by property owners or managed by a homeowner's association as a common easement within the residential community that is served by the dock.
  - (B) A community dock must be designed to accommodate no more than **one boat** per residential unit that shares a legal interest.
  - (C) One additional boat moorage location for guests may be included in the design for every ten residential units served.
- (v) Additional standards for commercial/industrial docks.

**Commented [A93]:** Revised for consistency per County recommendation

(A) The design, size, and construction of a commercial/industrial dock must be based on the needs analysis submitted per paragraph (3)(b). This provision allows the flexibility necessary to provide for existing and future water-dependent uses.

(vi) Additional standards for all docks.

**Table 14.26.420-1. Standards for docks.**

Element/ Sub-Element	Water Type		
	Marine Waters	Lakes	Rivers
<b>Max Height from Surface of Water</b>			
Individual dock		3 ft	3 ft
Joint-use dock		3 ft	3 ft
Commercial/Industrial Docks	as demonstrated by needs analysis		
<b>Max Width for Individual and Joint-Use Docks</b>			
Pier/Fixed-Piling	6 ft	4 ft for single user; 6 ft for joint use	NA
Ramp	4 ft	4 ft	4 ft
Floating section	8 ft	8 ft	8 ft
<b>Max Width for Community Docks</b>			
All segments	8 ft		
<b>Max Width for Commercial/Industrial Docks</b>			
All segments	as demonstrated by needs analysis		
<b>Max Length as measured from OHWM</b>			
Individual docks	50 ft, except if there are existing docks within 300 ft of side property lines, maximum is average length of existing docks		
Joint-use docks	50 ft, except if there are existing docks within 300 ft of side property lines, maximum is average length of existing docks + 15 ft		
Community docks and docks associated with marinas	minimum capable of accommodating the intended use, up to 250 ft, or up to 300 ft only if necessary to reach adequate moorage depth; in no case may the length exceed one-third of the width of the water body or interfere with navigation or other public uses of the water		
Commercial/Industrial docks	as demonstrated by needs analysis		
<b>Decking</b>			
Pier/Fixed-piling	Grating not required if ≤ 4 ft wide; otherwise minimum 30% functional grating	Minimum 40% functional grating	Grating not required if ≤ 4 ft wide; otherwise minimum 40% functional grating
Ramps	Fully grated		

**Commented [A94]:** PC and County staff initially recommended replacing this table, and related dimensional standards in the narrative, with a requirement for all saltwater docks to comply with WAC 220-660-380 or the conditions of HPA, and all freshwater docks to comply with WAC 220-660-140 or the conditions of HPA. Move numeric limits on number of boat lifts and canopies into the development standards section.

However, County staff have reassessed and now believe it best to keep the table. Tables like these are extremely useful for both applicants and implementing County staff. Redundancy with HPA requirements is a benefit in this case. Most of the width standards are in line with the WAC. The WAC does not address length. Therefore, it does not address total square footage.

Table retained.

**Commented [A95]:** Recommended by Ecology and WDFW to use consistent width requirements for docks

Element/ Sub-Element	Water Type		
	Marine Waters	Lakes ]	Rivers
Floating section, individual dock	Minimum 30% functional grating if ≤ 6 ft wide; Minimum 50% functional grating if > 6 ft wide		
Floating section, joint-use dock	Minimum 50% functional grating		
Floating section, community dock	Minimum 50% functional grating		
<b>Other structures</b>			
Boat/watercraft lifts	Not permitted	Maximum one free-standing boatlift and two personal watercraft lifts per dwelling unit	Not permitted
Watercraft lift canopies	Not permitted	Permitted provided they are constructed of light permeable fabric	Not permitted

**Commented [A95]:** Recommended by Ecology and WDFW to use consistent width requirements for docks

(c) Launch Ramps

- (i) A launch ramp is allowed only if it provides access to waters that are not adequately served by existing access facilities, or if use of existing facilities is demonstrated to exceed the designed capacity by the needs analysis required by paragraph (3)(b).
- (ii) A launch ramp must be located:
  - (A) to minimize the obstruction of currents, alteration of sediment transport, and the accumulation of drift logs and debris;
  - (B) where there is adequate water mixing and flushing;
  - (C) where they will not adversely affect flood channel capacity or otherwise create a flood hazard; and
  - (D) where water depths are adequate to eliminate or minimize the need for dredging or filling.

(d) **Marinas**

- (i) Marinas must be located and designed to minimize adverse impacts on natural shoreline processes, including erosion, sediment transport, and/or beach accretion.
- (ii) Marinas must be sited, designed, and constructed to minimize conflicts with other shoreline uses.

**Commented [A96]:** Per County. Regulations updated to reflect "boating facilities" regulations at WAC 173-26-241(3)(c), e.g. minimize aesthetic impacts, site suitability, navigability, extended mooring, etc.

- (iii) Marinas must occupy the minimum amount of water surface necessary, and must maximize the use of dry land boat storage.
  - (iv) The Administrative Official may approve up to 50 feet of additional dock length without a Shoreline Variance if the additional length is needed to reach adequate moorage depth, the total length does not exceed one-third of the width of the water body, and the extension would not interfere with navigation or other public uses of the water.
  - (v) Marinas must provide physical or visual public access for as many water-oriented recreational uses as possible, commensurate with the scale of the proposal.
  - (vi) Marinas must provide:
    - (A) restrooms available twenty-four hours a day for use by any patron of the marina facility;
    - (B) sewage disposal facilities (pump out, holding, or treatment facilities);
    - (C) trash and recycling receptacles.
  - (vii) Marinas must provide spill kits, fail-safe facilities, and procedures for receiving, storing, dispensing, and disposing of oil or hazardous products, as well as a spill response plan for oil and other products.
  - (viii) Marina operators must post all regulations pertaining to handling, disposal, and reporting of waste, sewage, fuel, oil or toxic materials where all users may easily read them. Rules for spill prevention and response, including reporting requirements, must be posted on site. Discharge of sewage, solid waste, fuels and oil, unused bait, and fish or shellfish cleaning wastes into marine water is prohibited.
  - (ix) All pipes, plumbing, wires, and cables at a marina must be placed at or below ground and dock levels.
  - (x) Floating on-water residences, including liveaboards, and floating homes are prohibited.
- (e) Moorage.
- (i) New covered moorage is prohibited, except when necessary for operation of a water-dependent use at commercial, industrial, or transportation-related facilities.

**Commented [A97]:** Per Ecology recommendation, moved liveaboard reference from the Residential section to Boating Facilities since they are applicable to marina use.

- (ii) Extended mooring on waters of the state is prohibited, except as allowed by applicable state regulations and where a lease or permission is obtained from the State and impacts to navigation and public access are mitigated.
- (iii) Temporary moorages are allowed for vessels used in the construction of boating facilities provided that:
  - (A) Upon termination of the project, the aquatic habitat in the affected area is returned to its pre-construction condition within one year;
  - (B) Construction vessels may not ground or otherwise disturb substrates; and
  - (C) Temporary moorage is located to minimize shading of aquatic vegetation.
- (f) Mooring buoys.
  - (i) A private mooring buoy may secure no more than two vessels.
  - (ii) Location.
    - (A) Mooring buoys must be located more than 50 feet but less than 300 feet (or one-third of the width of the water body, whichever is less) from the OHWM.
    - (B) The location of existing buoys, docks, and other structures should be considered when locating mooring buoys.
    - (C) Private mooring buoys may not be placed in a location that would interfere with access to private or public property.
    - (D) In addition to other location requirements, in order to avoid impacts to critical habitats, components of the mooring buoy (anchor, buoy, or moored vessel) may not be located within:
      - (I) 25 feet of vegetated shallows (except where such vegetation is limited to state-designated noxious weeds);
      - (II) 300 feet of spawning habitat for ESA-listed fish species; or
      - (III) 25 feet of spawning habitat for other fish species.
- (g) Pilings

- (i) Standards for all pilings.
  - (A) Pilings must be structurally sound and cured prior to placement in or exposure to the water.
  - (B) Pilings must not be treated with pentachlorophenol, creosote, copper naphthalene, chromate copper arsenate, or comparably toxic compounds. Pilings should be constructed of steel, concrete, plastic, untreated wood, or newer technologies that minimize impact on the aquatic environment.
  - (C) Pilings must be the smallest diameter necessary.
- (ii) Mooring pilings are preferred over additional decked overwater structures that serve the same purpose.
- (iii) Additional standards for mooring pilings as an accessory use to a dock:
  - (A) Pilings may not be located farther than 20 feet from the side of a dock.
  - (B) Pilings may not be placed farther waterward than the end of the dock.
  - (C) Piling height must be between 2 and 6 feet above the OHWM.
- (iv) Additional standards for pier-support or float-anchoring pilings:
  - (A) Pilings in freshwater must be spaced at least 18 feet apart on the same side of any component of a dock, unless the component is shorter than 18 feet or a need for reduced piling spacing is documented by a professional engineer.
  - (B) Pilings in marine water must be spaced at least 20 feet apart on the same side of any component of a dock, unless the component is shorter than 20 feet or a need for reduced piling spacing is documented by a professional engineer.
- (h) Recreational Floats
  - (i) Except for floats that are part of a pier or dock, floats used primarily for moorage are prohibited.
  - (ii) Dimensional standards.
    - (A) Private recreational floats serving four or fewer dwelling units must be no longer or wider than 8 feet.

- (B) All other recreational floats should be the minimum size necessary to support the intended use.
- (iii) Preference for joint use.
  - (A) Only one recreational float is allowed for each waterfront parcel or adjoining waterfront parcels under single ownership.
  - (B) Individual recreational floats are only allowed if the applicant can demonstrate that all other reasonable community or joint-use options have been investigated and found infeasible.
- (5) Mitigation
  - (a) New or expanded uses should follow mitigation sequencing consistent with SMP Part V, Critical Areas.
  - (b) Mitigation proposals must provide mitigation at a minimum 1:1 ratio, by area, of new overwater cover to mitigation action using one or more of the mitigation measures listed under (c) below. The ratio should be increased if the measure will take more than one year to provide equivalent function or if the measure does not have a high success rate. Applicants should consult with other permit agencies, such as Washington Department of Fish and Wildlife or U.S. Army Corps of Engineers, for additional specific mitigation requirements.
  - (c) For new development and expansion of existing footprints, appropriate mitigation may include one or more of the following measures:
    - (i) Removal of any additional legal existing overwater or in-water structures that are not the subject of the application or are not otherwise required to be removed.
    - (ii) Replacement of areas of existing solid overwater cover with grated material or use of grating on those altered portions of docks if they are not otherwise required to be grated.
    - (iii) Planting of native vegetation along the shoreline immediately landward of the OHWM consisting of a density and composition of trees and shrubs typically found in undisturbed areas adjacent to the subject water body. [This measure may be used only when in-kind mitigation measures have been exhausted or proven infeasible.]
    - (iv) Removal or ecological improvement of hardened shoreline, including existing launch ramps or structural shoreline stabilization. Improvements may consist

Commented [A98]: Per PC recommendation.

of softening the face and toe of the stabilization with soil, gravel, and cobbles and incorporating vegetation or large woody debris.

- (v) Removal of man-made debris waterward of the OHWM, such as car bodies, oil drums, concrete or asphalt debris, remnant docks, or other material detrimental to ecological functions and ecosystem-wide processes.
  - (vi) Placement of large woody debris if consistent with local, state and federal regulations.
  - (vii) Participation in an approved mitigation program.
- (d) In-kind measures are preferred over out-of-kind measures when consistent with the objective of compensating for adverse impacts to ecological function.

#### 14.26.425 Breakwaters, Groins, and Jetties

- (1) **Applicability.** This section applies to:

- (a) “Breakwaters,” meaning offshore structures generally built parallel to shore that may or may not be connected to land. Their primary purpose is to protect harbors, moorages and navigation activity from wave and wind action by creating stillwater areas along shore. A secondary purpose is to protect shorelines from wave caused erosion. Breakwaters may be fixed, i.e., made of quarry rock, floating, or submerged.
- (b) “Groins,” meaning wall-like structures built seaward from the shore into the intertidal zone. Their purpose generally is to build or preserve an accretion shoreform by trapping littoral sand drift on the updrift side. Groins are usually narrow in width, vary in length, and may be built in a series along a shore; they may be permeable, impermeable, high or low, and fixed or adjustable according to drift conditions.
- (c) “Jetties,” meaning structures generally built perpendicular to the shore extending through or past the intertidal zone or foreshore. They are built singly or in pairs at harbor entrances or river mouths mainly to prevent the shoaling or accretion of littoral sand drift. Jetties also protect channels and inlets from storm waves and crosscurrents.

- (2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:

- (a) Breakwaters, groins, and jetties are allowed only for water-dependent uses, public access, shoreline stabilization, restoration, or other specific public purpose.
- (b) Breakwaters, groins, and jetties are prohibited in the following areas:

- (i) All lakes.
  - (ii) Shorelines where valuable geohydraulic or biological processes are sensitive to alteration or development such as feeder bluffs, marshes, wetlands, and accretion shoreforms such as spits, hooks, bars, or barrier beaches.
  - (iii) Areas where the proposed structure would result in a net adverse impact upon adjacent and nearby properties and shorelines.
  - (c) Existing jetties or groins may be repaired or replaced only if:
    - (i) The footprint is minimized to the greatest extent possible; and
    - (ii) A qualified professional with experience evaluating projects in marine or riverine areas determines that removing the structure will cause more damage than letting it remain, or, if it is determined that significant impacts will occur to life or property if the groin is removed.
- (3) **Application Requirements.** In addition to the requirements in [SCC 14.26.710](#) Applications, an application must include the following:
- (a) Purpose of structure(s).
  - (b) Designs prepared by a qualified professional with expertise in such design.
  - (c) Construction material.
  - (d) Method of construction.
  - (e) Location of OHWM, normal (average), low, and high water elevations.
  - (f) Direction of net long shore drift (when appropriate).
  - (g) Soils and geology.
  - (h) Beach profile.
  - (i) Direction of net long shore drift (when appropriate).
  - (j) Seasonal wind and wave data.
  - (k) Artificial beach feeding and enhancement proposals must demonstrate that jetties or groins are necessary.
  - (l) Impact Assessment on Surrounding Properties. Proposals for new structures must include an analysis to determine how the project may affect adjacent properties

updrift/upstream and downdrift/downstream of the site. The assessment must be prepared by a qualified professional and provide site-specific and scientifically rigorous information to fully document the need for the jetty or groin.

(4) **Development Standards.**

- (a) Breakwaters must be designed and constructed to protect critical areas and ecological functions.
- (b) Breakwaters must minimize alterations to shoreline sand and gravel transport unless such impediment is found to benefit ecological functions. The effect of proposed breakwaters on sand and gravel movement must be evaluated during permit review.
- (c) Breakwaters must be designed and constructed in a manner that minimizes significant adverse impacts on water circulation and aquatic life. The design must also minimize impediments to navigation and to visual access to the shoreline.
- (d) Floating breakwaters are preferred over solid breakwaters where they can withstand anticipated wave action.

**14.26.430 Commercial Development**

(1) **Applicability.** This section applies to:

- (a) “Commercial development,” meaning those activities which are involved in wholesale, retail, service, and business trade. Included are hotels, motels, grocery markets, shopping centers, restaurants, shops, private or public rental campgrounds or cabins, and indoor recreation facilities. Not included are private camping grounds, residential or recreation subdivisions, marinas, or ports and industry.
- (b) “Institutional development,” meaning public or private facilities including, but not limited to, police and fire stations, libraries, activity centers, schools, educational and religious training centers, water-oriented research facilities, and similar non-commercial uses.
- (c) “Essential public facilities,” meaning those facilities listed in RCW 36.70A.200 that are typically difficult to site.

(2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following.

- (a) Preference will be given to commercial uses in descending order of priority:
  - (i) Water-dependent commercial uses;

- (ii) Water-related and water-enjoyment commercial uses;
- (iii) Nonwater-oriented commercial uses.
- (b) Nonwater-oriented commercial uses on the shoreline are allowed only when they meet one or more of the following criteria:
  - (i) Navigability is severely limited at the proposed site, and the commercial use provides a significant public benefit with respect to the SMA's objectives, such as providing public access or ecological restoration.
  - (ii) The site is physically separated from the shoreline by another property or a public right of way.
  - (iii) The use is part of a mixed-use project that meets all of the following criteria:
    - (A) The mixed-use project includes one or more water-dependent uses;
    - (B) The underlying zoning district permits residential uses together with commercial uses;
    - (C) Significant public benefit is provided in accordance with the objectives of the SMA, such as providing public access per [SCC 14.26.370](#) Public Access, and ecological restoration per [SCC 14.26.475](#) Shoreline Habitat and Natural Systems Enhancement Projects;
    - (D) Residential uses meet requirements of [SCC 14.26.470](#) Residential Development.
- (c) Nonwater-dependent commercial uses are not allowed overwater, except in existing commercial structures or when they are necessary in support of water dependent uses.
- (d) New commercial development that requires shoreline stabilization in conjunction with the placement of fill material within the Aquatic shoreline environment designation is prohibited.
- (3) **Application Requirements.** In addition to the application requirements in [SCC 14.26.710](#) Applications, an application must include the following:
  - (a) Brief description of the proposed modification or use and which use category per subsection (2)(a) (i) – (iii), is applicable.
  - (b) For a nonwater oriented commercial use, a description of how one or more of the criteria in subsection (2)(b)(i) – (iii) will be met.

- (c) A plan and narrative depicting compliance with subsection (4) Development Standards, for siting accessory commercial uses, provisions for shoreline access, orientation of eating and drinking facilities and lodging facilities.]

**Commented [A99]:** Added per County requirements and clarifications

**(4) Development Standards.**

- (a) Accessory commercial uses (e.g. parking, storage, service, circulation areas) that do not require a shoreline location must be located landward of the water-oriented portions of the development and comply with shoreline buffers for nonwater-oriented uses. Accessory commercial uses may be allowed in existing structures or where necessary in support of water-oriented uses.
- (b) Commercial uses must provide shoreline access, including:
  - (i) access for members and users of the development; and
  - (ii) public access consistent with [SCC 14.26.370](#) Public Access.
- (c) Eating and drinking facilities and lodging facilities must be oriented to provide user views to the waterfront.
- (d) The Administrative Official may condition commercial development on a case-by-case basis to achieve the goals of [SCC 14.26.370](#) Public Access while providing for landscaping, screening, or other measures to achieve compatibility with adjacent uses or onsite conditions.

**14.26.435 Dredging and Dredge Material Disposal**

**(1) Applicability.**

- (a) This section applies to “dredging,” meaning the removal of bed material waterward of the OHWM or wetlands using other than unpowered, hand-held tools, and the disposal of dredge material or spoils.
- (b) This section does not apply to:
  - (i) Removal of bed material waterward of the OHWM or wetlands that is incidental to an otherwise authorized use or modification (e.g. agriculture, aquaculture, shoreline crossings, bulkhead replacements), which is regulated by the section governing the associated use or modification. ]
  - (ii) [The disposal of dredged material at an open water disposal site approved through the auspices of the Dredged Material Management Program (RCW 79.105.500).

**Commented [A100]:** Required by Ecology to remove this as this “exempt from the SMP” phase is not accurate. Needs to be amended to reflect nuances of RCW 90.58.065 and WAC 173-26-241(3)(a) or delete this section. Instead, included in subsection (i) above.

- (2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:
- (a) Dredging and dredge material disposal is allowed only when consistent with SCC Chapter 14.34 Flood Damage Prevention.
  - (b) New development must be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
  - (c) Dredging is allowed for the following activities:
    - (i) Development of new or expanded wet moorages, harbors, ports or water-dependent industries of economic importance to the region when there are no feasible alternatives or other alternatives may have a greater ecological impact.
    - (ii) Development of essential public facilities when there are no feasible alternatives.
    - (iii) Maintenance of irrigation reservoirs, drains, canals, or ditches for agricultural purposes.
    - (iv) Removal of accumulated sediment for flood control or to maintain existing drainage features.
    - (v) Restoration or enhancement of shoreline ecological functions and processes benefiting water quality or fish and wildlife habitat or both.
    - (vi) Installation of necessary underground utilities when there are no feasible alternatives in accordance with [SCC 14.26.490](#) Utilities.
    - (vii) Establishing, expanding, relocating, or reconfiguring navigation channels where necessary to ensure safe and efficient accommodation of existing navigational uses. Maintenance dredging of established navigation channels and basins must be restricted to maintaining previously dredged or existing authorized location, depth, and width.
  - (d) Dredging for the primary purpose of obtaining fill material is allowed only when:
    - (i) the material is necessary for the restoration of ecological functions;
    - (ii) the fill is placed waterward of the OHWM; and

- (iii) the project is associated with a MTCA or CERCLA habitat restoration project, or any other significant habitat enhancement project approved through a shoreline conditional use permit..
- (e) Dredging is prohibited in the following locations, except for maintenance dredging and for beneficial public purposes consistent with this SMP:
  - (i) In estuaries, natural wetlands, and marshes.
  - (ii) Along net positive drift sectors and where geohydraulic processes are active and accretion shoreforms would be damaged or irretrievably lost.
  - (iii) In shoreline areas and bottom soils that are prone to sloughing, refilling, and continual maintenance dredging.
  - (iv) In officially designated fish, shellfish, and wildlife spawning, nesting, harvesting, and concentration areas.
  - (v) Where water quality would be degraded below permitted state and federal standards.
  - (vi) Where current and tidal activity are significant, requiring excessive maintenance dredging.
- (f) Dredge material disposal landward of the OHWM is allowed only when it meets all of the following conditions:
  - (i) Containment dikes must be built and maintained to minimize escapement of spoils bearing discharge.
  - (ii) An adequate settling basin must be built and maintained so that the site's discharge water carries a minimum of suspended sediment.
  - (iii) Normal drainage patterns must not be adversely affected by the disposal operation and site.
  - (iv) Removal of deposited spoil material for other uses must utilize a single point of ingress and egress and must maintain the containment dikes for the life of the project.
  - (v) Need and special consideration for landscaping and buffer areas are subject to County determination, review, and criteria found in SCC 14.16.830.
- (g) Dredge material disposal waterward of the OHWM is allowed only as an element of an approved shore restoration or beach enhancement program.

- (h) Dredge material disposal in open waters is allowed in accordance with the Puget Sound Dredged Disposal Analysis evaluation procedures for managing in-water disposal of dredged material; when approved by applicable agencies, which may include the U.S. Army Corps of Engineers pursuant to Section 10 (Rivers and Harbors Act) and Section 404 (Clean Water Act) permits, Washington State Department of Natural Resources, and Washington State Department of Fish and Wildlife Hydraulic Project Approval; and when found to meet all of the following conditions:
    - (i) land disposal is infeasible, less consistent with this SMP, or prohibited by law;
    - (ii) nearshore disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible;
    - (iii) offshore habitat will be protected, restored, or enhanced;
    - (iv) adverse effects on water quality or biologic resources from contaminated materials will be mitigated;
    - (v) shifting and dispersal of spoil will be minimal;
    - (vi) water quality will not be adversely affected.
  - (i) Dredging for channelization is prohibited if it results in any of the following:
    - (i) long-term negative impacts on fish and wildlife resources or recreation or aesthetic resources;
    - (ii) long-term net loss of ecological functions;
    - (iii) increased flood elevations or velocities.
- (3) **Application Requirements.** In addition to the requirements in [SCC 14.26.710](#) Applications, an application must include the following:
- (a) A description of the purpose of the proposed dredging and an analysis of compliance with the policies and regulations of this SMP.
  - (b) A detailed description of the physical character, shoreline geomorphology, and biological resources in the area proposed to be dredged, including:
    - (i) A site plan map outlining the perimeter of the area proposed to be dredged, including the OHWM when dredging will be conducted in the nearshore. The map must also include the existing bathymetry and have data points at a minimum of two-foot depth increments.

Commented [A101]: Clarification recommended by Ecology

- (ii) A habitat survey conducted according to the most recent WDFW eelgrass/macroalgae survey guidelines, if applicable.
- (iii) Information on stability of bedlands adjacent to proposed dredging and spoils disposal areas.
- (iv) Tidal fluctuation, current flows, direction, and degree of change.
- (c) A detailed description of the physical, chemical, and biological characteristics of the dredge materials to be removed, including:
  - (i) Physical analysis of material to be dredged (material composition and amount, grain size, organic materials present, source of material, etc.).
  - (ii) Chemical analysis of material to be dredged (volatile solids, chemical oxygen demand (COD), grease and oil content, mercury, lead and zinc content, etc.).
  - (iii) Biological analysis of material to be dredged.
- (d) A description of the dredging operations, including:
  - (i) Method of dredging, including facilities for settlement and transportation of dredge material.
  - (ii) Length of time required.
  - (iii) Quantity of dredge material.
  - (iv) Frequency and quantity of project maintenance dredging.
- (e) Detailed plans for upland dredge material disposal, including the specific land disposal site(s) and relevant information on the disposal site(s), including, but not limited to:
  - (i) Dredge material disposal area;
    - (A) Physical characteristics including location, topography, existing drainage patterns, surface and ground water;
    - (B) Biological characteristics;
    - (C) Size and capacity of disposal site;
    - (D) Means of transportation to the disposal site;
    - (E) Proposed dewatering and stabilization of dredged material;

- (F) Methods of controlling erosion and sedimentation; and
  - (G) Future use of the site and conformance with land use policies and regulations.
    - (ii) Plan for disposal or use of maintenance dredge material for at least a 50-year period, if applicable.
  - (f) An assessment of potential impacts to ecological functions or processes from the proposal, including hydraulic modeling studies sufficient to identify existing geohydraulic patterns and probable effects of dredging.
  - (g) A mitigation plan to address identified impacts, if necessary.
- (4) **Development Standards.**
- (a) Dredging and dredge material disposal must not adversely impact existing and adjacent water and shoreline uses, properties, and access.
  - (b) Conditions on dredging or dredge material disposal may be imposed to reduce proximity impacts, protect public safety, and ensure compatibility with other shoreline uses. Conditions may include any or all of the following:
    - (i) Limitations on the period of operations;
    - (ii) Limitations on the hours of operation;
    - (iii) Limitations on the type of machinery;
    - (iv) Requirements for the provision of landscaped buffer strips, or fencing, or both, to address noise and visual impacts at upland disposal or transfer sites. ]

#### **14.26.440 Fill, Excavation, and Grading**

- (1) **Applicability.**
- (a) This section applies to:
    - (i) “Fill,” meaning the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material in a manner that raises the elevation or creates dry land, either waterward or landward of the OHWM.
    - (ii) “Excavation” or “grading,” meaning the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material landward of the OHWM in a manner that alters the natural contour of the land.

**Commented [A102]:** Per County. Given the mitigation provisions that precede it, this can be removed.

- (b) **This section does not apply to:**
- (i) dredging or dredge material disposal (see [SCC 14.26.435](#) Dredging and Dredge Material Disposal).
  - (ii) **Fill, excavation, or grading incidental to an otherwise authorized use or modification (e.g. agriculture, aquaculture, shoreline crossings, bulkhead replacements), which is regulated by the section governing the associated use or modification.**
- (2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:
- (a) Fill, excavation, and grading is allowed only when consistent with SCC Chapter 14.34 Flood Damage Prevention.
- (3) **Application Requirements.** In addition to the requirements in [SCC 14.26.710](#) Applications, an application must include the following:
- (a) Proposed use of the fill/excavated area;
  - (b) Physical, chemical, and biological characteristics of the fill/excavated material;
  - (c) Source of fill material;
  - (d) Method of placement and compaction;
  - (e) Location of fill relative to natural or existing drainage patterns;
  - (f) Location of perimeter of fill, excavation, or graded area relative to the OHWM;
  - (g) Perimeter erosion control or stabilization means;
  - (h) Type of surfacing and runoff control devices;
  - (i) Disposal location of excavated materials.
- (4) **Development Standards.**
- (a) The fill, excavation, or grading work must be:
    - (i) the minimum necessary to accommodate approved shoreline uses and developments that are consistent with this SMP.
    - (ii) designed to blend physically and visually with existing topography to the maximum extent practicable.

**Commented [A103]:** PC recommends explicitly exempting aquaculture from this section. This may be inconsistent with the permit/review provisions in the aquaculture section of the SMP, as well as with the Guidelines. No revision made.

**Commented [A104]:** Added consistent with similar language provided under dredging.

**Commented [A105]:** Required by Ecology to remove this as this "exempt from the SMP" phase is not accurate. This is a global change.

- (iii) located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes.
  - (iv) designed and located so shoreline stabilization will not be necessary to protect the affected materials.
  - (v) designed, constructed, and maintained to prevent, minimize, or control all material movement, erosion, and sedimentation from the affected area, in accordance with SCC Chapter 14.32.
- (b) Fill.
- (i) Commercially available rock, gravel, soil, or sand is preferred for fill material.
  - (ii) Solid waste, concrete, asphalt, brick rubble, contaminated soils, construction and demolition waste, or other materials that may degrade surface and groundwater quality or the shoreline area are prohibited.
  - (iii) Structures supported by pilings are preferred over fills.
  - (iv) Fill waterward of the OHWM is allowed only where necessary to support one or more of the following:
    - (A) New and existing water-dependent uses, including aquaculture;
    - (B) Public access;
    - (C) Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
    - (D) Expansion or alteration of transportation facilities currently located on the shoreline where alternatives to fill are infeasible;
    - (E) Ecological restoration or enhancement, including, but not limited to, beach nourishment, habitat creation, culvert upgrades to improve fish and flow passage, or bank restoration when consistent with an approved restoration plan;
    - (F) Maintenance of legally established development, provided the proposal also complies with SMP Part VI, Legally Established Pre-existing Uses and Structures.

#### **14.26.445 Forest Practices**

##### **(1) Applicability.**

(a) Forest practices governed under Chapter 76.09 RCW are subject to the provisions of this SMP as follows:

- (i) All Class IV-General forest practices that propose conversion to a use other than commercial timber production shall be subject to all of the provisions of this SMP.
- (ii) Any request for County approval of a Conversion Option Harvest Plan (COHP) shall be subject to all of the provisions of this SMP.
- (iii) The County shall coordinate the review of forest practice applications within the urban growth areas (UGAs) of incorporated cities and towns through interlocal agreements; provided, that the County shall continue to condition forest practices within all UGAs to the full extent of this Part until such time as its jurisdictional responsibility is amended by interlocal agreements.

**Commented [A106]:** Consistent with SCC 14.24.110

(b) This section applies to “forest practices,” meaning any activity conducted on or directly pertaining to forestland and relating to growing, harvesting or processing timber.

(c) This section does not apply to:

- (i) preparatory work such as tree marking, surveying, and removal of incidental vegetation such as berries, greenery, or other natural products whose removal cannot normally be expected to result in damage to shoreline natural features, which is not regulated by this SMP;
- (ii) log storage away from forestlands, which is regulated by [SCC 14.26.450](#) Industrial Development
- (iii) Clear cutting of timber that is solely incidental to the preparation of land for other uses is not considered a forest practice and is permitted subject to the use standards applicable to the proposed new use and development.

**Commented [A107]:** Recommendation by Ecology for consistency with RCW 90.58.150 and WAC 173-26-241(3)(e).

**Commented [A108]:** Recommendation by Ecology for consistency and clarification

(d) A forest practice that only involves timber cutting is not a development under the SMA and this SMP and does not require a shoreline substantial development permit or a shoreline exemption.

**Commented [A109]:** Consistent with 2017 legislative update

(2) **When allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:

(a) Timber Cutting on Shorelines of Statewide Significance. Per RCW 90.58.150, on shorelines of statewide significance, with respect to timber situated within 200 feet landward of the OHWM, only selective commercial timber cutting is allowed, and no

more than 30 percent of the merchantable trees may be harvested in any ten-year period, provided:

- (i) That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions, or silviculture practices necessary for regeneration render selective logging ecologically detrimental; and
- (ii) Any deviation from the selective commercial timber cutting standards of RCW 90.58.150 can only be authorized through the issuance of a shoreline conditional use permit.

- (b) Commercial Forest Practices within the Natural shoreline environment designation requires a conditional use permit.

**Commented [A110]:** Required per Ecology for consistency with RCW 90.58.150, WAC 173-26-241(3)(e), and WAC 173-26-211(5)(a)(ii)(D).

**Commented [A111]:** Required per Ecology for consistency with WAC 173-26-211(5)(a)(ii)(D)

**(3) Application requirements.**

- (a) All forest practices likely to convert to non-forest uses require shoreline review.
- (b) A forest practice that only involves timber cutting is not a development under the SMA and does not require a shoreline substantial development permit or a shoreline exemption.

**Commented [A112]:** Clarification per Ecology per 2017 legislative update

**(4) Development standards.**

- (a) Forest practices in shoreline jurisdiction must comply with:
  - (i) RCW Chapter 76.09 (Forest Practices); and
  - (ii) WAC 222 (Forest Practices Rules).
- (b) Forest practices likely to result in conversion to non-forest uses must:
  - (i) comply with SMP Part V (Critical Areas);
  - (ii) limit the conversion to the minimum necessary, while complying with the purpose of the shoreline environment designation, general policies and regulations, and specific shoreline modification and use policies on the subject property;
  - (iii) ensure no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources, and values provided for in RCW 90.58.020 such as navigation, recreation, and public access.

- (c) [The following shall be subject to a 6-year moratorium on all future non-forest practices activities which require a shoreline permit or authorization from the County:]
- (i) Forest practices of any class governed by Chapter 76.09 RCW that:
    - (A) Do not fall under Subsection (1)(a)(i)-(iii) of this Section; and
    - (B) Where no significant threat to the public safety or welfare is indicated; and
    - (C) Where no indications exist of future conversion to uses other than forest practices; or
  - (ii) Where an undeclared conversion of forest land to a specified use has occurred under a non-conversion forest practice application (FPA) without an approved COHP in good standing; or
  - (iii) When harvesting takes place without an FPA. In this case, the moratorium shall begin on the date the harvest activity was discovered by the DNR or the County.
- (d) Waiver of the 6-Year Moratorium. The applicant may apply to the County for a waiver of the 6-year moratorium. The 6-year moratorium may be waived for a lot of record where such activity complies with all applicable County ordinances. Such waiver may be issued by the Administrative Official as a Level I process where a finding can be made that granting the waiver meets the criteria noted below. Before acting on the request for waiver of the moratorium, the Administrative Official shall issue a notice of development application (NODA) consistent with the procedures under SCC Chapter 14.06, including a 15-day comment period, and review the project for consistency with SEPA under SCC Chapter 16.12; provided further, where the initial shoreline review and site visit concludes that no shoreline functions or critical areas have been impacted, or do not exist, the Administrative Official may waive the NODA requirement and issue the waiver. The following shall provide the criteria for considering a waiver:
- (i) A critical areas site assessment must be prepared where warranted by this Section following initial review and site visit of the use proposed for the property subject to the moratorium. The site assessment shall determine the level of impacts to County-regulated shorelines, critical areas and associated buffers that have occurred due to logging and any associated conversion activity. The site assessment shall also include an estimated time needed for recovery of the shoreline to a state comparable to what it was before the forest practice took place.

**Commented [A113]:** Consistent with SCC 14.24.110, including use of waiver language modified for shorelines.

- (ii) If, based on the prepared site assessment and comments received, the Administrative Official determines that recovery of the shoreline, critical area(s) and associated buffers can be achieved, then a mitigation plan shall be prepared and implemented consistent with [SCC 14.26.305](#) and the moratorium shall be lifted. If, however, the shoreline, critical areas and their buffers cannot be restored to a level of function comparable to what it was prior to the logging activity during the moratorium period, the request for a waiver of the moratorium shall be denied and the County shall not accept applications for development permits for the duration of the moratorium.

#### **14.26.450 Industrial Development**

- (1) **Applicability.** This section applies to “industrial development,” meaning privately owned/operated facilities for the processing, manufacturing, storage, and transfer of raw, semi-finished, or finished goods.
- (2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:
  - (a) Industrial facilities and structures that are water-dependent or water-related are permitted only where the applicant can demonstrate that the proposed use is water-dependent or water-related.
  - (b) Nonwater-oriented industrial development is only allowed on shorelines when:
    - (i) Navigability is severely limited at the site and the use provides a significant benefit with respect to the objectives of the SMA, such as providing public access and ecological restoration;
    - (ii) The use is part of a mixed-use project that includes water-dependent uses and the use provides a significant benefit with respect to the objectives of the SMA, such as providing public access and ecological restoration; or
    - (iii) The site is physically separated from the shoreline by another property or public right of way.
  - (c) Accessory uses. Accessory uses to industrial development (e.g. parking, warehousing, open-air storage, and transportation corridors) that does not require a shoreline location must be located upland of the water-dependent or water-related portions of the development and comply with shoreline buffers.
  - (d) Preferred uses. New industrial uses will be given priority in the following order:
    - (i) Water-dependent industrial uses

- (ii) Water-related industrial uses
    - (iii) Nonwater-oriented industrial uses.
  - (e) New industrial development and redevelopment is encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated. Federal and state requirements for hazardous materials clean up or management must be addressed.
  - (f) Waste Treatment and Disposal. Storage and disposal of industrial wastes is prohibited in shoreline jurisdiction, except that wastewater treatment systems may be allowed in shoreline jurisdiction only when alternate, inland areas are proven to be infeasible.
- (3) **Application Requirements.** In addition to the application requirements in [SCC 14.26.710](#) Applications, an application must include the following:
- (a) Brief description of the proposed modification or use and which use category per subsection (2)(b) (i) – (iii), is applicable.
  - (b) For a nonwater oriented industrial use, a description of how one or more of the criteria in subsection (2)(b)(i) – (iii) will be met.
  - (c) A plan and narrative depicting compliance with subsection (4)(a)-(e) Development Standards, for joint use docks, petroleum products and hazardous materials, log storage, public access and height.
- (4) **Development Standards.**
- (a) Joint use. Port and industrial development must avoid duplication of docks. Joint use is preferred and will be considered during project proposal review.
  - (b) Petroleum Products and Hazardous Materials
    - (i) A facility that involves either solid, liquid, or gas bulk storage of petroleum products, chemicals, and other materials potentially hazardous to shoreline areas and water bodies is allowed only as a conditional use and must demonstrate the need to locate in the shoreline jurisdiction.
    - (ii) A facility involved in the transfer of petroleum and/or other hazardous products must utilize best available technology and procedures to prevent spills.
    - (iii) Spill cleanup equipment and supplies must be available for prompt application at all locations involved in such transfer activities.

**Commented [A114]:** Added per County requirements and clarifications

- (c) Log storage.
  - (i) Log storage is only allowed where:
    - (A) it will not interfere with navigation or other beneficial water uses; and
    - (B) it will not result in a net loss of ecological functions; and
    - (C) It will not require dredging in order to accommodate log storage or transport.
  - (ii) In-water log storage is allowed only on a temporary basis, and only where natural tidal or current flushing and water circulation are adequate to disperse polluting wastes.
  - (iii) New unpaved, dry land log storage areas must have at least four foot average separation depth to the water table.
  - (iv) The free-fall dumping of logs into water is not permitted. Easy let down techniques and devices must be employed for water storage or transfer.
  - (v) Bark and wood debris must be controlled, collected, and disposed of in such a manner to prevent entry or accumulation on shorelines and water bodies at all log storage and handling areas.
- (d) Public Access.
  - (i) Industrial development on publicly owned property must provide public access in accordance with [SCC 14.26.370](#) Public Access.
  - (ii) Public access is appropriate mitigation for impacts to shoreline resources and values if feasible and can be provided in a manner that does not result in significant interference with operations or hazards to life and property.
- (e) **Height.**
  - (i) Height for industrial development exceeding 35 feet above average grade may be approved when necessary for the functions of a permitted use, provided such structures are designed to minimize obstruction of views and the applicant demonstrates that the development will not obstruct the view of a substantial number of residences and overriding consideration of the public interest will be served.

**Commented [A115]:** Added for consistency with allowances for height exceedences

#### 14.26.455 Instream Structures

(1) **Applicability.**

- (a) This section applies to “instream structures,” meaning structures placed by humans within a stream or river waterward of the OHWM that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. Instream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.
- (b) This section does not apply to instream structures incidental to an otherwise authorized use or modification (e.g. agriculture, aquaculture, shoreline crossings, bulkhead replacements), which is regulated by the section governing the associated use or modification.
- (c) Instream structures that are part of a utility project are regulated both by this section and [SCC 14.26.490](#) Utilities.
- (d) Instream structures that are part of a habitat project are regulated both by this section and [SCC 14.26.475](#) Shoreline Habitat and Natural Systems Enhancement Projects.
- (e) Docks, floats, marinas, and boat ramps are regulated under [SCC 14.26.420](#) Boating Facilities, not by this section.

(2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:

- (a) A channelization project with instream structures is prohibited if it results in any of the following:
  - (i) long-term negative impacts on fish and wildlife resources or recreation or aesthetic resources;
  - (ii) long-term net loss of ecological functions;
  - (iii) increased flood elevations or velocities.

(3) **Application Requirements.** In addition to the application requirements in [SCC 14.26.710](#) Applications, an application must include the following:

- (a) A design plan and narrative depicting compliance with subsection (4)(a)-(d) Development Standards.

**Commented [A116]:** Required by Ecology to remove this as this “exempt from the SMP” phase is not accurate. Language modified similar to dredging section.

**Commented [A117]:** Added per County requirements and clarifications

**(4) Development Standards.**

- (a) The location, planning, and design of instream structures must address all of the following:
  - (i) public access to shorelines;
  - (ii) flood protection;
  - (iii) preservation of historic and cultural resources;
  - (iv) protection and preservation of ecosystem-wide processes and ecological functions;
  - (v) impacts to fish and wildlife, with special emphasis on protecting and restoring priority habitats and species;
  - (vi) watershed functions and processes;
  - (vii) hydrogeological, hydraulic, and hydrologic processes;
  - (viii) preservation of natural scenic vistas.
- (b) Structures must be designed and located to minimize removal of riparian and aquatic vegetation.
- (c) Diversion structures must be designed and located to return flow to the stream or river in as short a distance as possible.
- (d) Instream structures must provide for adequate upstream and downstream fish passage.

**14.26.460 Mining**

**(1) Applicability.**

- (a) Generally, this section applies to “mining,” meaning the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses.
- (b) This section does not apply to:
  - (i) other uses (e.g., dredging) that may incidentally use materials extracted as part of the primary use;
  - (ii) mining that complies with the Washington Department of Fish and Wildlife’s Gold and Fish Pamphlet.

- (c) If a renewal, extension, or reauthorization of mining operations is requested, compliance with this section is required.
- (2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:
- (a) Mining is only allowed when the Administrative Official determines it is dependent on a shoreline location based on an evaluation of geologic factors such as the distribution and availability of mineral resources in the County; the need for such mineral resources; and economic, transportation, and land use factors.
  - (b) For marine and lake shorelines, mining waterward of the OHWM is prohibited.
  - (c) For rivers and streams, mining waterward of the OHWM is prohibited unless:
    - (i) Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the system as a whole; and
    - (ii) The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.
    - (iii) Evaluation of impacts should be integrated with the relevant environmental review requirements of SEPA.
- (3) **Application Requirements.** In addition to the requirements in [SCC 14.26.710](#) Applications, and the special use permit application requirements in SCC 14.16.440 Mineral Resource Overlay, an application requires the following:
- (a) Quantity of materials to be mined, in total and by type;
  - (b) Quality of materials to be mined, by type. For certain minerals, a qualified geologist's evaluation may be required;
  - (c) Mining technique and equipment to be utilized;
  - (d) Depth of overburden;
  - (e) Total mineral deposit in lateral extent and depth;
  - (f) Proposed depth of mining;
  - (g) Cross-section diagrams indicating present and proposed elevation/extraction levels;

- (h) Existing drainage patterns, seasonal or continuous, and proposed alterations thereof;
  - (i) Proposed means of controlling/handling surface runoff and preventing or minimizing erosion and sedimentation;
  - (j) Origin, depth, and extent of subsurface water resources and aquifer recharge areas;
  - (k) Quality analysis of overburden, excavation material, and tailings with plans for storage, usage, or disposition;
  - (l) Mining plan and scheduling, including seasonal, phasing, and daily operation schedules;
  - (m) For surface mining, a reclamation plan that meets the requirements of this SMP and RCW Chapter 78.44; and
  - (n) Screening, buffer, and fencing plan that meet the requirements of this section and the rest of Skagit County Code.
- (4) **Development Standards.**
- (a) Applicants must obtain all other required state permits and meet all the requirements of RCW Chapter 78.44, Surface Mining.
  - (b) Public access. Mining must not impair public access to publicly owned shorelines and water bodies.
  - (c) Floodplains. All equipment, works, and structures of mining operations must be able to withstand flooding without becoming hazards themselves and without the placement of flood hazard reduction measures. All mining must comply with SCC Chapter 14.34, Flood Damage Prevention.
  - (d) Screening. Mining operations must provide vegetative screening to obscure views of the mining site consistent with the following criteria.
    - (i) In the Rural Conservancy and Urban Conservancy environments, the width of required vegetative screening between mining operations and the OHWM is 50 feet; in the High Intensity environment, the width of required vegetative screening between mining operations and the OHWM is 20 feet. These minimums do not replace critical areas buffer requirements.
    - (ii) Screening must be native vegetation and must be maintained in effective condition at all times.

- (iii) Vegetative screening must be planted by the start of mining or as soon thereafter as possible, and be established within one year of the start of mining.
  - (iv) If vegetative screening is not possible, artificial screening or fencing to suit the site, operations, and shoreline area is required.
- (e) Operations.
- (i) Accessory equipment and materials essential to mining operations in shoreline jurisdiction must be stored or sited as far landward from the OHWM as feasible.
  - (ii) Stockpiles and tailings must not exceed the height, slope, and moisture content limits determined by local and state agencies. Existing topography and the existing uses of surrounding properties must be considered when siting stockpile locations.
  - (iii) Earth stability. Mining operations must not impair lateral support or cause earth movements or erosion to extend beyond property lines or to adversely affect the shoreline and water environment.
  - (iv) Erosion control. Mining activities must use effective techniques for preventing or minimizing adverse surface runoff, erosion, and sediment generation. Overburden, mining debris, and tailings must be stored and protected in such a manner so as to prevent or minimize erosion or seepage to surface and ground waters. All preventative techniques must be adequately maintained throughout mining and reclamation operations.
  - (v) Water quality and quantity. Mining operations must:
    - (A) Prevent pollution of ground and surface waters;
    - (B) Impound runoff as necessary to prevent accelerated runoff and erosion;
    - (C) Protect all shoreline areas from acidic or toxic materials.
- (f) Reclamation.
- (i) Subsequent use and ecological function. The proposed subsequent use of mined property must be consistent with the environment designation in which the property is located and the reclamation of disturbed shoreline areas must provide appropriate ecological functions consistent with the setting.

- (ii) Land reclamation. To ensure the future use and viability of shoreline areas after mining activities, reclamation must be completed within one year of discontinuing mining operations, consistent with the following standards:
  - (A) All equipment, machinery, buildings, and structures not involved in reclamation activities must be removed from the site. All equipment used for reclamation must be removed from the site upon review and approval of the reclamation by state and local agencies.
  - (B) Stagnant or standing water may not collect or remain except as provided in an approved site reclamation plan.
  - (C) Backfill material must be of natural, compatible materials. Combustible, flammable, noxious, toxic, or solid waste materials are not allowed as backfill.
  - (D) All overburden, waste, and nontoxic material storage piles and areas must either be leveled, sodded or hydroseeded, and planted, or returned to the excavated area for reuse as backfill and subsequently sodded or hydroseeded and planted.
  - (E) Reclamation must prevent erosion and sedimentation both during reclamation and afterward.
  - (F) Suitable drainage systems must be installed and maintained if natural, gradual drainage is not possible. Such systems should collect, treat, and release surface runoff so as to prevent erosion and sedimentation.
  - (G) Topography of the site must be restored to the approximate prior contours or to contours compatible with the surrounding land and shoreline area.
  - (H) All banks, slopes, and excavated areas for surface mined unconsolidated materials must be sloped to no steeper than two-and-one-half feet horizontal to one foot vertical. All slopes must be sodded or surfaced with appropriate soil to at least the depth of the surrounding, undisturbed soil and subsequently revegetated.
  - (I) All banks, slopes, and excavated areas of mined consolidated material must be sloped to no steeper than one foot horizontal to one foot vertical.

- (J) Slopes of quarry walls must have no prescribed slope unless a hazardous condition is created whereby the quarry must be backfilled and sloped according to the above.
- (K) Revegetative practices must utilize compatible, native vegetation.
- (L) Mining operations must not be left in a condition that may become hazardous to public health and safety.

#### **14.26.465 Recreational Development**

(1) **Applicability.**

- (a) This section applies to “recreational development,” meaning modification of the natural or existing environment to accommodate recreation, including land clearing, earth modifications, structures, and other facilities such as parks, camps, campgrounds, camping clubs, golf courses, and other outdoor recreation areas.
- (b) This section does not apply to residential subdivisions, resorts, motels, hotels, and other commercial enterprises, but does apply to recreational uses associated with such development.

(2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:

- (a) Recreational development must relate to access, enjoyment, and use of the shorelines of the state. Uses such as restrooms, recreation halls and gymnasiums, commercial services, access roads, and parking lots, must be located according to the following preferences:
  - (i) outside of shoreline jurisdiction, where feasible; or
  - (ii) landward of water-oriented uses unless it can be shown that such facilities are essentially shoreline dependent.
- (b) Motor and recreational vehicles.
  - (i) Licensed and unlicensed recreational motor vehicles and all forms of all-terrain vehicles are allowed only on roads, trails, approved off-road areas, or developments consistent with this SMP.
  - (ii) All vehicle use in recreational development is prohibited in critical areas except for emergency or approved maintenance activities, boat launching, and the on and off loading of handicapped persons.

(3) **Application Requirements.** In addition to the application requirements in [SCC 14.26.710](#) Applications, an application must include the following:

- (a) Brief description of the proposed modification or use and whether it is a water-dependent, water-related, water-enjoyment, or nonwatery-oriented use.
- (b) For a nonwater-oriented recreational use, a description of how it will meet one or more of the criteria in subsection (2).
- (c) A design plan and narrative depicting compliance with subsection (4) (a) –(e) Development Standards, for potential shoreline use conflicts, safe operation without material interference of the normal public use of the shorelines, no net loss of shoreline ecological functions or ecosystem-wide processes, avoiding conflict with the implementation of public agency recreation plans, and the use of fertilizers, pesticides and herbicides

**Commented [A118]:** Added per County requirements and clarifications

(4) **Development Standards.**

- (a) Recreational development must be designed to minimize conflict with onsite and nearby shoreline uses. Techniques to increase compatibility with nearby shoreline uses may include, but are not limited to, providing a physical separation to reinforce the distinction between public and private space, providing signage, providing adequate space, and providing screening with landscape planting or fences.
- (b) Recreational developments must be located, constructed, and operated not to become a hazard to public health and safety nor materially interfere with the normal public use of the shorelines.
- (c) Recreational developments must be located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and so that no net loss of shoreline ecological functions or ecosystem-wide processes results.
- (d) Recreational developments must be designed in consideration of public agency recreation plans to avoid conflict with the implementation of such plans.
- (e) Fertilizers, pesticides, and herbicides.
  - (i) Recreational developments requiring the use of fertilizers, pesticides, and herbicides must leave a chemical free swath at least 25 feet in width from water bodies and wetlands, unless another BMP achieving equivalent results can be incorporated or near-shore or waterward application is deemed necessary and applied consistent with manufacturer specifications.

**Commented [A119]:** Required by Ecology for consistency with WAC 173-26-241(3)(i).

- (ii) Recreational developments requiring the use of fertilizers, pesticides, and herbicides must not unduly burden nor create use conflicts with adjacent and nearby public or private recreation facilities and areas.

#### 14.26.470 Residential Development

(1) **Applicability.**

- (a) This section applies to “residential development,” meaning primary, accessory, and appurtenant residential structures and uses; residential subdivisions; and multifamily structures and uses.
- (b) Motels, hotels and other transient or commercial housing are regulated by by [SCC 14.26.430](#) Commercial Development.
- (c) Camping developments or clubs are regulated by [SCC 14.26.465](#) Recreational Development.

(2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:

- (a) Single-family residences are a preferred use in shoreline jurisdiction when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.
- (b) Multifamily housing is prohibited, unless served by public sewer and water.
- (c) Overwater homes and floating homes are prohibited.

(3) **Application Requirements.** In addition to the requirements in [SCC 14.26.710](#) Applications, an application must include the following:

- (a) Applications for new residential land divisions must include an evaluation of the clustering of lots to minimize physical and visual impacts on shorelines.

(4) **Development Standards.** In addition to the general provisions of [SMP Part III](#), development must comply with the following standards:

- (a) Plats and subdivisions must be designed, configured and developed in a manner that ensures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.
- (b) Residential development must be located and designed to avoid the need for flood hazard reduction measures, including shoreline stabilization.

**Commented [A120]:** Per Ecology recommendation for WAC consistency (WAC 173-26-241(3)(j)(iv)(C)): Floating on-water residences (FOWRs), which include the term “liveaboards” have been located in the Boating Facilities section.

- (c) The use of fill for expansion or creation of upland areas to support residential development is prohibited, except for supporting infrastructure such as roads when there is no feasible alternative.
- (d) Wherever feasible, utilities for new residential development must be installed underground and consistent with [SCC 14.26.490](#) Utilities.
- (e) Residential development must implement Low-Impact Development where feasible through compliance with MR5 in the Stormwater Management Manual.
- (f) Residential development must comply with [SCC 14.26.380](#) Vegetation Conservation.

#### 14.26.475 Shoreline Habitat and Natural Systems Enhancement Projects

##### (1) **Applicability.**

- (a) This section applies to activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines, including, but not limited to:
  - (i) floodplain restoration projects;
  - (ii) fish passage barrier removal or improvement;
  - (iii) projects to increase shoreline habitat complexity; or
  - (iv) stabilization of eroding banks provided that the purpose of the project is restoration or enhancement of the natural character and ecological functions of the shoreline, and the project uses appropriate erosion control techniques and approaches, including limited use of rock as stabilization only at the toe of the bank as necessary, with primary emphasis on using native vegetation to control erosive forces.
- (b) Such projects may include, but are not limited to, the following shoreline modification actions, provided the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline:
  - (i) Modification of vegetation;
  - (ii) removal of nonnative or invasive plants;
  - (iii) shoreline stabilization;
  - (iv) dredging; and
  - (v) filling.

**Commented [A121]:** Recommended per Ecology to provide more direct consistency with WAC 173-26-231(3)(g)

- (c) Per RCW 90.58.147, fish habitat enhancement projects that conform to the provisions of RCW 77.55.181(1) are determined to be consistent with this SMP, and per RCW 77.55.181(4) are exempt from local government permits and fees.
- (2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix.
- (3) **Application Requirements.** In addition to the requirements [SCC 14.26.710](#) Applications, an application must include the following:
  - (a) Detailed construction plans that include the following:
    - (i) Plan and cross-section views of the existing and proposed shoreline configuration, showing accurate existing and proposed topography and OHWMs.
    - (ii) Detailed construction sequence and specifications for all materials, including gravels, cobbles, boulders, logs, and vegetation. The sizing and placement of all materials must be selected to accomplish the following objectives:
      - (A) Protect primary structures from erosion and other damage over the long term, and accommodate the normal amount of alteration from currents and wind- or boat-driven waves;
      - (B) Allow safe passage and migration of fish and wildlife; and
      - (C) Minimize or eliminate juvenile salmon predator habitat.
  - (b) For projects that include native vegetation, a detailed three-year vegetation maintenance and monitoring program to include the following:
    - (i) Goals and objectives of the shoreline restoration or enhancement plan;
    - (ii) Success criteria by which the implemented plan will be assessed;
    - (iii) A three-year maintenance and monitoring plan, consisting of at least one site visit per year by a qualified professional, with annual progress reports submitted to the Administrative Official and all other agencies with authority; and
    - (iv) A performance standard of 100% survival for the first year of growth post installation, with no less than 80% survival at the end of the third year, and replacement if the performance standard is not achieved.
- (4) **Development Standards.**

**Commented [A122]:** PC recommended adding a requirement to hold a pre-application neighborhood meeting. The County notes that a neighborhood meeting can be added as a requirement when 14.06 is updated with details about timing and notifications (in SCC Chapter 14.06), and a requirement that projects may not have negative effects on neighboring properties.

The following is recommended by the County

- (a) All shoreline restoration and enhancement projects must protect the integrity of adjacent natural resources, including aquatic habitats and water quality.
- (b) Long-term maintenance and monitoring (minimum of three years) must be arranged by the project applicant and included in restoration or enhancement proposals. Longer monitoring time may be required at the discretion of the Administrative Official during initial review of the project.
- (c) The applicant must demonstrate that no significant change to sediment transport or river current will result that would adversely affect ecological processes, properties, or habitat.
- (d) Shoreline restoration and enhancement projects must be designed using the best available scientific and technical information, and implemented using best management practices.
- (e) Shoreline restoration and enhancement must not significantly interfere with the normal public use of the navigable waters of the state without appropriate mitigation.
- (f) For projects on state-owned aquatic lands, project proponents must coordinate with the Washington Department of Natural Resources prior to permit application.
- (g) Shoreline restoration and enhancement projects must be designed and implemented to avoid adverse impacts to neighboring properties.
- (h) For a project within an urban growth area, the applicant should consult with the County and Ecology to determine if the proposal or adjacent properties may be afforded relief under RCW 90.58.580, in the event that the proposed restoration project shifts the OHWM landward.

Commented [A123]: Per TWC and County recommendation.

Commented [A124]: Per PC recommendation

#### 14.26.480 Structural Shoreline Stabilization

(1) **Applicability.**

- (a) This section applies to “structural shoreline stabilization,” meaning physical improvements to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action.
  - (i) “Hard shoreline stabilization” means shoreline stabilization involving solid, hard surfaces, such as concrete bulkheads.
  - (ii) “Soft shoreline stabilization” may include the use of gravels, cobbles, boulders, and logs, as well as vegetation.

- (b) This section does not apply to “nonstructural stabilization,” which includes building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.
  - (c) This section does not apply to flood hazard reduction, as defined in [SCC 14.26.350](#).
- (2) **When Allowed.** These modifications are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix.
- (a) New hard shoreline stabilization structures are prohibited, except when an analysis confirms that that there is a significant possibility that an existing primary structure will be damaged within three years as a result of shoreline erosion in the absence of such hard shoreline stabilization structures, or where waiting until the need is immediate results in the loss of opportunity to use measures that would avoid impacts on ecological functions.
  - (b) In all cases, the feasibility of soft shoreline stabilization must be evaluated prior to a request for hard structural stabilization.
  - (c) New or enlarged stabilization structures are prohibited except in the following situations:
    - (i) To protect an existing primary structure, including a residence, when conclusive evidence, documented by a geotechnical analysis, is provided that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate onsite drainage issues and address drainage problems away from the shoreline edge before considering hard or soft shoreline stabilization.
    - (ii) In support of new non-water-dependent development, including single-family residences, when all of the conditions below apply:
      - (A) The erosion is not being caused by upland conditions, such as drainage and the loss of vegetation.
      - (B) Nonstructural measures, such as placing the proposed development farther from the shoreline, planting vegetation, or installing onsite drainage improvements, are not feasible or not sufficient to adequately address erosion impacts.

**Commented [A125]:** Per PC recommendation.

**Commented [A126]:** Clarification of terms. Shoreline stabilization is a modification.

**Commented [A127]:** Per PC recommendation

- (C) The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical analysis. The damage must be caused by natural processes, such as currents or waves.
  - (iii) In support of water-dependent development when all of the conditions below apply:
    - (A) The erosion is not being caused by upland conditions, such as drainage and the loss of vegetation.
    - (B) Nonstructural measures, such as planting vegetation, or installing onsite drainage improvements, are not feasible or not sufficient to adequately address erosion causes or impacts.
    - (C) The need to protect primary structures, including residences, from damage due to erosion is demonstrated through a geotechnical analysis.
  - (iv) To protect projects for the restoration of ecological functions or for hazardous substance remediation projects pursuant to Chapter 70.105D RCW when nonstructural measures, planting vegetation, or installing onsite drainage improvements, are not feasible or not sufficient to adequately address erosion causes or impacts.
- (3) **Application Requirements.** In addition to the requirements in [SCC 14.26.710](#) Applications, an application must include the following:
- (a) For all shoreline stabilization structures, the application must include:
    - (i) A geotechnical analysis prepared by a qualified professional that includes the following:
      - (A) An assessment of the necessity for shoreline stabilization by estimating time frames and rates of erosion and reporting on the urgency associated with the specific situation.
      - (B) An assessment of the cause of erosion, looking at processes occurring both waterward and landward of the OHWM.
      - (C) Design recommendations for minimum sizing of hard or soft shoreline stabilization materials, including gravel and cobble beach substrates necessary to dissipate wave energy, eliminate scour, and provide long-term shoreline stability.

- (D) An assessment of alternative shoreline stabilization measures, including:
    - (I) Placing the structure farther from the OHWM.
    - (II) Correcting any onsite groundwater or drainage issues that may be causing shoreline erosion.
  - (E) Where shoreline stabilization structures are determined to be necessary, the assessment must evaluate the feasibility of using soft shoreline stabilization measures instead of hard shoreline stabilization.
  - (F) An assessment of the anticipated effects of the proposed project on neighboring properties and ecosystem processes and functions, including, but not limited to effects on feeder bluffs, drift cells, and eroding shorelines.
  - (G) [In addition to mitigation sequencing requirements in [SCC 14.26.305](#), a detailed description of any compensatory mitigation measures necessary to achieve no net loss of shoreline ecological functions relevant to the geotechnical report findings and recommendations.]
- (ii) Detailed construction plans that include the following:
- (A) Plan and cross-section views of the existing and proposed shoreline configuration, showing accurate existing and proposed topography and OHWMs.
  - (B) Detailed construction sequence and specifications for all materials, including gravels, cobbles, boulders, logs, and vegetation. The sizing and placement of all materials must be selected to accomplish the following objectives:
    - (I) Protect the primary structures from erosion and other damage over the long term, and accommodate the normal amount of alteration from currents and wind- or boat-driven waves;
    - (II) Allow safe passage and migration of fish and wildlife; and
    - (III) Minimize or eliminate juvenile salmon predator habitat.
  - (C) For projects that include native vegetation, a detailed five-year vegetation maintenance and monitoring program to include the following:

**Commented [A128]:** Required per Ecology. Shoreline modifications with the potential to adversely impact shoreline ecological functions require demonstration of mitigation sequencing and project specific determination of no net loss of shoreline ecological function.  
See WAC 173-26-231(3)(a)(iii).

- (I) Goals and objectives of the shoreline stabilization plan;
  - (II) Success criteria by which the implemented plan will be assessed;
  - (III) A five-year maintenance and monitoring plan, consisting of at least one site visit per year by a qualified professional, with annual progress reports submitted to the Administrative Official and all other agencies with authority;
  - (IV) A performance standard of 100% survival for the first year of growth post installation, with no less than 80% survival at the end of the third year, and replacement if the performance standard is not achieved; and
- (D) A contingency plan and a bond in an amount and form acceptable to the County in case of failure.
- (b) For replacement of existing hard shoreline stabilization structures, the application must also include a written narrative prepared by a qualified professional that demonstrates the need and includes the following:
- (i) An assessment of the necessity for continued structural shoreline stabilization, considering site-specific conditions such as water depth, orientation of the shoreline, wave fetch or flow velocities, and location of the nearest primary structure. This assessment should include consideration of soft stabilization alternatives. This assessment may be waived when an existing hard structural shoreline stabilization measure is proposed to be repaired or replaced using soft structural shoreline stabilization measures, resulting in significant restoration of shoreline ecological functions or processes.
  - (ii) An assessment of erosion potential resulting from the action of waves or other natural processes operating at or waterward of the OHWM in the absence of the hard structural shoreline stabilization.
  - (iii) Design recommendations for minimizing impacts of any necessary hard structural shoreline stabilization.
  - (iv) An assessment that concludes the replacement structure is designed, located, sized, and constructed to assure no net loss of ecological functions consistent with mitigation sequencing requirements in [SCC 14.26.305](#).
- (4) **Development Standards.** In addition to the general provisions of [SMP Part III](#), development must comply with the following standards:

**Commented [A129]:** Required per Ecology to specifically consider soft-stabilization alternatives. Mitigation sequencing and no net loss determination required.

- (a) New or expanded shoreline stabilization structures. New hard and soft structural shoreline stabilization must include measures designed to address erosion impacts.
- (b) General design standards. When a hard or soft structural shoreline stabilization measure is demonstrated to be necessary, the following design standards must be incorporated into the stabilization design:
  - (i) Soft structural shoreline stabilization measures must be used to the maximum extent practicable for new, enlarged, or replacement shoreline stabilization measures. Hard structural shoreline stabilization measures must be limited to the portion or portions of the site where necessary to protect or support existing shoreline structures or trees, or where necessary to connect to existing shoreline stabilization measures on adjacent properties. When needed, hard structural shoreline stabilization transition areas should be minimized and extend into the subject property from the property line no more than 10 feet.
  - (ii) For new, expanded, or replacement soft and hard structural shoreline stabilization measures, the following location and design standards are preferred in descending order:
    - (A) Conduct excavation and fill activities associated with the soft or hard structural shoreline stabilization landward of the existing OHWM to the maximum extent practicable.
    - (B) Where (A) above is not practicable because of overriding safety or environmental concerns, conduct necessary excavation and fill activities waterward of the existing OHWM as needed to implement a soft structural shoreline stabilization technique or to mitigate the impacts of hard structural shoreline stabilization. Fill material waterward of the OHWM may be sand, gravel, cobble, or boulders (also known as rip rap) provided the placement of boulders does not effectively present a continuous wall or face to oncoming waves.
  - (iii) Shoreline stabilization measures may allow some fill waterward of the OHWM to provide enhancement of shoreline ecological functions through improvements in substrate condition or gradient. These types of waterward fills may be approved without a Shoreline Conditional Use Permit.
  - (iv) All shoreline stabilization measures must minimize and mitigate any adverse impacts to ecological functions resulting from short-term construction activities, consistent with Part V, Critical Areas. Impact minimization techniques may include compliance with appropriate timing restrictions, use

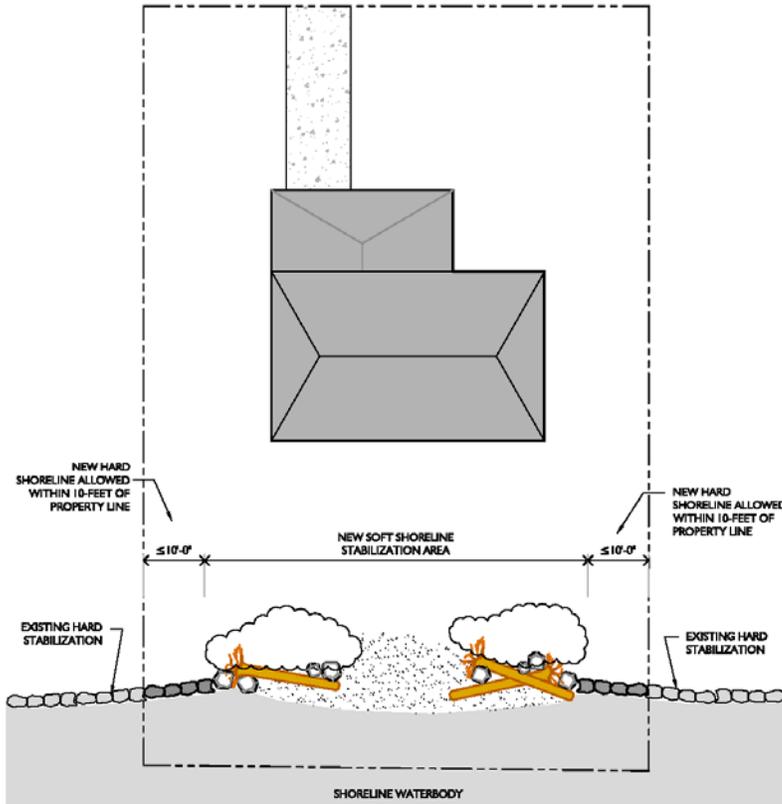
of best management practices to prevent water quality impacts related to upland or in-water work, and stabilization of exposed soils following construction.

- (v) All new, expanded, or replacement hard structural shoreline stabilization measures must minimize any long-term adverse impacts to ecological processes and functions by incorporating the following measures into the design:
  - (A) Minimizing the size of hard structural shoreline stabilization measures, including height, depth, and mass;
  - (B) Shifting the hard structural shoreline stabilization landward, or sloping the hard structural shoreline stabilization landward, or both, to provide some dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.
  - (C) Minimizing impacts to natural erosion and accretion areas.
- (vi) New and expanded shoreline stabilization measures must mitigate any adverse impacts to ecological functions by incorporating the following measures into the design if appropriate for local conditions:
  - (A) Restoring appropriate substrate conditions waterward of the OHWM, to include substrate composition and gradient. The material should be sized and placed to remain stable during a two-year flood event on rivers and under typical tides or boat- and wind-driven wave conditions on lakes or marine waters, including storm events.
- (c) Planting vegetation consistent with Part V, Critical Areas, and [SCC 14.26.380](#) Vegetation Conservation.
  - (A) Additional mitigation measures, including, but not limited to removal of existing armoring, may be required by the County or state or federal agencies, depending on the level of impact.
  - (ii) Shoreline stabilization measures must not significantly interfere with normal surface and subsurface drainage into the adjacent water body.
  - (iii) Shoreline stabilization measures must not be a hazard to navigation.
  - (iv) Stairs or other water access measures may be incorporated into the shoreline stabilization (e.g., steps integrated into the bulkhead, coved area with shallow

- entry), but must not extend waterward of the shoreline stabilization measure and the OHWM.
- (v) Shoreline stabilization measures must not restrict appropriate public access to the shoreline. When a structural shoreline stabilization measure is required at a public access site, provisions for safe access to the water must be incorporated into the design (e.g., steps integrated into the bulkhead, coved area with shallow entry). Access measures should not extend farther waterward than the face of the shoreline stabilization measure and the OHWM.
  - (vi) Areas of temporary disturbance within the shoreline buffer must be expeditiously restored to their pre-project condition or better.
  - (vii) Shoreline stabilization measures must not extend waterward more than the minimum amount necessary to achieve effective stabilization, except for those elements that enhance shoreline ecological functions and minimize impacts.
  - (viii) Per RCW 90.58.580, when a shoreline restoration project that includes shoreline stabilization intended to improve ecological functions shifts the OHWM landward:
    - (A) The project may not be approved until the applicant submits a declaration that the applicant has notified the owners of all affected properties by the shoreline jurisdiction creation or increase on such property.
    - (B) Any buffers from the OHWM or lot area for the purposes of calculating lot coverage must be measured from the pre-modification location. The pre-modification OHWM must be recorded with the Auditor on a Department-approved form.
- (d) **Hard structural shoreline stabilization standards.**
- (i) When hard structural shoreline stabilization is proposed on a site where hard structural shoreline stabilization is not located on adjacent properties, the construction of hard structural shoreline stabilization must tie in with the existing contours of the adjoining properties, as feasible, such that the proposed stabilization would not cause erosion of the adjoining properties.
  - (ii) When hard structural shoreline stabilization is proposed on a site where hard structural shoreline stabilization is located on adjacent properties, the proposed stabilization may tie in flush with existing stabilization measures on adjoining properties, provided that the new stabilization does not extend

waterward of the OHWM, except as necessary to make the connection to the adjoining stabilization, and does not extend onto the adjacent property. In such circumstances, the remaining portion of the stabilization must be placed landward of the existing OHWM such that no net intrusion into the water body occurs nor does net creation of uplands occur.

- (iii) Fill behind hard structural shoreline stabilization must be limited to 1 cubic yard per running foot of stabilization. Any filling in excess of this amount is considered a regulated activity subject to the regulations in this Chapter pertaining to fill activities and the requirement for obtaining a Shoreline Substantial Development Permit or Shoreline Conditional Use Permit.
  - (iv) Replacement hard structural shoreline stabilization measures must not encroach waterward of the OHWM or waterward of the existing shoreline stabilization measure unless the primary residence was constructed prior to January 1, 1992, and there is overriding safety or environmental concerns. In such cases, the replacement structure must abut (attached to and waterward of) the existing shoreline stabilization structure. All other replacement hard structural shoreline stabilization measures must be located at or landward of the existing shoreline stabilization structure.
- (e) **Soft structural shoreline stabilization standards.** In addition to applicable general design standards and hard structural shoreline stabilization standards above, the following standards apply:
- (i) The soft shoreline stabilization design must provide sufficient protection of adjacent properties by tying in with the existing contours of the adjoining properties to prevent erosion at the property line, provided the stabilization measure does not extend onto the adjacent property. Soft shoreline stabilization projects that include necessary use of hard structural shoreline stabilization measures, as indicated by the appropriate study, only near the property lines to tie in with adjacent properties may be permitted as soft shoreline stabilization measures. The length of hard structural shoreline stabilization transition area to adjacent properties must be minimized to the maximum extent practicable, and extend into the subject property from the property line by no more than 10 feet (see diagram below). The hard structural shoreline stabilization transition area must not extend waterward of the OHWM, except as necessary to make the connection to the adjoining stabilization, and must not extend onto the adjacent property.



- (ii) The soft shoreline stabilization design must size and arrange any gravels, cobbles, logs, and boulders so that the project remains stable during a two-year flood event on rivers and under typical boat- and wind-driven wave conditions on lakes and marine waters, including storm and tidal events, and dissipates wave and current energy, without presenting extended linear faces to oncoming waves or currents.

Commented [A130]: Added clarity per County to include marine shorelines

#### 14.26.485 Transportation Facilities (including parking)

##### (1) Applicability.

- (a) This section applies to “transportation facilities,” meaning those structures and developments that facilitate movement of people, goods, and services. For this SMP, these facilities include:

- (i) all forms of roads and roadways, including bikeways and equestrian trails and private driveways or private roads serving more than one home;
  - (ii) airports and landing fields;
  - (iii) parking areas for vehicles of all types;
  - (iv) bridges and causeways;
  - (v) rail transportation; and
  - (vi) ferry terminals
- (b) This section does not apply to:
- (i) a driveway for an individual single-family home, which is a residential appurtenance and is part of the primary use and is regulated by [SCC 14.26.470](#);
  - (ii) floatplane moorage, which is regulated by [SCC 14.26.420](#);
  - (iii) operation of a single private floatplane on waters where FAA has designated a seaplane landing area, which is not regulated by this SMP.
- (2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following:
- (a) Transportation facilities (other than bikeways, trails, and equestrian trails) are prohibited within shoreline jurisdiction unless locating outside of shoreline jurisdiction is infeasible.
  - (b) Overwater parking is prohibited in shoreline jurisdiction.
- (3) **Application Requirements.** In addition to the requirements in [SCC 14.26.710](#) Applications, an application must include the following:
- (a) Transportation facilities that are to be used secondarily as flood control or protection structures must provide additional data regarding:
    - (i) channel profiles,
    - (ii) effects on flood level hydraulics, and
    - (iii) potential for enlargement of inundated areas.

Commented [A131]: TWC added for clarity

- (4) **Development Standards.** In addition to the general provisions of [SMP Part III](#), development must comply with the following standards:
- (a) Transportation facilities must be planned, located, and designed to achieve all of the following:
    - (i) minimize possible adverse effects on unique or fragile shoreline features;
    - (ii) no net loss of shoreline ecological functions;
    - (iii) prevent untreated runoff, erosion, and sedimentation from entering surface water systems;
    - (iv) avoid adverse impacts to the flow of surface, subsurface, and floodwaters;
    - (v) avoid adverse impacts on existing or planned water-dependent uses;
    - (vi) set back from the OHWM to the maximum extent feasible to allow for a usable shoreline area for vegetation conservation and planned shoreline uses;
    - (vii) avoid locating in or through designated parks, scenic, natural, historic, archaeologically significant, or recreation areas, except where alternative locations are demonstrated to be infeasible.
  - (b) Fill, grading, and excavated materials from both construction and maintenance activities must be disposed of outside shoreline jurisdiction. If alternative locations are infeasible, such activities must be carried out in accordance with [SCC 14.26.440](#) Fill, Excavation, and Grading.
  - (c) Relief culverts and diversion ditches must not discharge onto erodible soils, fills, or sidecast materials.
  - (d) Mechanical means are preferred over the use of herbicides for brush control. If herbicides are used, they must be applied so that chemicals do not enter shoreline water bodies, or be certified for aquatic use.
  - (e) Transportation facilities must implement Low-Impact Development where feasible through compliance with MR5 in the Stormwater Management Manual.
  - (f) Fill associated with transportation facilities is only permitted in water bodies and their associated wetlands and beaches when all structural or upland alternatives are proven infeasible.
  - (g) Transportation facilities must be consistent with [SCC 14.26.370](#) Public Access.

Commented [A132]: Modified from 6F, per County comment

- (h) Transportation facilities that are allowed over water bodies and associated wetlands must utilize elevated, open pile or pier structures and techniques. The number of water crossings must be the fewest necessary to serve the use or district.
- (i) Bridge abutments and necessary approach fills must be located, if feasible, landward of associated wetlands or the OHWM for water bodies without associated wetlands provided mid-river bridge piers are permitted.
- (j) Roads and railroads must not measurably increase flood levels or profiles and must not restrict or otherwise reduce floodplain and floodway capacities.
- (k) Unpaved existing roads and parking areas may be paved, provided such facilities comply with all other applicable requirements of this SMP.
- (l) Shared driveways are preferred where they result in less impervious area and thereby reduce potential adverse shoreline impacts.
- (m) Shoreline road ends.
  - (i) The County is prohibited from vacating any county road that abuts a body of salt or fresh water except as allowed by RCW 36.87.130.
  - (ii) Development, alteration, or vacation for any purpose of county road ends within shoreline jurisdiction must comply with the provisions of the SMA and this SMP.
- (n) Parking.
  - (i) Parking in shoreline jurisdiction is not a preferred use.
  - (ii) New or expanded parking must:
    - (A) Locate landward of the primary facility or activity, except where necessary for ADA access or where no other locations are feasible.
    - (B) Locate outside shoreline buffers. A Shoreline Variance to locate within shoreline buffers is available only:
      - (I) To place the required ADA parking spaces within the shoreline buffer to facilitate better and safer public access to the shoreline;
      - (II) When the applicant's lot/site has topographical constraints where no other location outside the buffer yet within the proposed development is feasible (e.g., the use or activity is

located on a parcel entirely or substantially encumbered by the required buffer).

- (C) Be accessory to an authorized use.
- (D) Minimize environmental and visual impacts.
- (E) Utilize permeable materials to minimize runoff and potential erosion and sedimentation, where feasible or required by SCC 14.32 Stormwater Management.
- (F) Be screened from view of shoreline areas and nearby properties with native vegetation to be planted within six months of facility completion. Screening must be effective within two years of planting.

**Commented [A133]:** Modified from 6F, per County comment

(o) Floatplanes.

- (i) Commercial floatplane facilities, including docks and storage area bases, may not be adjacent to residential areas and must meet the standards in [SCC 14.26.420](#) Boating Facilities.
- (ii) Floatplane facilities must be located to minimize short- and long-term noise impacts and other impacts on habitat areas of endangered or threatened species, environmentally critical and sensitive habitats, and migration routes on adjacent parcels and over-flight areas.

- (p) Height for bridges and other transportation facilities exceeding 35 feet above average grade may be approved when necessary for the functions of a permitted use, provided such structures are designed to minimize obstruction of views and the applicant demonstrates that the development will not obstruct the view of a substantial number of residences and overriding consideration of the public interest will be served.

**Commented [A134]:** Added for consistency with allowances for height exceedences

#### 14.26.490 Utilities

(1) **Applicability.**

- (a) This section applies to “utilities,” meaning facilities and services that generate, transport, process, or store water, sewage, solid waste, electrical energy, communications and pipelines for fuel, oil, natural gas, and petroleum products. Firefighting facilities and administrative structures associated with the operation of the utility are considered part of the utility. Utilities include upland and in-water facilities and services that generate, transport, process, or store water, sewage, solid waste, electrical energy, communications and pipelines for fuel, oil, natural gas, and petroleum products.

- (i) “Large utilities” serve more than one community (i.e. more than one neighborhood, town, city, or other defined place) or major attractions. Examples include, but are not limited to, 230 kv power transmission lines, natural gas transmission lines, and regional water storage tanks and reservoirs, regional water transmission lines or regional sewer collectors and interceptors. Large facilities may also include facilities serving an entire community, such as subregional switching stations (115 kv and smaller), and municipal sewer, water, and stormwater facilities.
  - (ii) “Small utilities” serve adjacent properties and include, but are not limited to, power lines not specified under “large utilities,” water, sanitary sewer, and stormwater facilities, fiber optic cable, pump stations and hydrants, switching boxes, and other structures normally found in a street right-of-way. Onsite utility features serving primary use such as a water, sewer, or gas line to a residence are accessory utilities and are considered part of the primary use.
  - (b) This section does not apply to “accessory utilities,” meaning onsite utilities that support a permitted shoreline use and are considered part of the primary use.
- (2) **When Allowed.** These uses are allowed in the shoreline environment designations listed in [SCC 14.26.405](#) Uses and Modifications Matrix, subject to the following.
- (a) The following uses must be located outside of shoreline jurisdiction whenever feasible. If not feasible, the use must ensure no net loss of shoreline ecological functions and no significant adverse impacts to other shoreline resources and values that cannot be mitigated.
    - (i) Transmission facilities (e.g., power lines, cables, pipelines), particularly those running roughly parallel to the shoreline.
    - (ii) Facilities that require periodic maintenance that may disrupt shoreline ecological functions.
    - (iii) Energy and communication systems including towers and antennas.
  - (b) Use of existing routes and rights of way. New utilities must be located in existing rights of way and corridors whenever feasible. Specifically power, communications, pipelines, and fuel lines must utilize existing rights-of-way, corridors, and/or bridge crossings and must avoid duplication and construction of new or parallel corridors in shoreline jurisdiction. Proposals for new corridors or water crossings must demonstrate the infeasibility of existing routes.
- (3) **Application Requirements.** In addition to the requirements in [SCC 14.26.710](#) Applications, an application must include the following:

- (a) A design plan and narrative depicting compliance with (4) (a) –(k) Development Standards, as applicable, for the specific utility development proposed.
- (4) **Development Standards.** In addition to the general provisions of [SMP Part III](#), development must comply with the following standards:
- (a) General standards. All new utility facilities must be designed and located to meet the following criteria while meeting the needs for planned growth:
    - (i) Preserve the natural landscape;
    - (ii) Locate and design the project to avoid the need for new structural shoreline stabilization or flood hazard reduction facilities;
    - (iii) Screen facilities from water bodies. Such screening or landscaped areas must consist of native, self-sustaining vegetation to be planted immediately following utility construction or, in the case of existing vegetation, such vegetation must be effectively maintained as screening; and
    - (iv) Minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations.
    - (v) Avoid impacts to fish and wildlife habitat to the maximum extent possible.
    - (vi) The utility installation must not change the natural rate, extent, or opportunity of channel migration.
  - (b) Undergrounding required. All utilities for new subdivisions, mobile home parks, and recreational developments must be installed underground in shoreline jurisdiction.
  - (c) Underground utility lines. For those utility lines allowed in or across shoreline jurisdiction and installed underground or underwater, the following standards apply:
    - (i) Underwater utility lines must enter and emerge inland from fresh and salt water banks, dikes, beaches, or shorelands.
    - (ii) Banks, dikes, beaches, or shorelands where such facilities enter or leave water bodies must be returned to their pre-construction condition, stabilized with compatible, self-sustaining vegetation, and maintained in a safe condition.
    - (iii) Underground (or water) utility lines must be completely buried under the river bed in all river or stream crossings except where such lines may be affixed to a bridge structure and except for appropriate water or sewage treatment plant intake pipes or outfalls.

- (d) Surface utility lines. When utility lines are allowed in or across shoreline jurisdiction and installed on the surface, the following standards apply:
  - (i) Surface utility lines must minimize crossings of shoreline jurisdiction and utilize the shortest, most direct route feasible.
  - (ii) Permitted water crossings requiring structural abutments or approach fills must set back such facilities landward of the OHWM.
  - (iii) Permitted wetland crossings must utilize pier or open pile techniques only. Landfills are not permitted.
- (e) Aerial utility lines. When utility lines are allowed in or across shoreline jurisdiction and installed in an aerial manner, the following apply:
  - (i) Aerial utility lines must minimize crossing of shoreline jurisdiction and must utilize existing crossings where feasible. All crossings must utilize the shortest, most direct route feasible.
  - (ii) Aerial utility lines must make maximum use of area topography to minimize visual contrasts.
- (f) Surface Water and Stormwater Outfalls. The Administrative Official may condition the proposed outfall location and design to ensure aesthetic compatibility and to reduce adverse environmental impacts. Outfalls must:
  - (i) comply with the flow and discharge requirements of SCC Chapter 14.32 Stormwater Management;
  - (ii) be set back from the water's edge and discharged onto appropriate materials such as rocks, logs, and other natural materials to mimic the appearance of a natural-looking creek flowing into the water body;
  - (iii) be designed and installed so that during periods of heavy rainfall the velocity and quantity of runoff will not be detrimental to important aquatic life in the receiving waters, and so that it does not flood adjacent land;
  - (iv) install vegetation consistent with [SCC 14.26.380](#).
- (g) Hydropower facilities. Flowlines and powerhouses are subject to the following additional standards:
  - (i) Flowlines and powerhouses must be designed, located, and constructed in a manner that avoids extensive topographical alteration and avoids impacts to shoreline ecological function and critical areas, consistent with [SCC 14.26.305](#).

- (ii) Flowlines and powerhouses must be designed to minimize the removal of riparian vegetation and to return flow to the stream in as short a distance as practical.
  - (iii) Surface flowlines must be designated, located, and constructed to present as low a profile as possible.
  - (iv) All intake and diversion structures must be designed to maximize the natural transportation of bedload materials to the greatest extent possible.
  - (v) Where site conditions permit, powerhouses must be located a minimum of 50 feet from the OHWM, provided that this does not apply to tailraces.
  - (vi) Impoundments must be located to minimize impacts to critical areas, shoreline natural features, and important scenic vistas.
- (h) Solar energy. Solar energy panels are subject to the regulations for the primary use of the building as well as any general standards of this SMP.
- (i) Tidal and wave energy facilities.
- (i) Tidal and wave energy facilities must be installed so that water quality and marine life will not suffer degradation and that no net loss of ecological function will result, consistent with [SCC 14.26.305](#).
  - (ii) System components of tidal and wave energy or tidal power-generating facilities which are not water-dependent must be located outside shoreline jurisdiction unless alternative locations, including alternative technology, are demonstrated to be infeasible. Location of the system components must not result in a net loss of shoreline ecological functions and processes or significant adverse impacts to other shoreline resources and values such as parks and recreation facilities; public access; archaeological, historic, or cultural resources; or aesthetic resources.
- (j) Maintenance. Maintenance and repair of legally established pre-existing utility facilities is permitted consistent with the use and modifications matrix and SMP Part VI. Maintenance activities must:
- (i) Protect shoreline and critical area habitat consistent with vegetation conservation, critical areas, and other development standards of this SMP;
  - (ii) Provide stormwater management practices to reduce both water quantity and water quality impacts, where appropriate;

- (iii) Provide appropriate erosion and sediment control practices;
  - (iv) Provide appropriate revegetation of disturbed areas following maintenance or repair; and
  - (v) Use best management practices for chemical and nutrient use and containment.
- (k) [Height for utilities exceeding 35 feet above average grade may be approved when necessary for the functions of a permitted use, provided such structures are designed to minimize obstruction of views and the applicant demonstrates that the development will not obstruct the view of a substantial number of residences and overriding consideration of the public interest will be served.]

**Commented [A135]:** Added for consistency with allowances for height exceedences

## Part V: Critical Areas

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All changes to Part V are taken from applicable sections of SCC 14.24 (Critical Areas Ordinance). The following sections of SCC 14.24 are not included in Part V:

- 14.24.010 Introduction.
- 14.24.020 Title and purpose.
- 14.24.030 Authority.
- 14.24.040 Applicability, jurisdiction and coordination.
- 14.24.070 Activities allowed without standard review.
- 14.24.110 County regulation of forest practices for the protection of critical areas.
- 14.24.120 Ongoing agriculture.
- 14.24.140 Variances.
- 14.24.150 Reasonable use exception.
- 14.24.600 Frequently flooded areas designations.
- 14.24.610 Frequently flooded areas initial project review.
- 14.24.620 Frequently flooded areas development requirements.
- 14.24.630 Frequently flooded areas protection standards.
- 14.24.700 Compliance tracking.
- 14.24.710 Fees.
- 14.24.720 Administrative Official.
- 14.24.730 Appeals from the Administrative Official.

**14.26.500 Application of Critical Areas Protection Standards within Shoreline Jurisdiction**

- (1) [Where critical areas exist within shoreline jurisdiction, shoreline uses, modifications, and activities must comply with the additional provisions in this Part.]
- (2) Consistent with WAC 173-26-191(2)(b), if SCC Chapter 14.24 is amended after adoption of this SMP, Part V will still be the operative regulation for this SMP until this SMP is amended to reflect changes to SCC Chapter 14.24.
- (3) Relationship to other Federal, State, Tribal and Local Jurisdictional Agencies' Regulations. Many State, Federal and regional regulations apply to projects conducted within critical areas. Uses otherwise allowed by County codes do not eliminate other agency regulatory requirements.

Commented [A136]: Recommended by Ecology

#### 14.26.505 Resource Information and Maps

- (1) Skagit County's critical areas maps are provided only as a general guide to alert the user to the possible distribution, location and extent of critical areas. Map identification of critical areas provides only approximate boundaries and locations in Skagit County. The actual locations and boundaries of critical areas, as well as their quality and quantity, shall be based upon the presence of the features applicable to each critical areas element in this Part. Maps shall not be considered a regulatory standard or substitute for site-specific assessments. The application of definitions, methodologies and performance standards pursuant to the site assessment requirements provided in this Part is the controlling factor in determining the actual presence and extent of critical areas.
- (2) Skagit County will utilize data from natural resource agencies as a source of best available science (BAS) to develop critical areas maps. Maps will be updated when new data becomes available from resource agencies.

#### 14.26.510 Authorizations Required

With the exception of activities identified under [SCC 14.26.720](#) that do not require local review, any land use activity that can impair the functions and values of critical areas or their buffers, including suspect or known geologically hazardous areas, through a development activity or by disturbance of the soil or water, and/or by removal of, or damage to, existing vegetation, shall require critical areas review and written authorization pursuant to this SMP. Review and authorizations required under this Part shall be executed through the permit and approval requirements of this SMP and under the authorities of the SMA. Regardless of whether a shoreline substantial development permit or approval is required, any proposed alteration that can adversely affect a critical area or its standard buffer must comply with the substantive and procedural requirements of this Part. Critical areas review pursuant to this Part shall be conducted as part of the underlying shoreline permit or approval, where applicable. It is the responsibility of the landowner, or designee, who conducts or proposes to undertake land use activities that can adversely impact critical areas or their buffers to obtain County authorization prior to commencing such activities.

- (1) No shoreline permit, exemption from the shoreline substantial development permit process, land division, development approval, or other County authorization shall be granted until the applicant has demonstrated compliance with the applicable provisions of this Part.
- (2) Conflicts with Other Provisions. If any provision of this Part conflicts with any other applicable provision of the Skagit County Code, the more restrictive shall apply unless specifically excepted in this SMP.

#### 14.26.515 Standard Critical Areas Review and Site Assessment Procedures

- (1) Determination that an Activity Requires Standard Review. All applications for approval of activities requiring approval pursuant to [SCC 14.26.510](#) shall require the submission of a

**Commented [A137]:** Edits recommended by Ecology for consistency

critical areas checklist completed and filed by the applicant on the forms provided by Planning and Development Services. If not otherwise required, all applications for critical areas review shall include a description of the proposed activity and a site plan showing the location of the proposed activity and associated area of disturbance in relation to all known critical areas or critical areas indicators.

- (2) Review Procedures. Upon receipt of a completed critical areas checklist, the Administrative Official shall use the following method to determine whether critical areas or their required buffers are within 300 feet or a distance otherwise specified in this Part or may be affected by the proposed activity.
  - (a) Review the critical areas checklist together with the maps and other critical areas resources identified in the relevant sections of this Part; and
  - (b) Complete the Critical Areas Staff Checklist; and
  - (c) Inspect the site; and
  - (d) Complete the Critical Areas Field Indicator form
- (3) Determination that Critical Areas are not Present or Affected.
  - (a) If the Administrative Official determines that critical areas or critical area buffers are not present within 300 feet of the proposed activity or within a distance otherwise specified in this Part; or
  - (b) The project does not expand an existing single-family residence by more than 200 square feet of floor area and does not adversely impact or encroach into critical areas or their buffers; or
  - (c) The vertical expansion of an existing single-family residence located within a critical area or its buffer may be allowed if the expansion does not adversely impact or encroach into critical areas of their buffers; or
  - (d) The project does not expand an existing structure, other than a single-family residence, by more than 200 square feet of floor area, does not alter the use or increase septic effluent, and does not adversely impact or encroach into critical areas or their buffers; then
  - (e) The review required pursuant to this Part is complete. Any proposed change in use or scope of activity from that contained in the application shall be subject to further review under this Part.

**Commented [A138]:** Adjusted to 300 feet to account for largest of the possible wetland buffers

**Commented [A139]:** Added per County staff to allow some development flexibility for existing structures while maintaining consistency with existing expansion allowances.

- (4) Determination that Critical Areas are Present or Affected. If the Administrative Official determines that critical area indicators are present within 200 feet of the proposed activity or within a distance otherwise specified in this Part, then the Administrative Official shall note this determination in the application file and the applicant shall be required to provide the critical areas site assessment specified in this Part. Development of a site assessment may precede a County site visit; provided, that no disturbance of vegetation or land surface occurs prior to County authorization. If the applicant chooses, the site assessment may be limited to 300 feet surrounding a proposed development only if there are no other activities occurring or proposed on the remainder of the parcel which are in conflict with this Part. If the applicant, together with assistance from the Administrative Official, cannot obtain permission for access to properties within 300 feet of the project area, then the site assessment may also be limited accordingly. The site assessment shall be completed as follows:
- (a) The site assessment shall be prepared by a qualified professional for the type of critical area or areas involved and shall contain the information specified for each type of critical area. The qualified professional may consult with the Administrative Official prior to or during preparation of the site assessment to obtain County approval of modifications to the contents of the site assessment.
  - (b) The site assessment shall use scientifically valid methods and studies in the analysis of critical areas data and field reconnaissance and reference the source of science used.
  - (c) The site assessment shall include:
    - (i) Project description that includes a detailed narrative describing the project, its relationship to the critical area and its potential impact to the critical area; and
    - (ii) A copy of the site plan for the project proposal including a map to scale depicting critical areas, buffers, the development proposal, and any areas to be cleared; and
    - (iii) Identification and characterization of all critical areas and buffers adjacent to the proposed project area; and
    - (iv) An assessment of the probable cumulative impacts to critical areas resulting from development of the site and the proposed development; and
    - (v) A description of the proposed stormwater management plan for the development and consideration of impacts to drainage alterations; and

- (vi) A description of efforts made to apply mitigation sequencing pursuant to [SCC 14.26.305](#); and
  - (vii) A proposed mitigation plan including land use restrictions and landowner management, maintenance and monitoring responsibilities; and
  - (viii) Regulatory analysis including a discussion of any Federal, State, Tribal, and/or local requirements, or special management recommendations which have been developed for species and/or habitats located on the site.
  - (ix) If necessary, designate a maintenance corridor to provide an area for construction and maintenance of buildings and other structures. The standard width of the maintenance corridor shall be 15 feet. This distance may be modified with approval of the Administrative Official. The following may be allowed within the maintenance corridor area:
    - (A) Landscaping with non-invasive species only;
    - (B) Uncovered decks;
    - (C) Building overhangs if such overhangs do not extend more than 18 inches into the setback area;
    - (D) Impervious ground surfaces, such as driveways and patios; provided, that such improvements may be subject to special drainage provisions adopted for the various critical areas; and
    - (E) Trails.
  - (d) If necessary to ensure compliance with this Part, the Administrative Official may require additional information from the applicant, separate from the critical areas site assessment.
- (5) General Mitigation Requirements.
- (a) Mitigation. All proposed alterations to critical areas or associated buffers shall require mitigation sufficient to ensure no net loss of ecological functions, prevent risk from a critical areas hazard, where applicable, and shall give adequate consideration to the reasonable and economically viable use of the property.
- (6) Financial Assurance. The Administrative Official shall require the mitigation proposed in the site assessment to be completed prior to final approval of the development permit. For all projects with an estimated mitigation cost of \$10,000 or more, the Administrative Official may require financial assurance which will guarantee compliance with the

**Commented [A140]:** Allows for some flexibility by the Admin Official

mitigation plan if the mitigation proposed in the site assessment cannot be completed prior to final approval of the development permit. Financial assurance shall be in the form of either a surety bond, performance bond, assignment of savings account or an irrevocable letter of credit guaranteed by an acceptable financial institution with terms and conditions acceptable to the County Prosecuting Attorney, shall be in the amount of 125% of the estimated cost of the uncompleted actions or construction, and shall be assigned in favor of Skagit County Planning and Development Services. The term of the financial assurance shall remain in place until the required mitigation is complete.

#### **14.26.520 Protected Critical Areas (PCA) Requirements**

- (1) PCA. Approval of projects which trigger a development permit and/or other land use activities that require critical areas site assessment(s) shall require the identification and designation of PCAs. PCAs shall include all critical areas and their associated buffers as well as all areas on the parcel not investigated for critical areas. PCAs shall be depicted on a site plan, suitable for recording, and shall include all critical areas and associated buffers which have been identified through the site assessment process.
  - (a) The PCA is to be left undisturbed in its natural state. No clearing, grading, filling, logging, or removal of woody material; building; construction or road construction of any kind; planting of non-native vegetation or occupation by livestock is allowed within the PCA areas except as specifically permitted by Skagit County on a case-by-case basis.
- (2) PCA Field Identification and Buffer Edge Markers.
  - (a) Temporary Markers. During construction phases of development, distinct temporary marking consisting of flagging and/or staking shall be maintained along the outer limits of the delineated PCA or the limits of the proposed site disturbance outside of the PCA. Prior to the start of construction activity, and as necessary during construction, temporary markings shall be inspected by the Administrative Official or qualified professional. Written confirmation is to be included in the record as to whether or not the flagging has been installed consistent with the permit requirements prior to commencement of the permitted activity.
  - (b) Permanent Buffer Edge Markers. Except as provided under Subsection (2)(b)(i) of this Section, the outer edges of all PCAs, with the exception of aquifer recharge areas, shall be clearly marked on-site by the applicant or landowner with permanent stakes and critical areas markers. Critical areas markers may be either approved critical areas signs or inexpensive steel posts painted a standard color approved by the Administrative Official that is clearly identifiable as a critical areas marker. Installation of permanent markers shall be the responsibility of the landowner.

- (i) The Administrative Official may waive or modify the requirement for permanent buffer edge markers; provided, that any such decision shall be based on a site-specific determination that future verification of PCA locations will not be substantially more difficult without the placement of permanent markers and that such waiver or modification will not result in reduced long-term protection of critical areas.
- (ii) Where such permanent markers are required, the Administrative Official shall specify their frequency of placement and general location. Permanent markers shall be placed to locate the edge of the PCA to an approximate accuracy of within 5 percent of the specified buffer width or within 5 feet, whichever is larger. The spacing intervals of the markers shall be such as to provide comparable accuracy of line-of-sight determination of buffer edges. The locations of all required stakes/markers shall be shown on the plat map or site plan recorded with the Auditor.
- (c) Signs or Fencing Required as Part of Critical Area Mitigation. The Administrative Official shall require permanent signs or fencing where the Administrative Official determines that it is a necessary component of a mitigation plan. The intent is to provide clear and sufficient notice, identification and protection of critical areas on-site where damage to a critical area or buffer by humans or livestock is probable due to the proximity of the adjacent activity.
- (d) Sign, Marker and Fence Maintenance. It is the responsibility of the landowner, or any subsequent landowner, to maintain the required PCA markers, signs or fences in working order throughout the duration of the development project or land use activity. "Maintenance" includes any necessary replacement. Removal of required signs, markers or fences without prior written approval of the Administrative Official shall be considered a violation of this Part.
- (3) PCA Recording and Binding Agreements.
  - (a) All PCAs shall be recorded with the County Auditor in accordance with the procedures established under this Section. The applicant shall be responsible for all fees and other costs associated with recording of PCAs.
  - (b) Binding Agreements. For each project or activity that requires recording of PCAs, the following information shall be recorded with the Auditor, using forms provided by Planning and Development Services, as part of a binding agreement between the landowner and the County which shall run with the land and be readily available to the public upon request:

- (i) Binding agreement signed by the landowner and the Administrative Official which stipulates any special conditions of approval, protective covenants, binding conditions, or other requirements such as use restrictions, required mitigation, and/or landowner maintenance or monitoring requirements established at the time of approval;
  - (ii) Reference to the County file containing the complete record of information pertaining to approval of the project or activity.
- (4) PCAs on Pre-Existing Lots.
  - (a) For development proposals and other land use activities on pre-existing lots, not part of a proposed land division, planned unit development (PUD) or other form of multiple lot development, PCAs shall be identified on a scaled site plan showing the location of the PCA, structures (existing and proposed) and their distances from the PCA and lot lines to show relative location within the subject parcel(s). All PCAs shall include the necessary labeling to show calculated area (in square feet or acreage), and type or category of critical area designated. The site plan may be prepared by the applicant and all distances and locations of structures may be measured from the established PCA boundary to within plus-or-minus 5 feet.
  - (b) Ingress and Egress. Owners of PCAs shall grant ingress and egress by the Administrative Official for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.
- (5) PCA Designations for New Land Divisions.
  - (a) For land divisions and PUDs where critical areas have been identified through site assessments, all PCAs shall be placed into separate tracts or easements, whose uses shall be regulated by the provisions of this Part. Area within a PCA can be included in total acreage for development purposes and may be used in lot area or density calculations. PCAs may be owned and maintained by the owner of the lot of which they are a part or transferred to the County, homeowners association or land trust.
  - (b) If the development project is a CaRD application and is within a natural resource land, the remainder parcel shall be put into Os-PA or Os-NRL and shall have all of the constraints that are set forth in this Part.
    - (i) If the development project is a short subdivision conducted pursuant to SCC 14.16.860 (Agricultural land preservation) which segregates an existing single-family residence on a substandard lot while preserving the remainder of the parcel under a County-approved agricultural preservation agreement, said short subdivision shall not include additional development as defined under SCC 14.04.020 and subsequent development on the segregated home

site and/or remainder parcel shall require standard review pursuant to this Part.

- (c) Recording. PCA designations shall be recorded with the Auditor as part of the plat approval process. The Auditor file number referencing the agreement shall be on the face of the plat and its provisions shall run with the land.
- (d) PCA Plat Map Descriptions. The location of PCAs shall be clearly identified on preliminary and final plat maps. PCAs shall be labeled using the letters A through Z, or another labeling system approved by the Administrative Official. If a survey was not used to map the critical area, a note on the final plat map shall be recorded stating that a legal survey was not performed to delineate the critical area and that the surveyor is not incurring liability for the exact boundaries of the critical area on the plat map. All PCAs shall include the necessary labeling to show calculated area (in square feet or acreage), and type and/or category of critical areas within each lot. This information shall be noted on the face of the approved plat.
- (e) PCA Maintenance. The PCA is to be left undisturbed in its natural state. No clearing, grading, filling, logging, or removal of woody material; building; construction or road construction of any kind; planting of non-native vegetation or occupation by livestock is allowed within the PCA areas except as specifically permitted by Skagit County on a case-by-case basis.
- (f) Ingress, Egress and Use. Owners of PCAs shall grant ingress and egress by the Administrative Official for monitoring and evaluation of compliance with established conditions of approval, binding conditions or any required mitigation.

#### **14.26.521 Critical Areas Determination and Conditions of Approval**

Based on the critical areas site assessment and other available critical areas information, the Administrative Official shall make a determination on the proposed activity. A determination to approve a proposal shall include designation of protected critical areas (PCAs) pursuant to [SCC 14.26.520](#) and stipulation of binding conditions and required mitigation, monitoring, maintenance or other conditions of approval pursuant to this Part.

- (1) If the Administrative Official determines that there are no conditions under which the proposed activity could be approved, then the Administrative Official shall deny the proposal.
- (2) Formal determinations made by the Administrative Official shall include the basis and rationale for the determination, as well as detailed specification of related conditions of approval, land use prohibitions, and required landowner mitigation, management, monitoring and/or maintenance.

- (3) Complete Record. A complete record of all formal determinations by the Administrative Official, along with related critical areas checklists, site assessments, binding agreements, conditions of approval, land use prohibitions and required mitigation shall be maintained by the County and made available to the public upon request, pursuant to Chapter 40.14 RCW.
- (4) Option to Apply for a Variance. If, as a result of the critical areas site assessment and determination, the applicant believes that he or she is eligible for a variance from one or more of the dimensional requirements of this Part, then the applicant may request a variance as described in [SCC 14.26.735](#).

#### **14.26.522 Hazard Tree Removal**

- (1) In a critical area or critical area buffer, removal of hazardous, diseased or dead trees and vegetation by the landowner may be permitted when necessary to:
  - (a) Control fire; or
  - (b) Halt the spread of disease or damaging insects consistent with the State Forest Practice Act, Chapter 76.09 RCW; or
  - (c) Avoid a hazard such as landslides; or
  - (d) Avoid a threat to existing structures or aboveground utility lines.
- (2) Before hazardous, diseased or dead trees and vegetation may be removed by the landowner pursuant to Subsection (1) of this Section:
  - (a) Unless there is an emergency pursuant to SCC14.26.720, the landowner shall obtain prior written approval from Planning and Development Services. This consent shall be processed promptly and may not be unreasonably withheld. If the Administrative Official fails to respond to a hazard tree removal request within 10 business days, the landowner's request shall be conclusively allowed; and
  - (b) The removed tree or vegetation should be left within the critical areas or buffer unless the Administrative Official, or a qualified professional, warrants its removal to avoid spreading the disease or pests; and
  - (c) Any removed tree or vegetation shall be replaced by the landowner with an appropriate native species in appropriate size. Replacement shall be performed consistent with accepted restoration standards for critical areas within 1 calendar year;
  - (d) For this Section only, a "qualified professional" shall mean a certified arborist, certified forester or landscape architect.

#### **14.26.530 Wetland Designations**

- (1) Wetlands, as defined in RCW 36.70A.030(21), are areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands.
- (2) Designation. Wetlands shall be identified and designated through a site visit and/or a site assessment in compliance with WAC 173-22-035.

#### **14.26.531 Wetland Classification**

Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington 2014 Update (Department of Ecology Publication No. 14-06-029, as amended). This document contains the definitions, methods and a rating form for determining the categorization of wetlands below:

- (1) Category I wetlands are those wetlands of exceptional value in terms of protecting water quality, storing flood and stormwater, and/or providing habitat for wildlife.
- (2) Category II wetlands do not meet the criteria for Category I rating but occur infrequently and have qualities that are difficult to replace if altered.
- (3) Category III wetlands have important resource value.
- (4) Category IV wetlands are of limited resource value. They typically have vegetation of similar age and class, lack special habitat features, and/or are isolated or disconnected from other aquatic systems or high quality upland habitats.

#### **14.26.532 Wetland Site Assessment Requirements**

Any proposed high impact land use within 300 feet of wetland indicators, and any other proposed land use within 225 feet of wetland indicators, requires a wetlands site assessment. In addition to the requirements of [SCC 14.26.515](#), the following shall be included in a wetlands site assessment:

- (1) A wetland delineation shall be performed as part of a site assessment. The delineation shall be performed by a qualified professional trained in conducting delineations in accordance with the methodology specified under [SCC 14.26.530](#); and
- (2) Wetland category, including Cowardin and hydrogeomorphic (HGM) classification, in accordance with [SCC 14.26.531](#); and
- (3) A site plan indicating wetland and buffer boundaries and the locations of all data points; and
- (4) Functions and values analysis which includes but is not limited to a discussion of water quality, fish and wildlife habitat hydrologic regime, flood and stormwater control, base flow and groundwater support, cultural and socioeconomic values; and
- (5) All data sheets and rating forms used to assess the wetland conditions on and off site.

**14.26.533 Wetland Protection Standards**

- (1) Wetland Buffer Widths.
  - (a) Standard Wetland Buffers. Standard buffers are based on land use impact. The following standard buffers shall be required for regulated wetlands unless otherwise provided for in this Section:

Wetland Rating	Standard Buffers		
	Land Use Impact		
	Low	Moderate	High
Category I	150 feet	225 feet	300 feet
Category II	150 feet	225 feet	300 feet
Category III	75 feet	110 feet	150 feet
Category IV	25 feet	40 feet	50 feet

- (b) Optional Wetland Buffers. The applicant may choose to have the optional wetland buffers in Section 8C.2.3 (as updated in 2014) of Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, apply in place of the standard buffers in Subsection (1)(a) of this Section, provided a site assessment is completed by a qualified professional pursuant to SCC 14.26.515.

Wetland Rating	Habitat Score	Land Use Impact		
		Low	Moderate	High
Category I	Standard Buffers only			
Category II	8—9	150'	225'	300'
	6—7	75'	110'	150'
	<6	50'	75'	100'
Category III	8—9	150'	225'	300'
	6—7	75'	110'	150'
	<6	40'	60'	80'
Category IV	Standard Buffers only			

- (2) Wetland buffers shall be measured horizontally in a landward direction from the wetland edge, as delineated in the field, pursuant to the requirements of [SCC 14.26.531](#). Where lands abutting a wetland display a continuous slope of 25% or greater, the buffer shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer should be extended to a point 25 feet beyond the top of the bank of the sloping area.
- (3) Any wetland created, restored or enhanced as mitigation for approved wetland alterations shall also include the standard buffer required for the category of the created, restored, or enhanced wetland.
- (4) Where a legally established and constructed public roadway transects a wetland buffer, the Administrative Official may approve a modification of the standard buffer width to the edge of the roadway, provided:
  - (a) The isolated part of the buffer does not provide additional protection of the wetland; and
  - (b) The isolated part of the buffer provides insignificant biological, geological or hydrological buffer functions relating to the wetland; and
  - (c) If the resulting buffer distance is less than 50% of the standard or optional buffer for the applicable wetland category, no further reduction shall be allowed.

**Commented [A141]:** Per TWC, Ecology guidance in 2018 has adjusted the buffer table to associate a habitat score of 5 with scores of 3-4 rather than 6-7.

#### **14.26.534 Wetland Performance-based Buffer Alternatives and Mitigation Standards**

Buffer widths may be increased, decreased or averaged in accordance with the following provisions. All mitigation proposed shall be consistent with State and Federal wetland regulations.-

- (1) Buffer Width Increasing. The Administrative Official may require the standard or optional buffer width to be increased by the distance necessary to protect wetland functions and provide connectivity to other wetland and habitat areas for one of the following:
  - (a) To maintain viable populations of existing species listed by the Federal or State government as endangered, threatened or sensitive; or
  - (b) To protect wetlands against severe erosion that standard erosion control measures will not effectively address; or
  - (c) When a Category I or II wetland is located within 300 feet of:
    - (i) Another Category I, II or III wetland; or
    - (ii) A fish and wildlife HCA; or
    - (iii) A Type S or F stream; or
    - (iv) A high impact land use that is likely to have additional impacts.

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect wetland and habitat functions. If the wetland contains variations in sensitivity, increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the wetland.

- (2) Buffer Width Averaging. Buffer averaging allows limited reductions of buffer width in specified locations, while requiring increases in others. Averaging of required buffer widths will be allowed only if the applicant demonstrates that all of the following criteria are met:
  - (a) Averaging is necessary to accomplish the purpose of the proposal and no reasonable alternative is available; and
  - (b) Averaging width will not adversely impact the wetland functions and values; and
  - (c) The total area contained within the wetland buffer after averaging is no less than that contained within the standard buffer prior to averaging; and
  - (d) The buffer width shall not be reduced below 75% of the standard buffer width.

- (3) **Buffer Width Decreasing.** Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in [SCC 14.26.305](#). In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a five-year monitoring and maintenance plan.
- (a) High impact land use projects may apply moderate intensity buffers if measures to minimize impacts to wetlands from high impact land uses are implemented. Some of the measures that may be used can be found in Department of Ecology Publication No. 05-06-008, Wetlands in Washington State, Volume 2, Appendix 8C (as updated in 2014), [listed in the Impact Minimization Measures table].

**Commented [A142]:** Ecology recommends including this table in the SMP rather than a soft reference to DOE guidance

**Impact Minimization Measures**

Examples of Disturbance	Activities and Uses that Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Commercial/Industrial</li> <li>• Residential</li> <li>• Recreation (e.g. athletic fields)</li> <li>• Agricultural buildings</li> </ul>	<ul style="list-style-type: none"> <li>• Direct lights away from wetland</li> <li>• Only use lighting where necessary for public safety and keep lights off when not needed</li> <li>• Use motion activated lights</li> <li>• Use full cut-off filters to cover light bulbs and direct light only where needed</li> <li>• Limit use of blue-white colored lights in favor of red-amber hues</li> <li>• Use lower intensity LED lighting</li> <li>• Dim light to the lowest acceptable intensity</li> </ul>
Noise	<ul style="list-style-type: none"> <li>• Commercial</li> <li>• Industrial</li> <li>• Recreation – (e.g. athletic fields, bleachers, etc.)</li> <li>• Residential</li> <li>• Agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Locate activity that generates noise away from wetland</li> <li>• Construct a fence to reduce noise impacts on adjacent wetland and buffer</li> <li>• Plant a strip of dense shrub vegetation adjacent to wetland buffer</li> </ul>

Examples of Disturbance	Activities and Uses that Cause Disturbances	Examples of Measures to Minimize Impacts
Toxic runoff*	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Commercial/industrial</li> <li>• Residential areas</li> <li>• Application of agricultural pesticides</li> <li>• Landscaping</li> <li>• Agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered</li> <li>• Establish covenants limiting use of pesticides within 150 ft. of wetland</li> <li>• Apply integrated pest management</li> </ul>
Stormwater runoff	<ul style="list-style-type: none"> <li>• Parking lots</li> <li>• Roads</li> <li>• Residential areas</li> <li>• Commercial/Industrial</li> <li>• Recreation</li> <li>• Landscaping/lawns</li> <li>• Other impermeable surfaces, compacted soil, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Retrofit stormwater detention and treatment for roads and existing adjacent development</li> <li>• Prevent channelized or sheet flow from lawns that directly enters the buffer</li> <li>• Infiltrate or treat, detain, and disperse new runoff from impervious surfaces and lawns</li> </ul>
Pets and human disturbance	<ul style="list-style-type: none"> <li>• Residential areas</li> <li>• Recreation</li> </ul>	<ul style="list-style-type: none"> <li>• Use privacy fencing</li> <li>• Plant dense native vegetation to delineate buffer edge and to discourage disturbance</li> <li>• Place wetland and its buffer in a separate tract</li> <li>• Place signs around the wetland buffer every 50-200', and for subdivisions place signs at the back of each residential lot.</li> <li>• When platting new subdivisions, locate greenbelts, stormwater facilities, or other lower-intensity land uses adjacent to wetland buffers.</li> </ul>
Dust	<ul style="list-style-type: none"> <li>• Tilled fields</li> <li>• Roads</li> </ul>	<ul style="list-style-type: none"> <li>• Use best management practices to control dust</li> </ul>
<p>* These examples are not necessarily adequate for minimizing toxic runoff if threatened or endangered species are present at the site.</p>		

(4) Any person who alters or proposes to alter regulated wetlands shall reestablish, create, rehabilitate and/or enhance areas of wetland in order to compensate for wetland losses at the ratios described in the Wetland Mitigation Ratios table.

**Commented [A143]:** Ecology recommends including this table in the SMP rather than a soft reference to DOE guidance

**Wetland Mitigation Ratios**

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

- (5) Allowed Uses in Wetlands or Wetland Buffers. The following activities may be permitted within wetlands or their buffers but shall comply with [SCC 14.26.515](#) and [14.26.532](#).
  - (a) Uses and activities which are consistent with the purpose and function of the buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the wetland involved; provided, that such activity shall not result in a decrease in wetland functions and values and shall not prevent or inhibit the buffer’s recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails and viewing platforms less than 200 square feet which may be covered but not enclosed.
  - (b) Stormwater discharges to wetlands shall be controlled and treated in accordance with the Stormwater Management Manual.

**14.26.535 Wetland Alternative Compensation Projects**

- (1) Off-Site Compensation. On-site compensation is generally preferred over off-site compensation. Off-site compensation allows replacement of wetlands away from the site

on which the wetland has been impacted by a regulated activity. The following conditions apply to off-site compensation:

- (a) Off-site compensation shall occur within shoreline jurisdiction of the same drainage basin of the same watershed where the wetland loss occurs; provided, that Category IV wetlands may be replaced outside of the watershed if there is no reasonable alternative. In such instances, the stormwater storage function provided by Category IV wetlands must be provided for within the design of the development project.
- (b) Off-site compensation can be allowed only under 1 or more of the following circumstances:
  - (i) On-site compensation is not feasible due to hydrology, soils, or other physical factors;
  - (ii) On-site compensation is not practical due to probable adverse impacts from surrounding land uses or would conflict with a Federal, State or local public safety directive;
  - (iii) Potential functions and values at the site of the proposed restoration are greater than the lost wetland functions and values;
  - (iv) When the wetland to be altered is of a limited function and value and is degraded, compensation shall be of the wetland community types needed most in the location of compensation and those most likely to succeed with the highest functions and values possible.
- (2) Out-of-kind compensation can be allowed when out-of-kind replacement will best meet the provisions of Subsection (3)(a) of this Section, the mitigation sequence outlined in [SCC 14.26.305](#), and the provision for no net loss of shoreline ecological functions.
- (3) Selecting Compensation Sites. Except in the case of cooperative compensation projects in selecting compensation sites, applicants shall pursue locations in the following order of preference:
  - (a) Filled, drained, or cleared sites which were formerly wetlands and where appropriate hydrology exists;
  - (b) Upland sites, adjacent to wetlands, if the upland is significantly disturbed and does not contain a mature forested or shrub community of native species, and where the appropriate natural hydrology exists.

- (4) Innovative Wetland Mitigation Projects. The Administrative Official may encourage, facilitate and approve innovative wetland mitigation projects. Advance compensation or mitigation banking are examples of innovative compensation projects allowed under the provisions of this Section wherein 1 or more applicants, or an organization with demonstrated capability, may undertake a compensation project together if it is demonstrated that all of the following circumstances exist:
- (a) Creation of 1 or several larger wetlands may be preferable to many small wetlands; and
  - (b) The group demonstrates the organizational and fiscal capability to act cooperatively; and
  - (c) The group demonstrates that long-term management of the compensation area will be provided; and
  - (d) There is a clear potential for success of the proposed compensation at the identified compensation site; and
  - (e) Wetland mitigation banking programs consistent with the provisions outlined in the Department of Ecology's publications No. 06-06-011A and No. 06-06-011B (Wetland Mitigation in Washington State, Part 1 and Part 2), Chapter 90.84 RCW and Chapter 173-700 WAC will be considered as a method of compensation for unavoidable, adverse wetland impacts associated with future development.

#### **14.26.540 Aquifer recharge areas intent**

- (1) This Section establishes areas determined to be critical in maintaining both groundwater quantity and quality. This Section specifies regulatory requirements for development within these areas and provides a methodology by which Skagit County will determine the level of review and any mitigation measures required. The intent of this Section is to:
- (a) Define minimum regulatory requirements to protect groundwater quality and quantity for existing and future use; and
  - (b) Identify practices, alternatives, and mitigation measures that can minimize the adverse impacts of proposed projects; and
  - (c) Ensure adequate design, construction, management, and operations to protect groundwater quality and quantity.
- (2) Existing and future beneficial uses of groundwater shall be maintained and protected. Degradation of groundwater quality that would interfere with or become injurious to beneficial uses shall be avoided or minimized.

- (3) Wherever groundwater is determined to be of a higher quality than the criteria established for said waters under this Section, the existing water quality shall be protected, and contaminants that will reduce the existing quality thereof shall not be allowed to enter such waters, except in those instances where it can be demonstrated that:
  - (a) An overriding consideration of the public interest will be served; and
  - (b) All contaminants proposed for entry into said groundwater(s) shall be provided with all known, available, and reasonable methods of prevention, control, and treatment prior to entry.
- (4) It is also the intent of this regulation to:
  - (a) Comply with and implement the requirements of Chapter 90.48 RCW, Chapters 173-200, 173-201A, 173-160, 246-290 and 246-291 WAC, Chapter 12.48 SCC; and
  - (b) Carry out powers in manners which are consistent with Chapter 90.54 RCW and Chapters 173-503 and 173-505 WAC, as amended; and
  - (c) Comply with the Washington State Department of Health's wellhead protection guidance.

#### **14.26.541 Aquifer recharge areas designations**

There are 2 categories of aquifer recharge areas. These categories are designated to assist the Administrative Official in determining the level of assessment necessary to evaluate land use proposals. The categories are based on the determination that certain areas require additional scrutiny of the potential impacts of a proposed land use, with consideration given to hydrogeological susceptibility and vulnerability. All designated areas are subject to change as data and information are updated or become available.

- (1) Categories.
  - (a) Category I areas are those so designated because of the need for protection due to a pre-existing land use, or because they are identified by the County, State or Federal government as areas in need of aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability. Category I areas are shown on the aquifer recharge area map. Category I areas include:
    - (i) Areas served by groundwater which have been designated as a "sole source aquifer area" under the Federal Safe Drinking Water Act; and
    - (ii) Areas identified by the County as potential or existing sea water intrusion areas; and

- (iii) Areas designated as “wellhead protection areas” pursuant to WAC Chapter 246-290 and the groundwater contribution area, or otherwise recognized by the Health Officer or Administrative Official as needing wellhead protection. Wellhead protection areas shall, for the purpose of this regulation, include the identified recharge areas associated with:
  - (A) The 10-year groundwater time of travel for all Group A public water systems; or
  - (B) The 1-year groundwater time of travel for all Group B public water supply wells.
- (iv) Areas within 1/2 mile of a surface water source limited (SWSL) stream as designated in [SCC 14.26.544](#)(3)(c).
- (b) Areas throughout the County not identified as Category I areas are designated as Category II areas.
- (c) When any portion of the proposed project area is located partly within a Category I area, the proposed project shall be subject to the level of scrutiny provided for a Category I area.
- (2) In order to protect aquatic resources, each watershed drainage area identified in [SCC 14.26.545](#) is hereby designated as a “flow-sensitive basin.” Flow-sensitive basins may include areas that also are designated Category I or Category II areas.

#### **14.26.542 Aquifer recharge areas prohibited activities**

The following activities are prohibited in Category I areas due to the probability or potential magnitude of their adverse effects on groundwater:

- (1) Landfills, including, but not limited to, hazardous or dangerous waste disposal facilities as defined in Chapter 173-303 WAC, municipal solid waste landfills as defined in Chapter 173-351 WAC, and limited purpose landfills as defined in Chapter 173-350 WAC.
- (2) Underground injection wells. Class I, III, and IV wells and subclasses 5F01, 5D03, 5F04, 5W09, 5W10, 5W11, 5W31, 5X13, 5X14, 5X15, 5W20, 5X28, and 5N24 of Class V wells, such as:
  - (a) Agricultural drainage wells;
  - (b) Untreated sewage waste disposal wells;
  - (c) Cesspools;
  - (d) Industrial process water and disposal wells; and

- (e) Radioactive waste disposal.
- (3) Wood treatment facilities that allow any portion of the treatment process to occur over permeable surfaces (both natural and manmade).
- (4) Facilities that store, process, or dispose of chemicals containing perchloroethylene (PCE) or methyl tertiary butyl ether (MTBE).
- (5) Facilities that store, process, or dispose of radioactive substances.
- (6) Other activities that the Administrative Official or Health Officer determines would significantly degrade groundwater quality or reduce the recharge to aquifers currently or potentially used as a potable water source or that may serve as a significant source of base flow to a flow-sensitive basin stream. The determination must be made based on credible scientific information.

#### **14.26.543 Aquifer recharge areas site assessment requirements**

- (1) Except as provided in Subsection (4) of this Section, the level of study for a site assessment which will be required of the applicant by the Administrative Official for a given development will be based on an initial project review by Skagit County Planning and Development Services that may also include staff from the Health Department and a County staff hydrogeologist. The standard site assessment requirements are provided in Subsection (2) of this Section. The reporting requirements for a particular project can be reduced, at the discretion of the Administrative Official or Health Officer, if it is determined that the preparation of a site assessment is not likely to provide additional information that will aid in the assessment of likely impacts to groundwater quality or quantity.
- (2) Site Assessment Requirements. Unless the scope of the site assessment has been reduced by the Administrative Official or the Health Officer, the site assessment shall satisfy the requirements of [SCC 14.26.515](#), and shall include:
  - (a) A site plan acceptable to the Administrative Official or Health Officer, which indicates the approximate location of known or geologically representative wells (abandoned and active), springs, and surface watercourses within 1,000 feet of the project property.
  - (b) A description of the site-specific hydrogeological characteristics regarding potential impact(s) to the quantity or quality of underlying aquifer(s). At a minimum this will include a description of the lithology, depth and static water level of known underlying aquifer(s), and depiction of groundwater flow direction and patterns on the appropriate map; and

- (c) Identification of the initial receptors of potential adverse impacts located hydraulically down-gradient and within 1,000 feet of the project or as otherwise directed by the Administrative Official or Health Officer.
- (3) Additional Site Assessment Elements. After the initial project review, 1 or more of the site assessment elements listed below may be required based upon the proposed project activity, aquifer recharge area classification, complexity of underlying hydrogeological conditions, and/or the perceived potential to adversely impact hydraulically downgradient receptors. One or more of these additional site assessment elements may also be required if the applicant chooses to demonstrate that certain mitigation measures are not necessary to protect the quantity or quality of the underlying aquifer(s), or that the project does not pose a detrimental risk to hydraulically downgradient receptors. Additional site assessment elements include:
- (a) Lithologic characteristics and stratigraphic relationships of the affected aquifer(s) and overlying geologic units and soil types including thickness, horizontal and vertical extent, permeability, and infiltration rates of surface soils.
  - (b) Delineation of identified structural features such as faults, fractures, and fissures.
  - (c) Aquifer characteristics including determination of recharge and discharge areas, transmissivity, storage coefficient, hydraulic conductivity, porosity, and estimate of groundwater flow direction, velocity and patterns for the affected aquifer(s).
  - (d) Estimate of precipitation and evapotranspiration rates for the project area.
  - (e) Preparation of appropriate hydrogeological cross sections depicting underlying lithology and stratigraphy, aquifer(s), and potential or probable contaminant pathways from a chemical release.
  - (f) Contaminant fate and transport including probable migration pathways and travel time of potential contaminant release(s) from the site through the unsaturated zone to the aquifer(s) and through the aquifer(s), and how the contaminant(s) may be attenuated within the unsaturated zone and the aquifer(s) with consideration to advection, dispersion, and diffusion of contaminants in the groundwater.
  - (g) Delineation of areas potentially affected by contaminant migration on the ground surface and/or through potentially affected aquifer(s).
  - (h) Determination of background or existing groundwater quality underlying the project area.
  - (i) Development of a groundwater monitoring program to measure potential impacts of the development to underlying aquifer(s).

- (j) Development of a spill plan and/or contingency plan describing the specific actions which will be taken if a release of a contaminant(s) occurs, or if groundwater monitoring results indicate a contaminant(s) from the site has entered the underlying aquifer(s).
  - (k) Determination of the degree of continuity between groundwater and nearby surface water including potential impacts to flows in surface water source limited (SWSL) streams and flow-sensitive basins from proposed groundwater withdrawals, and potential impacts to surface water quality from site runoff or contaminated groundwater discharge.
  - (l) Assessment of the potential for pumping-induced seawater intrusion.
  - (m) Nitrate Loading Assessment. For projects that have the potential to adversely impact groundwater quality by nitrate loading, the applicant shall test existing wells and/or required test wells for nitrate as nitrogen and calculate the current and projected future groundwater nitrate concentrations at full project build-out, at an appropriate point of compliance, as determined by project characteristics, and in a methodology approved by the County. If the calculated nitrate loading in the intended water supply equals or exceeds 5 milligrams per liter nitrate as nitrogen, the applicant shall develop a mitigation plan with the point of compliance determined based on project characteristics.
- (4) Activities not requiring review under this Section. The following activities do not require review under the provisions of this Section:
- (a) Activities that legally existed on or before June 13, 1996. Expansions or changes in use shall comply with the applicable provisions of this Section.
  - (b) Single-family residential building permits, including accessory building permits and accessory dwelling unit (ADU) building permits, which are outside Category I areas.
  - (c) Residential short plats outside Category I areas where each lot is 2.5 acres or greater.
  - (d) Single-family residential building permits where a site assessment was required to be completed for the land division. The applicant must comply with the recorded plat notes and the applicable mitigation measures contained in the site assessment.

#### **14.26.544 Aquifer recharge areas impact mitigation**

The Administrative Official and Health Officer shall review development proposals to assess aquifer(s) vulnerability and establish needed mitigation measures. Where determined to be necessary through the site assessment process, or otherwise required under [SCC](#)

[14.26.541](#)(1)(a)(iii), development approvals shall include conditions designed to prevent significant degradation of water quality or reduction in recharge to underlying aquifer(s). Mitigation for groundwater withdrawals is presented in [SCC 14.26.546](#). The project shall not cause exceedance of the water quality standards specified in WAC Chapter 173-200 or otherwise violate the anti-degradation requirements of WAC Chapter 173-200.

- (1) Mitigation Plan Elements. For proposals requiring aquifer recharge area impact mitigations, in addition to adhering to any of the required mitigation measures identified above, the applicant shall develop for approval by the Administrative Official and the Health Officer a mitigation plan for the proposed development. All mitigation conditions applied to permits shall be based on all known, available, and reasonable methods of prevention, control, and treatment. Compliance with the mitigation plan shall be enforceable by the Administrative Official or Health Officer. The applicant may amend the plan with the approval of the Administrative Official and Health Officer. The Administrative Official and Health Officer may, based on performance criteria and monitoring results, require additional amendments to the plan. The mitigation plan shall contain the project's permit conditions and, as applicable:
  - (a) A description of the mitigation measures to be taken, how they will be implemented, and performance criteria.
  - (b) An environmental monitoring plan describing the monitoring program, maintenance, and reporting requirements.
  - (c) A contingency plan describing corrective actions to be taken if monitoring results indicate that mitigation measures are not effectively protecting groundwater resources and human health. The Health Officer or the Administrative Official shall have the authority to impose additional required corrective actions where such measures are necessary to protect groundwater resources or human health. Where appropriate contingencies are not feasible and result in an activity posing unacceptable risk to the groundwater resources or human health, the Administrative Official or Health Officer shall deny the proposal.
  - (d) Multiple-stage (or phased) development must consider the total build-out of the project in terms of critical aquifer recharge areas protection to allow for an assessment of the cumulative impacts of the entire development.
  - (e) Conditions that would precipitate ceasing the project operation altogether.
  - (f) Wellhead Protection Mitigation. Where a wellhead protection plan addressing the project area exists, the Administrative Official or Health Officer shall use the recommendations contained in the wellhead protection plan as a basis for formulating required mitigation measures. In the absence of such a mitigation plan, the Administrative Official or the Health Officer shall contact the owner of the public

water system impacted by the proposed project and jointly develop mitigation measures, a summary of which shall be signed by the applicant and recorded with the applicant's property title.

- (g) Seawater Intrusion. Mitigation must be consistent with [SCC 14.26.550](#) Seawater intrusion areas.
  - (h) "Sole Source Aquifer" Mitigation. See SCC 14.18.310(2).
  - (i) Nitrate Loading Mitigation.
    - (i) General Requirements. If a calculated nitrate loading concentration for a project at the designated point of compliance per [SCC 14.26.543](#)(3)(m) is equal to or greater than 5 milligrams per liter nitrate as nitrogen, then the applicant shall be required to place a notification on the documents of title for the property affected and a monitoring plan shall be developed to monitor the nitrate level and include a contingency plan to be implemented if the nitrate level exceeds 10 milligrams per liter nitrate as nitrogen.
    - (ii) Land Divisions. If the calculated nitrate loading concentration for a land division at the designated point of compliance per [SCC 14.26.543](#)(3)(m) is equal to or greater than 5 milligrams per liter nitrate as nitrogen, then the applicant shall:
      - (A) Develop a mitigation plan to minimize the nitrate loading rate; and
      - (B) Develop a contingency plan to be implemented if the nitrate concentration exceeds 10 milligrams per liter nitrate as nitrogen; and
      - (C) Place notification on the plat stating that mitigation and contingency plans exist.
    - (iii) Mitigation of nitrate in groundwater from on-site septic systems may include decreasing the density of septic system drainfields.
- (2) Recording of Mitigation Plan Summaries.
- (a) General Requirements. The Administrative Official or Health Officer may require that the applicant record a County-approved summary of the mitigation plan on the property title. A copy of the recorded summary shall be provided to the Administrative Official. If a property owner can demonstrate, to the satisfaction of the Administrative Official or Health Officer, that mitigation measures are no longer necessary, the Administrative Official or Health Officer shall approve the addition of language on the title for the property nullifying the mitigation requirements.

- (b) Land Divisions. The Administrative Official shall require the applicant for a land division to record the mitigation plan as part of the plat notes. If the mitigation plan is not recorded as or referenced by a plat note, the applicant shall record the mitigation plan on the affected property title(s).
- (3) Surface Water Source Limited (SWSL) Stream Mitigation.
- (a) If a project, excluding additions to a single-family dwelling unit that rely on an existing domestic groundwater system, is located within 1/2 mile of any of the streams identified in Subsection (3)(c) of this Section as SWSL streams the following mitigation measures shall be required, as applicable:
    - (i) Public Water. If an existing public water system, the source for which is located outside of the watershed containing the project, is timely and reasonably available to a project property within a SWSL watershed, and where the water provider is willing and able to provide safe and reliable potable water service, then the project shall be required to connect to the public water supply as a condition of project approval.
    - (ii) Interim Groundwater Withdrawals. If public water is not timely and reasonably available, as specified in Subsection (3)(a)(i) of this Section, the applicant may utilize groundwater withdrawn from the SWSL watershed on an interim basis, providing that the property shall be subject to mandatory participation in a local utility district (LUD) or special improvement district that will provide potable water service to the property if and when that occurs. The property owner shall be required to sign a written agreement with the County agreeing not to protest the LUD or special improvement district, and have those conditions recorded on the property title before a County permit or land division is approved. The property owner shall also agree through the above written agreement to connect all water fixtures to this public water system as soon as it is timely and reasonably available, and shall decommission any well(s) utilized for interim groundwater withdrawals in accordance with applicable State and County rules and regulations expediently following connection to the public system.
    - (iii) Lawn Watering. Lawn water restrictions or other water use conservation measures shall be required for properties included in land divisions approved after the date of adoption of the ordinance codified in this Part. Lawn watering restrictions for interim groundwater withdrawals shall not apply under the following conditions:
      - (A) The proposed development connects to an existing public water supply as described in Subsection (3)(a)(i) of this Section; or

- (B) The proposed development is drawing water from an aquifer that meets the demonstration standard as specified in Subsection (3)(d) of this Section.
  - (iv) Public Water Lines. The County should encourage extension of new public water lines to serve existing legal lots of record in SWSL watersheds through establishment of a utility improvement district or other shared funding mechanism provided any such extension outside of an urban growth area is consistent with the County's Comprehensive Plan.
  - (v) Comprehensive Plan. Where economically feasible, the County shall consider as part of its Comprehensive Plan limitations on the uses and densities within designated SWSL stream corridors to limit new individual wells as necessary to protect tributary base flows.
- (b) If a project is located within 1/2 mile of any of the streams identified in Subsection (3)(c) of this Section as SWSL then the total impervious surface of the proposed project shall be limited to 5% of the total lot area, unless the proposed development provides mitigation that will collect runoff from the proposed development, treat that runoff, if necessary to protect groundwater quality, and discharge that collected runoff into a groundwater infiltration system on site. The impervious surface limitation may be waived under the following conditions:
- (i) A project is connected to a public water system that has a source of water located outside of the watershed and if the project uses an approved on-site sewage disposal system and it is determined that the on-site sewage disposal system is providing acceptable compensating recharge to the aquifer; or
  - (ii) The project is located in an area that the County Engineer determines is not suitable for stormwater infiltration; or
  - (iii) The limitation is inconsistent with applicable stormwater regulations.
- (c) For the purposes of implementing this Part, the following streams are designated as surface water source limited streams:
- (i) Carpenter Creek;
  - (ii) Coal Creek;
  - (iii) Diobsud Creek;
  - (iv) Friday Creek;

- (v) Grandy Creek;
  - (vi) Jones Creek;
  - (vii) Lake Erie;
  - (viii) Nookachamps Creek;
  - (ix) Samish River;
  - (x) Whitehall Creek.
- (d) Exceptions. Projects meeting the following conditions shall not be required to provide the mitigation measures described in Subsections (3)(a) and (b) of this Section:
- (i) The applicant demonstrates, through an appropriate hydrogeologic characterization, that any groundwater withdrawal proposed for the project will not adversely impact stream flows deemed critical to salmonids in a SWSL stream; provided, that a mitigation report referencing the hydrological determination shall be recorded on the plat and/or title; or
  - (ii) If the project is located outside of the watershed of the streams listed in Subsection (3)(c) of this Section; or
  - (iii) If the project is located in an area where groundwater is under tidal influence.

**14.26.545 Flow-sensitive basins**

(1) Except as provided in Subsection (2) of this Section, average daily groundwater withdrawals for projects initiated after the effective dates indicated below shall be limited in each flow-sensitive basin to the amounts indicated below. The Health Officer, in coordination with the Washington Department of Ecology, shall be responsible for tracking water uses in flow-sensitive basins in accordance with Chapter 12.48 SCC.

- (a) Skagit River Basin.
  - (i) Flow-Sensitive Basins.

<b>Lower Skagit Flow-Sensitive Basins</b>	<b>Groundwater Withdrawal Limit (gallons per day)</b>
Alder Creek	81,430
Anderson/Parker/Sorenson Creeks	20,034

Careys Creek	11,633
Carpenter/Fisher Creeks	11,633
Childs/Tank Creeks	18,096
Coal Creek	18,742
Cumberland Creek	25,851
<a href="#">Day Creek</a>	131,839
Gilligan Creek	25,851
Hansen Creek	38,130
Jones Creek	67,212
Loretta Creek	11,633
Mannser Creek	15,511
Morgan Creek	13,572
Muddy Creek	28,436
Nookachamps Creek – East Fork	14,218
Nookachamps Creek – Upper	12,279
O'Toole Creek	23,266
<a href="#">Red Cabin Creek</a>	42,653
Salmon/Stevens Creek	5,170
Wiseman Creek	18,095

<b>Upper Skagit Flow-Sensitive Basins</b>	<b>Groundwater Withdrawal Limit (gallons per day)</b>
Aldon Creek	25,851
All Creek	25,851
Bacon Creek	25,851
Barr Creek	25,851
Big Creek	25,851

Boulder Creek	25,851
Boyd Creek	25,851
Clark Creek	25,851
Corkindale Creek	25,851
Diobsud Creek	25,851
Everett Creek	25,851
Finney Creek	25,851
Flume Creek	25,851
Grandy Creek	147,350
Gravel Creek	25,851
Hilt Creek	25,851
Hobbit Creek	25,851
Illabot Creek	25,851
Irene Creek	25,851
Jackman Creek	25,851
Jordan Creek	25,851
Mill Creek	25,851
Miller Creek	25,851
O'Brian Creek	25,851
Olson Creek	25,851
Ossterman Creek	25,851
Prairie Creek	25,851
Pressentin Creek	25,851
Rinker Creek	25,851
Rocky Creek	25,851
Savage Creek	25,851
Sutter Creek	25,851

Tenas Creek	25,851
White Creek	25,851

- (ii) Effective Date. Groundwater withdrawals from the flow-sensitive basins listed in Subsection (1)(a)(i) of this Section that were established after April 14, 2001, will be debited from the respective groundwater withdrawal limits.
- (b) Samish River Basin. There shall be no density bonus for CaRD developments that rely on groundwater as the water source and where the well is located within 1/2 mile of the Samish River or Friday Creek.
- (c) Stillaguamish River Basin.
  - (i) Flow-Sensitive Basins.

<b>Flow-Sensitive Basin</b>	<b>Groundwater Withdrawal Limit (gallons per day)</b>
Stillaguamish River and tributaries	302,400

- (ii) Effective Date. Groundwater withdrawals from the flow-sensitive basins listed in Subsection (1)(c)(i) of this Section that were established after September 26, 2005, will be debited from the respective groundwater withdrawal limits.
- (2) The Administrative Official shall report to the Health Officer the number of new residential connections or the estimated amount of consumptive water use for non-residential projects that will be created for each building permit or lot that relies on a groundwater withdrawal in a flow-sensitive basin. Groundwater withdrawals shall not be debited from the groundwater withdrawal limits established in Subsection (1) of this Section, where:
  - (a) The proposed groundwater withdrawal is exempt from permitting in RCW 90.44.050; and
    - (i) The Health Officer, using criteria developed in coordination with the Washington Department of Ecology, determines that the groundwater withdrawal will not adversely impact stream flows deemed critical to salmonids in a flow-sensitive basin; or
    - (ii) The applicant adopts mitigation measures approved by the Health Officer, using criteria developed in coordination with the Washington Department of

Ecology, to prevent the groundwater withdrawal from adversely impacting stream flows deemed critical to salmonids in flow-sensitive basins; or

- (b) The proposed groundwater withdrawal is not exempt from permitting in RCW 90.44.050 and the proposed withdrawal for a project is included in a water right permit issued by the Washington Department of Ecology and is covered by a mitigation plan approved by the Washington Department of Ecology; or
  - (c) The groundwater withdrawal is from an interruptible source and the applicant provides measures to supply adequate water at all times necessary for the project applied for, subject to the approval of the Health Officer; or
  - (d) Groundwater use for projects initiated prior to the effective date of the corresponding flow-sensitive basin designated in [SCC 14.26.545](#), by:
    - (i) The applicant filing with the Administrative Official a complete application for a building permit pursuant to Chapter 15.04 SCC or for approval of a land division pursuant to Chapter 14.18 SCC prior to the effective date of the corresponding flow-sensitive basin groundwater withdrawal limit; or
    - (ii) The applicant filing a well log with the Washington Department of Ecology prior to the effective date of the corresponding flow-sensitive basin groundwater withdrawal limit indicating the applicant's intent to rely on a groundwater withdrawal that is exempt from permitting in RCW 90.44.050; or
    - (iii) The Washington Department of Ecology issuing a water right permit or certificate with a priority date that is earlier than the effective date of the respective flow-sensitive basin groundwater withdrawal limit designated in this Section.
- (3) In addition to the provisions for public notice provided under SCC 14.06.150 and notice of decision under SCC 14.06.200, the Administrative Official shall provide electronic notice to the public, by use of the County's official website or otherwise, of all building permit and short subdivision applications and approvals in flow-sensitive basins.

#### **14.26.546 Flow-sensitive basin water withdrawal mitigation**

If a project hydrologically is located within a flow-sensitive basin, in addition to conditions imposed by the Health Officer pursuant to Chapter 12.48 SCC, mitigation measures required in [SCC 14.26.544](#) and groundwater withdrawal mitigation measures required by the Washington State Department of Ecology, the total impervious surface area of the project containing the project shall be limited to 20%, unless:

- (1) The applicant implements mitigation measures that collect stormwater runoff from the proposed development, treat that runoff, if necessary to protect groundwater quality, and discharge that collected runoff into a groundwater infiltration system on site, providing that the project is located in an area that the Administrative Official or Health Officer determines is suitable for stormwater infiltration; or
- (2) The project will be served by a public water system the source for which is located hydrologically outside of a flow-sensitive basin, and wastewater will be disposed in an approved on-site wastewater treatment system that the Health Officer or Administrative Official determines will provide adequate compensating recharge to the aquifer for the total amount of impervious surface proposed; or
- (3) The applicant demonstrates, through an appropriate hydrogeological characterization, that the placement of the proposed impervious surfaces will not adversely impact stream base flows in the subject tributary basin; or
- (4) The applicant demonstrates that the project is located in an area where groundwater and/or surface water is influenced by tidal fluctuation.

#### **14.26.547 Delineation of flow-sensitive basins.**

The Administrative Official shall produce maps delineating the boundaries of flow-sensitive basins. The Administrative Official shall update maps of flow-sensitive basins as provided in [SCC 14.26.505](#) and WAC 173-503-116.

#### **14.26.550 Seawater intrusion areas**

- (1) Applicability. This Section applies to wells and applications for building permits; special use permits; shoreline substantial development, variance, and conditional use permits; and land divisions in the following areas:
  - (a) Areas within one-half mile of a marine shoreline but no farther landward than the extent of shoreline jurisdiction; and
  - (b) The shoreline jurisdiction area of Guemes, Sinclair, Cypress, and Vendovi Islands.
- (2) Application Requirements.
  - (a) For Wells. An application proposing use of a well must include all of the following, which must be submitted for review prior to drilling any new well:
    - (i) A site plan, including:
      - (A) A dedicated inland well site location;
      - (B) Estimated depth of proposed well;

- (C) An estimated land elevation of the well, except that if the well is within 250 feet of the shoreline, or if determined by the County Hydrogeologist, the elevation of the well must be surveyed by a licensed surveyor;
- (D) Depth and chloride levels of surrounding wells;
- (ii) A drilling plan;
- (iii) Payment of applicable fees.
- (b) For Alternative Water Sources. An application proposing use of an alternative water source must include the following:
  - (i) Documentation of system design consistent with this Section and SCC 12.48.250;
  - (ii) Payment of applicable fees.
- (c) For Land Divisions. In addition to any applicable requirements above, an application for a land division proposing use of a well must include the following:
  - (i) An assessment of the available groundwater, including a report from a demonstration well located so that it will represent the groundwater under the entire land division and with consideration to where other wells will be located in the land division;
  - (ii) If the proposed land division is within an area of documented chlorides in excess of 25 ppm, all well locations must be specified and spaced 100 feet or more from any other well, including wells on neighboring properties.
- (3) Development Standards for Alternative Water Sources.
  - (a) Where a known seawater intrusion problem exists, alternative sources of water are encouraged, but must comply with the requirements of SCC 12.48.250.
  - (b) Reverse Osmosis (RO) Systems. Any reverse osmosis (RO) system must be designed to:
    - (i) Use seawater collected from the open sea as the water source; and
    - (ii) Discharge effluent only to the open sea.
- (4) Development Standards for Wells.

- (a) Generally. For both existing and new wells, a well driller must:
  - (i) Install a wellhead source meter;
  - (ii) Install a sounding tube to allow water level measurements;
  - (iii) Set the maximum pumping rate consistent with Table 14.26.550-1;
  - (iv) Conduct a pump test under the supervision of a licensed well driller or licensed hydrogeologist, consistent with the following:
    - (A) Use the conservative maximum pumping rate defined in Table 14.26.550-1, or if the well driller proposes to use more than the maximum pumping rate in Table 14.26.550-1, include a hydrogeological assessment (including pump tests) using observation wells;
    - (B) Pump a minimum of 350 gallons from the formation during the test;
    - (C) Continue the pump test for at least four hours after water level stabilization has occurred, or for the timespan determined by the County Hydrogeologist, whichever is longer.
- (b) Documentation of Installation. The well driller must submit the following after the pump test:
  - (i) Well ID;
  - (ii) Proof of the sounding tube installation;
  - (iii) The maximum pumping rate set;
  - (iv) A record of the static water level depth prior to starting the pump test;
  - (v) Pumping rates during the pump test;
  - (vi) Drawdown measurements recorded throughout the pumping test in intervals as approved by the County Hydrogeologist;
  - (vii) The time of day when the drawdown measurement was observed;
  - (viii) Exact time of pump start and stop;
  - (ix) Any changes in pumping rate during the test;

- (x) Measurement of water level following pump shutoff until the water level in the well recovers to at least 95 percent of its pre-pumping level, including time of measurement.
- (c) Documentation of Elevation. Before final inspection, the applicant must submit a land elevation of the well as surveyed by a licensed surveyor.
- (d) Maximum Pumping Rates.
  - (i) The maximum pumping rate for wells must be set consistent with the following table.
  - (ii) A maximum pumping rate other than that in the table may be set if approved by the County Hydrogeologist.

**Table 14.26.550-1. Maximum pumping rates.**

Location	Chloride level		
	0—24 ppm	25—99 ppm	100—250* ppm
less than 1/2 mile from the coast for areas in (1)(a)	as determined or approved by the County hydrogeologist		
less than 1/2 mile from the coast for islands in (1)(b)	3 gpm	2 gpm	1 gpm
greater than 1/2 mile from the coast for islands in (1)(b)	3 gpm	3 gpm	3 gpm

**14.26.560 Geologically hazardous areas designations**

Geologically hazardous areas shall be designated consistent with the definitions provided in WAC 365-190-030 and 365-190-120. These include areas susceptible to the effects of erosion, sliding, earthquake, or other geologic events. They pose a threat to the health and safety of citizens when incompatible residential, commercial, industrial, or infrastructure development is sited in areas of a hazard. Geologic hazards pose a risk to life, property, and resources when steep slopes are destabilized by inappropriate activities and development or when structures or facilities are sited in areas susceptible to natural or human-caused geologic events. Some geologic hazards can be

reduced or mitigated by engineering, design, or modified construction practices so that risks to health and safety are acceptable. When technology cannot reduce risks to acceptable levels, building and other construction in, above and below geologically hazardous areas should be avoided.

#### **14.26.561 Geologically hazardous areas known or suspected risk**

Geologically hazardous areas shall be classified as “known or suspected risk” or “unknown risk.” Areas of known or suspected risk are indicated in Subsections (1) through (5) of this Section.

- (1) The following are considered known or suspected erosion hazards:
  - (a) Areas with gradients greater than or equal to 30%.
  - (b) Areas located within the following map units: No. 1 Andic Cryochrepts, Nos. 3 and 4 Andic Xerochrepts, No. 13 Birdsvie, Nos. 47 and 48 Dystric Xerochrepts, Nos. 50 and 51 Dystic Xerorthents, Nos. 63 and 65 Guemes, No. 69 Hoogdal, No. 90 Lithic Haploxerolls, No. 91 Marblemount, No. 99 Mundt and Nos. 150 and 151 Typic Croyorthods or mapped severe erosion hazard, as identified in the U.S. Department of Agriculture Natural Resources Conservation Service Soil Survey of Skagit County Area, WA (1989).
  - (c) Coastal beaches or bluffs.
  - (d) Areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two Skagit County (1978) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide).
  - (e) Areas susceptible to rapid stream incision and stream bank erosion.
- (2) Landslide hazards are areas potentially subject to landslides based on a combination of geologic, topographic and hydrologic factors. The following are known or suspected landslide hazards:
  - (a) Areas designated in the Department of Ecology, Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978) as U (Unstable), UB (Unstable Bluff), URS (Unstable Recent Slide), or UOS (Unstable Old Slide).
  - (b) Slopes having gradients of 15% or greater:
    - (i) That intersect geologic contacts with permeable sediments overlying low-permeability sediment or bedrock and springs or groundwater seepage are present; or

- (ii) That are parallel or subparallel to planes of weakness (such as bedding planes, joint systems, and fault planes) in subsurface materials.
  - (c) Slopes of 40% or steeper and with a vertical relief of 10 feet or more.
  - (d) Areas of previous failure such as earth slumps, earthflows, mudflows, lahars, debris flows, rock slides, landslides or other failures as observed in the field or as indicated on maps or in technical reports published by the U.S. Geological Survey, the Geology and Earth Resources Division of the Washington Department of Natural Resources, or other documents authorized by government agencies.
  - (e) Potentially unstable areas resulting from rapid stream incision, stream bank erosion, and undercutting by wave action.
  - (f) Coastal bluffs.
  - (g) Slopes with a gradient greater than 80% and subject to rock fall.
  - (h) Areas that are at risk from snow avalanches.
  - (i) Areas designated on the Skagit County Alluvial Fan Study Orthophoto Maps as alluvial fans or as identified by the Administrative Official during site inspection.
  - (j) Areas located in a narrow canyon potentially subject to inundation by debris flows or catastrophic flooding.
  - (k) Those areas delineated by the U.S. Department of Agriculture's Natural Resources Conservation Service Soil Survey of Skagit County as "severe" (Table 9) limitation for building development.
- (3) Seismic hazard areas are subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting. The following are known or suspected seismic hazards:
- (a) Areas located within a high liquefaction susceptibility as indicated on the Liquefaction Susceptibility Map of Skagit County issued by Washington Department of Natural Resources dated September 3, 2004, or as amended thereafter. A site assessment is not required for high liquefaction hazard areas for single-family residence proposals unless other criteria provided in this Section apply.
  - (b) Areas located within 1/4 mile of an active fault as indicated on investigative maps or described in studies by the United States Geologic Survey, Geology and Earth Resources Division of the Washington Department of Natural Resources, or other

documents authorized by government agencies, or as identified during site inspection.

- (c) Those known or suspected erosion and landslide hazards referenced in Subsections (1) and (2) of this Section.
  - (d) Tsunami and seiche hazard areas include coastal areas and lake shoreline areas susceptible to flooding, inundation, debris impact, and/or mass wasting as the result of coastal or inland wave action generated by seismic events or other geologic events. Suspect tsunami hazard areas are indicated on the Tsunami Hazard Map of the Anacortes-Whidbey Island Area, Washington: Modeled Tsunami Inundation from a Cascadia Subduction Zone Earthquake. A site assessment is not required for tsunami and seiche hazard areas but they are addressed through the frequently flooded section of this Part.
- (4) Volcanic hazard areas are subject to pyroclastic flows, lava flows, debris avalanche, and inundation by debris flows, mudflows, lahars or related flooding resulting from volcanic activity. Suspect volcanic hazards include those areas indicated in the United States Geologic Survey Open-File Report 95-499 as the volcanic hazard zone for Glacier Peak, Washington; or in the United States Geologic Survey Open-File Report 95-498 as the volcanic hazard area of Mount Baker, Washington. A site assessment is not required for volcanic hazard areas unless other criteria provided in this section apply.
  - (5) Mine hazard areas as designated on the Department of Natural Resources Map: Coal Measures of Skagit County (1924) or within 200 feet of any other current or historic mine operations determined to be a suspect or known geologically hazardous area by the Administrative Official.

#### **14.26.562 Geologically hazardous areas site assessment requirements**

- (1) If the Administrative Official determines that the proposed development activity is located within 200 feet of an area of known or suspected risk as indicated in [SCC 14.26.561](#), or within a distance from the base of a landslide hazard area equal to the vertical relief, and that the geologic condition may pose a risk to life and property, or other critical areas on and off the project area, a geologic hazard site assessment as indicated in this Section shall be required. This site assessment shall be prepared by a qualified professional.
- (2) The geologically hazardous area site assessment shall classify the type of geologic hazard(s) in accordance with [SCC 14.26.560](#) and [14.26.561](#). In addition to the requirements of [SCC 14.26.515](#), the site assessment shall include the following:
  - (a) A site plan depicting the height of slope, slope gradient and cross section indicating the stratigraphy of the site. The site plan shall indicate the location of all existing

- and proposed structures and any significant geologic features such as outcrops, springs, seeps, ponds, streams or other water bodies; and
- (b) An assessment of the geologic characteristics and engineering properties of the soils, sediments, and/or rock of the subject property and potentially affected adjacent properties. Soils shall be described in accordance with the Unified Soil Classification System; and
  - (c) A description of load intensity, surface and groundwater conditions, public and private sewage disposal systems, fills and excavations and all structural development; and
  - (d) A description of the extent and type of vegetative cover including tree attitude; and
  - (e) For potential coastal bluff geologic hazards: estimate of the bluff retreat rate, which recognizes and reflects potential catastrophic events such as seismic activity or a 100-year storm event; and
  - (f) For potential landslide hazards: estimate slope stability and the effect construction and placement of structures will have on the slope over the estimated life of the structure. Quantitative analysis of slope stability or slope stability modeling may be required by the Administrative Official; and
  - (g) Additional site assessment elements may be required by the Administrative Official.
- (3) Properties containing geologically hazardous conditions identified by the Administrative Official and the qualified professional shall require a geologically hazardous area mitigation plan.

#### **14.26.563 Geologically hazardous area mitigation standards.**

The mitigation plan shall be prepared by a qualified professional and include a discussion on how the project has been designed to avoid and minimize the impacts discussed under [SCC 14.26.562](#) and meet the provision for no net loss of ecological functions. The plan shall also make a recommendation for the minimum setback from the geologic hazard. Mitigation plans shall include the location and methods of drainage, locations and methods of erosion control, a vegetation management and/or restoration plan and/or other means for maintaining long-term stability of geologic hazards. The plan shall also address the potential impact of mitigation on the hazard area, the subject property and affected adjacent properties. The mitigation plan must be approved by the Administrative Official and be implemented as a condition of project approval.

One or more of the following mitigation standards, as required by the Administrative Official, shall be included as components of a mitigation plan pursuant to the requirements of [SCC 14.26.562](#). Mitigation standards, other than those listed below, may be required by the Administrative Official depending on the geologic hazard and the site conditions.

(1) Mitigation Standards.

- (a) A construction stormwater pollution prevention plan per SCC Chapter 14.32 (Stormwater Management).
- (b) A plan for the collection, transport, treatment, discharge and/or recycling of stormwater in accordance with the requirements of SCC Chapter 14.32, as amended. Surface drainage shall not be directed across the face of a landslide hazard (including marine bluffs or ravines). If drainage must be discharged from the hazard area into adjacent waters, it shall be collected above the hazard and directed to the water by tight line drain and provided with an energy dissipating device at the point of discharge.
- (c) All proposals involving excavation and/or placement of fill shall be subject to structural review under the appropriate provisions of the International Building Code (IBC) as amended by Skagit County.
- (d) Critical facilities as defined under Chapter 14.04 SCC shall not be sited within designated geologically hazardous areas with the exception of volcanic hazard areas. No critical facilities shall be located within 1/4 mile of an active fault.
- (e) All infiltration systems, such as stormwater detention and retention facilities and curtain drains utilizing buried pipe or French drains, are prohibited in geologically hazardous areas and their buffers unless the mitigation plan indicates such facilities or systems will not affect slope stability.
- (f) Existing vegetation shall be maintained in landslide and erosion hazard areas and associated buffers. Any replanting that occurs shall consist of native trees, shrubs, and ground cover that is compatible with the existing surrounding native vegetation, meets the objectives of erosion prevention and site stabilization, and does not require permanent irrigation for long-term survival. Normal nondestructive pruning and trimming of vegetation for maintenance purposes; or thinning of limbs of individual trees to provide a view corridor, shall not be subject to these requirements.
- (g) A minimum buffer width of 30 feet shall be established from the top, toe and all edges of all landslide and erosion hazard areas. For landslide and erosion hazard areas with a vertical relief greater than 50 feet, the minimum buffer shall be 50 feet. The buffer may be increased by the Administrative Official for development adjacent to a marine bluff or ravine which is designated as Unstable in the Coastal Zone Atlas, Washington, Volume Two, Skagit County (1978) or where the Administrative Official determines a larger buffer is necessary to prevent risk of damage to existing and proposed development.

- (h) Structural development proposals within seismic hazard areas shall meet all applicable provisions of the IBC as amended by Skagit County. The Administrative Official shall evaluate documentation submitted pursuant to [SCC 14.26.562\(2\)](#) and condition permit approvals to minimize the risk on both the subject property and affected adjacent properties. All conditions shall be based on known, available, and reasonable methods of prevention, control and treatment. Evaluation of geotechnical reports may also constitute grounds for denial of the proposal.
  - (i) No residential structures shall be located in geologic hazard areas or their buffers if that hazard cannot be fully mitigated.
- (2) Landslide or Erosion Hazard Buffer Reduction. Buffers of landslide or erosion hazard areas may be reduced to a minimum of 10 feet for development meeting all of the following criteria:
- (a) No reasonable alternative to buffer reduction exists; and
  - (b) A site assessment is submitted and certifies that:
    - (i) There is a minimal hazard in the vicinity of the proposed development as proven by evidence of no landslide activity in the past; and
    - (ii) A quantitative slope stability analysis indicates no significant risk to the development proposal and adjacent properties; or the geologically hazardous area can be modified; or the development proposal can be designed so that the hazard is eliminated. The quantitative analysis shall include the minimum setback allowed for development as indicated by a slope stability model with respect to a minimum factor of safety of 1.5 for static conditions, 1.25 for seismic conditions, or 10 feet, whichever results in the greater setback. The elements of the quantitative site assessment shall be determined by the Administrative Official and may include 1 or more of the following:
      - (A) Subsurface exploration, to include at least 1 boring with sample collection for laboratory analysis.
      - (B) Laboratory analysis shall assess the soil characteristics and include sieve analysis, moisture, angle of internal friction, and cohesion.
      - (C) Utilizing the information from the subsurface exploration and laboratory analysis, the quantitative site assessment shall include slope stability modeling with factor of safety analysis. The analysis shall indicate the factor of safety within 50 feet of the top and toe of geologic hazards; and

- (iii) The development will not significantly increase surface water discharge or sedimentation to adjacent properties beyond pre-development conditions; and
  - (iv) The development will not decrease slope stability on adjacent properties; and
  - (v) Such alterations will not adversely impact other critical areas.
- (3) Failed Mitigation Plans. Mitigation plans which do not fulfill the performance requirement based on the site assessment/geotechnical report findings or otherwise fail to meet the intent of this Part shall be revised and the subject development brought into compliance with the revised mitigation plan.
- (4) Mitigation Plan Verification. Upon completion of the project, a qualified professional shall verify that the mitigation plan has been properly implemented. The verification shall be required prior to final approval of the project by the Administrative Official.

**14.26.570 Fish and wildlife habitat conservation area designations.**

- (1) Fish and wildlife habitat conservation areas (HCAs) are listed in WAC 365-190-130 and are designated as follows:
- (a) Areas with which endangered, threatened, and sensitive species have a primary association;
  - (b) Habitats and species of local importance that have been designated by the County (Subsection (4) of this Section);
  - (c) All public and private tidelands suitable for shellfish harvest;
  - (d) Kelp and eelgrass beds, herring and smelt spawning areas;
  - (e) Naturally occurring ponds under 20 acres with submerged aquatic beds that provide fish or wildlife habitat as further defined in WAC 365-190-130(4)(e);
  - (f) Waters of the State as defined by WAC 222-16-030;
  - (g) Lakes, ponds, streams, and rivers planted with game fish by a governmental or tribal entity;
  - (h) Areas with which anadromous fish species have a primary association;
  - (i) State natural area preserves and natural resource conservation areas;
  - (j) Other aquatic resource areas;

- (k) State priority habitats and areas associated with State priority species as defined in WAC 365-190-080; and
  - (l) Areas of rare plant species and high quality ecosystems as identified by the Washington State Department of Natural Resources through the Natural Heritage Program in Chapter 79.70 RCW.
- (2) In addition to the HCAs identified in Subsection (1) of this Section, additional habitats and species of local importance may be designated by the Administrative Official based on declining populations, sensitivity to habitat manipulation or special value including but not limited to commercial, game or public appeal.
- (3) In order to nominate an area or a species to the category of habitats and species of local importance, an individual or organization must:
- (a) Demonstrate a need for special consideration based on:
    - (i) Declining population;
    - (ii) Sensitivity to habitat manipulation; or
    - (iii) Commercial or game value or other special value, such as public appeal; and
  - (b) Propose relevant management strategies considered effective and within the scope of this Part; and
  - (c) Provide species habitat location(s) on a map (scale 1:24,000). Submitted proposals will be reviewed by the Administrative Official and forwarded to the Departments of Fish and Wildlife, Natural Resources, and/or other local and State agencies or experts for comments and recommendations regarding accuracy of data and effectiveness of proposed management strategies.
- Skagit County will hold a public hearing for proposals found to be complete, accurate, potentially effective and within the scope of this Part. Approved nominations will become designated "habitats/species of local importance" and will be subject to the provisions of this Part.
- (4) The following species and habitats have been designated on a site-specific basis according to the official Habitats and Species of Local Importance Map:
- (a) Great blue heron nest sites;
  - (b) Vaux's swifts communal roosts;
  - (c) Pileated woodpecker nest sites;

- (d) Osprey nest sites;
- (e) Townsend big-eared bat communal roosts;
- (f) Cavity nesting duck breeding areas;
- (g) Trumpeter swan concentrations;
- (h) Harlequin duck breeding areas;
- (i) Waterfowl concentrations.

**14.26.571 Fish and wildlife habitat conservation area water type classification.**

Water types shall be classified according to WAC 222-16-030. Type F streams are those that are not shorelines of the state but still provide fish habitat; and Type N streams do not have fish habitat and are either perennial (Np) or seasonal (Ns). All streams are those areas where surface waters flow sufficiently to produce a defined channel or bed as indicated by hydraulically sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. Ns waters must be physically connected by an above-ground channel system to Type S, F, or Np waters.

**14.26.572 Fish and wildlife habitat conservation area site assessment requirements.**

Any project within 200 feet of a fish and wildlife habitat conservation area outside the special flood hazard area (SFHA) or within the protected review area as defined in SCC 14.34.055 requires a fish and wildlife HCA site assessment. In addition to the requirements of [SCC 14.26.515](#), the following shall be included in the site assessment:

- (1) Functions and values analysis, which includes but is not limited to a discussion of water quality/quantity and fish and wildlife habitat; and
- (2) An analysis of the riparian buffer areas above the ordinary high water mark including:
  - (a) Recruitment of large woody debris (LWD) to the stream;
  - (b) Shade;
  - (c) Bank integrity (root reinforcement);
  - (d) Runoff filtration;
  - (e) Wildlife habitat. ]
- (3) All other fish and wildlife habitat conservation areas, including habitats and species of local importance, shall be protected on a case-by-case basis by means of a habitat management plan based on the Washington State Priority Habitat and Species (PHS)

**Commented [A144]:** Per Ecology and WDFW, this can be removed. Management of bald eagles is now the primary responsibility of the USFWS under the federal *Bald and Golden Eagle Protection Act* and *Migratory Bird Treaty Act*.

program, as set forth in the site assessment requirements in [SCC 14.26.515](#) and this Section.

**14.26.573 Fish and wildlife habitat conservation area protection standards.**

- (1) Riparian Buffers. Riparian buffers apply only to streams and rivers.
  - (a) Intent of Riparian Buffers. The intent of riparian buffers is to protect the following 5 basic riparian forest functions that influence in-stream and near-stream habitat quality:
    - (i) Recruitment of Large Woody Debris (LWD) to the Stream. LWD creates habitat structures necessary to maintain salmon/trout and other aquatic organisms' productive capacity and species diversity.
    - (ii) Shade. Shading by the forest canopy maintains cooler water temperatures and influences the availability of oxygen for salmon/trout and other aquatic organisms.
    - (iii) Bank Integrity (Root Reinforcement). Bank integrity helps maintain habitat quality and water quality by reducing bank erosion and creating habitat structure and in-stream hiding cover for salmon/trout and other aquatic organisms.
    - (iv) Runoff Filtration. Filtration of nutrients and sediments in runoff (surface and shallow subsurface flows) helps maintain water quality.
    - (v) Wildlife Habitat. Functional wildlife habitat for riparian-dependent species is based on sufficient amounts of riparian vegetation to provide protection for nesting and feeding.
  - (b) Standard Riparian Buffers Measurement. Riparian buffer areas shall be measured horizontally in a landward direction from the ordinary high water mark. Where lands adjacent to a riparian area display a continuous slope of 25% or greater, the buffer shall include such sloping areas. Where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer shall be extended to a point 25 feet beyond the top of the bank of the sloping area. Riparian areas do not extend beyond the toe of the slope on the landward side of existing dikes or levees within established dike districts along the Skagit and Samish Rivers.
  - (c) Standard Riparian Buffer Widths. Riparian areas have the following standard buffer widths:

DNR Water Type	Riparian Buffer
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S	See SCC 14.26.310
F > 5 feet wide*	150 feet
F ≤ 5 feet wide*	100 feet
Np	50 feet
Ns	50 feet

\*Bankfull width of the defined channel (WAC [222-16-010](#)).

- (2) Where a legally established and constructed public roadway transects a riparian buffer, the Department may approve a modification of the standard buffer width to the edge of the roadway, provided:
- (a) The isolated part of the buffer does not provide additional protection of the riparian area; and
  - (b) The isolated part of the buffer provides insignificant biological, geological or hydrological buffer functions relating to the riparian area; and
  - (c) If the resulting buffer distance is less than 50% of the standard buffer for the applicable stream type or shoreline designation, no further reduction shall be allowed.

**14.26.574 Fish and wildlife habitat conservation area performance-based buffer alternatives and mitigation standards.**

- (1) Buffer Width Increasing. The Administrative Official may require the standard buffer width to be increased or to establish a nonriparian buffer, when such buffers are necessary for 1 of the following:
- (a) To protect priority fish or wildlife using the HCA.
  - (b) To provide connectivity when a Type S or F water body is located within 300 feet of:
    - (i) Another Type S or F water body; or
    - (ii) A fish and wildlife HCA; or
    - (iii) A Category I, II or III wetland;

The increased buffer distance may be limited to those areas that provide connectivity or are necessary to protect habitat functions. Increasing the buffer widths will only be done where necessary to preserve the structure, function and value of the habitat.

- (2) Buffer Width Averaging. Buffer width averaging allows limited reductions of buffer width in specified locations, while requiring increases in others. Averaging of required buffer widths shall be allowed only where the applicant demonstrates to the Administrative Official that all of the following criteria are met:
- (a) Averaging is necessary to accomplish the purpose of the proposal and no reasonable alternative is available; and
  - (b) The habitat contains variations in sensitivity due to existing physical characteristics; and
  - (c) Averaging will not adversely impact the functions and values of fish and wildlife conservation areas; and
  - (d) Averaging meets performance standards for protecting fish species; and
  - (e) The total area contained within the buffer after averaging is no less than that contained within the standard buffer prior to averaging; and
  - (f) The buffer width shall not be reduced below 75% of the standard buffer width.
- (3) Allowed Uses in HCAs or Buffers. The following activities may be permitted within fish and wildlife HCAs, provided mitigation sequencing is conducted per [SCC 14.26.305](#) and ~~the activities comply with [SCC 14.26.515](#), [14.26.572](#), and Chapter 14.34 SCC, where applicable.~~
- (a) Roads, Bridges and Utilities. Road, bridge and utility construction may be permitted across an HCA and/or its buffer under the following conditions:
    - (i) It is demonstrated to the Administrative Official that there are no alternative routes that can be reasonably used to achieve the proposed development; and
    - (ii) The activity will have minimum adverse impact to the fish and wildlife HCA; and
    - (iii) The activity will not significantly degrade surface or groundwater; and
    - (iv) The intrusion into the fish and wildlife HCA and its buffers is fully mitigated.
  - (b) Limited park or recreational access to an HCA or its required buffer; provided, that all of the following are satisfied:
    - (i) The access is part of a public park or a recreational resort development that is dependent on the access for its location and recreational function; and

**Commented [A145]:** Requested by Ecology to clarify that mitigation sequencing should be conducted.

- (ii) The access is limited to the minimum necessary to accomplish the recreational function; and
  - (iii) The access and the balance of the development are consistent with other requirements of SCC Title 14; and
  - (iv) The proponent obtains written approval from the County for the limited access and associated mitigation.
- (c) Uses and activities which are consistent with the purpose and function of the buffer and do not detract from its integrity may be permitted within the buffer depending on the sensitivity of the habitat involved; provided, that such activity shall not result in a decrease in riparian functions and values and shall not prevent or inhibit the buffer's recovery to at least pre-altered condition or function. Examples of uses and activities which may be permitted in appropriate cases, as long as the activity does not retard the overall recovery of the buffer, include removal of noxious vegetation, pedestrian trails and viewing platforms less than 200 square feet in size which may be covered but not enclosed.
- (d) Stormwater discharges shall be controlled and treated in accordance with the Stormwater Management Manual for Western Washington, Department of Ecology publication Nos. 05 10 029 through 05-10-033.
- (e) To allow for greater flexibility in a development proposal, an applicant has the opportunity to remove timber within the standard buffer widths shown above if the applicant's mitigation measures incorporate all of the performance standards based upon water type listed in the table below. In conformance with professional standards used by the Washington Department of Natural Resources for forest practices in sensitive areas, all removal of timber within HCA buffers shall be subject to conditioning specified by the Administrative Official in conjunction with an on-site technical team review in which participation by representatives of the proponent, Ecology, WDFW, WDNR and natural resource representatives of affected Indian tribes is solicited.

The intent of this Section is to provide an additional opportunity for an applicant to propose some level of timber removal within the riparian habitat zone, as long as it can be demonstrated that the function of the buffer can be maintained at the levels described below. If the buffer, in its current state, cannot meet these standards, then the Administrative Official will not be able to give its approval for any activity which would inhibit recovery of or degrade the current buffer.

The current performance of a given buffer area is compared to its potential performance as rated by the Soil Conservation Service, Soil Survey of Skagit County, 1989. In consultation with a representative from the Natural Resource Conservation

Service, Soil Conservation District or professional forester, the applicant will determine the capability of the site for woodland management, using the most suitable tree species according to the soil survey, and establish the stand characteristics that would be expected from a mature stand of those species established on site:

If the current stand can exceed the riparian protection that could be expected based on site potential, then additional activity may be allowed provided the following performance standards can be met. For Type S streams, an alternative method may be utilized to allow limited timber harvest within the outer 100 feet of a buffer:

**PERFORMANCE-BASED RIPARIAN STANDARDS\***

*(These standards must be exceeded before additional activity can be permitted within the riparian zone.)*

Watertype	Performance Standards
Type S <sup>1</sup>	<p>Maintain 95% of total <b>LWD recruitment</b> expected to enter the stream from a mature stand; and</p> <p>Maintain 85% of the trees which are greater than 24 inches DBH within 100 feet of stream; and</p> <p>Maintain an average of 75% canopy cover (based on canopy densitometer readings at stream edge).</p> <p>The <b>applicant</b> may further request some limited <b>timber</b> harvest of up to 30% of the merchantable <b>timber</b> within the outer 100 feet of any 200-foot required buffer provided the harvest:</p> <p>(a) Does not reduce the LWD and canopy requirements; and</p> <p>(b) The <b>applicant</b> will increase the total buffer size by 50 feet to mitigate for the limited <b>timber</b> harvest in the required buffer to provide additional wildlife habitat. The additional 50-foot buffer shall retain a minimum of 50% of the total number of trees with 25% of the total trees left having a diameter at breast <b>height</b> (DBH—4-1/2 feet) greater than 12 inches; and</p> <p>(c) No more than 50% of the dominant trees in the outer 100 feet may be harvested.</p>
Type F	<p>Maintain 85% of total <b>LWD recruitment</b> expected to enter the stream from a mature stand; and</p> <p>Maintain 85% of the trees which are greater than 18 inches DBH within 100 feet of stream; and</p> <p>Maintain an average of 75% canopy cover (based on canopy densitometer readings at stream edge).</p>
Types Np and Ns	<p>Maintain 50% of total <b>LWD recruitment</b> expected to enter the stream from a mature stand; and</p> <p>Maintain 85% of the trees which are greater than 24 inches DBH within 50 feet of stream; and</p> <p>Maintain an average of 75% canopy cover (based on canopy densitometer readings at stream edge).</p>

<sup>1</sup> Applies to Type S waters which are not Shorelines of Statewide Significance per Section 6A-3 of this SMP.

#### **14.26.575 Additional Provisions for Fish and Wildlife Habitat Conservation Areas**

- (1) **Critical Saltwater Habitats.** Critical saltwater habitats are fish and wildlife habitat conservation areas. Unless an inventory of critical saltwater habitat has already been completed, applicants proposing a use or modification waterward of the OHWM of Puget Sound or within 50 feet of the OHWM must submit an inventory of the site and adjacent areas to assess the presence of critical saltwater habitats and functions. The methods and extent of the inventory must be consistent with methodology established by Washington State Department of Fish and Wildlife.
- (2) **Critical Saltwater Habitat Standards.** Any proposed uses or modifications may not intrude into or over critical saltwater habitats except when all of the conditions below are met:
  - (a) The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;
  - (b) Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose;
  - (c) The project, including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat; and
  - (d) The project is consistent with the state's interest in resource protection and species recovery.
- (3) **Unavoidable impacts.** For development activities with the potential for adverse impacts on water quality or quantity in a fish and wildlife habitat conservation area, a critical areas site assessment must be prepared that discusses the project's potential to exacerbate water quality parameters that are impaired and for which Total Maximum Daily Loads (TMDLs) for that pollutant have been established, and prescribe any necessary mitigation and monitoring.
- (4) **The following additional activities may be permitted within fish and wildlife HCAs:**
  - (a) **Water-dependent uses.** Consistent with the use allowances for each environment designation, water-dependent uses and activities may be located at the OHWM or as prescribed by conditions added to a permit.

- (i) Uses, developments, and activities accessory to water-dependent uses should be located outside any applicable standard or reduced shoreline buffer unless at least one of the following is met:
  - (A) a location in the buffer is necessary for operation of the water-dependent use or activity (e.g., a road to a boat launch facility);
  - (B) the use, development, or activity does not conflict with or limit opportunities for other water-oriented uses and is located in parks or on other public lands that are already legally established and whose use is primarily related to access to, enjoyment and use of the water; or
  - (C) the applicant's lot or site has topographical constraints where no other location of the development is feasible (e.g., the water-dependent use or activity is located on a parcel entirely or substantially encumbered by the required buffer).
- (ii) All other accessory uses, developments, and activities proposed to be located in a riparian, lake, or marine buffer must obtain a Shoreline Variance unless otherwise allowed by other regulations in this section or in this SMP. Applicants are encouraged to consider the options of buffer averaging or buffer reduction and optimally implement mitigation sequencing prior to applying for a Shoreline Variance.
- (b) Public facilities and other water-oriented uses. Consistent with the use allowances for each environment designation, other essential public facilities as defined by RCW 36.70A.200, public access and recreation facilities, and their accessory uses and developments may be located in the shoreline buffer if the use or activity cannot be reasonably accommodated or accomplished outside of the standard or reduced shoreline buffer. Essential public facilities must also demonstrate that alternative sites are not available. These uses and modifications must be designed and located to minimize intrusion into the buffer.

#### **14.26.580 Frequently-Flooded Areas**

- (1) Development in special flood hazard areas is regulated by SCC Chapter 14.34, Flood Damage Prevention.

#### **14.26.590 Interdisciplinary team**

- (1) The Administrative Official, Hearing Examiner or other appropriate hearing body may, as they deem necessary, utilize an interdisciplinary team to provide technical assistance where necessary to assess a proposal or make a determination.

- (2) Members of the interdisciplinary team shall be selected by the Administrative Official, Hearing Examiner or appropriate hearing body. Selection of the team shall include the proponents (upon their request) and local, State, Tribal or Federal representatives with expertise in the field and/or independent professionals with expertise relating to the critical areas issue.
- (3) The functions of the interdisciplinary team are to field-check and verify critical areas determinations by reviewing the information included with an application, identify areas of concern, and help focus the preparation of subsequent reports and environmental documentation on the most relevant issues.
- (4) The Administrative Official, Hearing Examiner or appropriate hearing body will coordinate this effort and pursue a consensus process in seeking advice from the team.
- (5) A complete public record will be maintained of written opinions submitted by individual team members.

## Part VI: Legally Established Pre-Existing Uses and Structures

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### 14.26.610 Purpose and Applicability

- (1) Purpose. Consistent with RCW 90.58.620 and WAC 173-27-080, shoreline uses and developments that were legally established prior to the effective date of this SMP, but do not conform to the regulations of this SMP, enjoy certain limited rights to continuation, maintenance, and expansion. Single-family residences and appurtenant structures, located landward of the OHWM, that were legally established prior to the effective date of this SMP but do not conform to the regulations of this SMP, are considered conforming structures and uses for purposes of this SMP.
- (2) Applicability. This Part applies to structures and uses legally established prior to the effective date of this SMP but that do not conform to the regulations of this SMP, except:
  - (a) Agriculture is regulated by [SCC 14.26.410](#) Agriculture.
  - (b) Aquaculture is regulated by [SCC 14.26.415](#) Aquaculture.

**Commented [A146]:** Required change per Ecology. As noted earlier, Ag is not exempt from the SMP. Additionally, no need to point to Aquaculture section specifically.

### 14.26.620 Pre-Existing Single-Family Residences and Appurtenant Structures

- (1) Applicability. This section applies only to pre-existing single-family residences and their appurtenant structures.
- (2) Repair. Normal repair and normal maintenance is allowed, subject to other applicable provisions of Skagit County Code.
- (3) Enlargement or expansion. A pre-existing residential or appurtenant structure that is nonconforming with respect to dimensional standards may be enlarged or expanded in accordance with the following provisions:
  - (a) Minor. Enlargement or expansion by the addition of space to the main structure, or by the addition of space to an appurtenant structure, may be approved by the Administrative Official if all of the following criteria are met:

**Commented [A148]:** Revised per County

**Commented [A149]:** Per County. Adjust for minor and major, for added clarity

- (i) the enlargement does not extend farther waterward than the existing primary residential structure or farther into the minimum side yard setback;
  - (ii) the enlargement does not expand the footprint of the existing structure by more than 200 square feet;
  - (iii) the enlargement does not cause the existing structure to exceed the height limit, or in the case of an existing over-height structure, the enlargement does not increase the structure's existing height;
  - (iv) potential adverse impacts to shoreline or critical area ecological functions or processes from the expansion are mitigated on site, in accordance with [SCC 14.26.305](#); and
  - (v) any applicable requirements of SCC 14.34 are met.
- (b) Major. Proposed enlargements or expansions that do not meet all of the criteria above require a shoreline variance.
- (4) Replacement is authorized consistent with the provisions of 14.26.650(4) for replacement of other pre-existing structures.

**Commented [A150]:** Recommended by Ecology to meet the critical areas protection requirements.

**Commented [A151]:** Per PC recommendation

#### 14.26.630 Pre-Existing Docks

- (1) Applicability. This section applies only to pre-existing docks.
- (2) Repair.
  - (a) Normal repair of existing legally established facilities that fall below the thresholds for replacement identified in (3)(a) are allowed in accordance with [SCC 14.26.720](#).
  - (b) All repairs must utilize any material standards specified for new facilities.
- (3) Replacement.
  - (a) Any of the following are considered a new facility and must be designed consistent with any applicable design and mitigation standards for new facilities.
    - (i) Replacement of the entire overwater structure, not including support piling;
    - (ii) Replacement of 75 percent or more (cumulatively over a five-year period) of support pilings;
    - (iii) Replacement of 75 percent or more (cumulatively over a five-year period) of a boat launch.

**Commented [A152]:** Required per Ecology. Cannot authorize repair and maintenance without shoreline review.

**Commented [A153]:** Minor revision added per County and TWC to clarify that this requirement is for when all decking and substructure is replaced, but does not include piling.

(b) The Administrative Official may approve an alternative design that does not conform to current dimensional or other standards as a replacement without a Shoreline Variance if it meets all of the following criteria:

- (i) All replacements must utilize any material standards specified for new facilities;
- (ii) Any adverse ecological impacts are fully mitigated;
- (iii) The total square footage of the replacement facility is no larger than the existing facility;
- (iv) Replacement decking must meet the design standards listed in Table 14.26.420-1;
- (v) The nearshore 30 feet of walkway must meet the width design standards listed in Table 14.26.420-1; and
- (vi) The width of all walkways, ramps, and floats must not exceed the widths of the existing structure or the width design standards listed in Table 14.26.420-1, whichever is greater.

(4) Enlargement or expansion.

- (a) Enlargement or expansion requires shoreline review.
- (b) Applicants must demonstrate that there is a need for modification or enlargement due to increased or changed use or demand, safety concerns, or inadequate depth of water.
- (c) Enlarged portions must comply with any applicable dimensional, design, and mitigation standards for new facilities.

#### 14.26.640 Pre-Existing Structural Shoreline Stabilization

- (1) Applicability. This section applies only to pre-existing structural shoreline stabilization.
- (2) Repair. Normal repair and normal maintenance, including modification or improvement of an existing shoreline stabilization structure designed to ensure the continued function of the structure by preventing failure of any part, is allowed in accordance with [SCC 14.26.720](#).
- (3) Replacement. Replacement that does not constitute a new structure can be authorized consistent with the replacement provisions in [SCC 14.26.480\(3\)\(c\)](#). Any of the following constitutes a new structure:

**Commented [A154]:** Ecology does not support an off-ramp to allow the County to refer to state and federal agency decisions. The proposed language is intended to provide design flexibility to existing structures while still ensuring protection of ecological functions is maintained.

**Commented [A155]:** Same comment as above. Required per Ecology. Cannot authorize repair and maintenance without shoreline review.

- (a) construction of a new structure to perform a shoreline stabilization function of an existing structure that can no longer adequately serve its purpose;
  - (b) reconstruction of greater than 50 percent or 50 feet of linear length, whichever is less, within three years;
  - (c) reconstruction of the footing or bottom course of rock;
  - (d) placement of a new shoreline stabilization structure landward of a failing shoreline stabilization structure is considered a new structure.
- (4) Enlargement or expansion. Modifications or improvements that include additions to or increases in size of existing shoreline stabilization measures are considered new structures. (WAC 173-26-231(3)(a)(iii)(C)) Expansion of an existing shoreline stabilization structure includes any increase in height, width, or length.

#### **14.26.650 Other Pre-Existing Structures**

- (1) Applicability. This section applies to pre-existing structures other than single-family residences and their appurtenant structures, docks, or structural shoreline stabilization.
- (2) Normal repair and normal maintenance is allowed by this SMP, subject to other applicable provisions of Skagit County Code.
- (3) Enlargement or expansion.
  - (a) A structure used for a conforming use, but that is nonconforming with respect to dimensional standards, may be enlarged provided that such enlargement does not increase the extent of the nonconformity.
  - (b) A nonconforming structure that is moved by the landowner any distance must be brought into conformance with this SMP.
  - (c) Enlargement or expansion of a nonconforming structure in a way that would increase the nonconformity requires a Variance.
- (4) Replacement.
  - (a) A structure damaged or destroyed by fire, natural disaster, or other casualty may be reconstructed to the configuration existing immediately prior to the time the development was damaged, if all of the following occur:
  - (b) The applicant submits a complete application for reconstruction or replacement within 12 months of the date the damage occurred. The applicant may request a 12-month extension of the period to submit application for reconstruction or

replacement prior to the expiration of the original 12-month period. Such a request is a Level I application. The County may grant the extension if the applicant has made a good faith effort to submit a complete application, and extenuating circumstances beyond the applicant's control (not market conditions or financing delays) have delayed submittal of a complete application.

- (c) The applicant obtains all permits and completes construction within five years.

#### 14.26.660 Other Pre-Existing Uses

- (1) **Applicability.** This section applies to any legally established pre-existing land uses that do not conform to the use allowances or provisions of this SMP due to subsequent changes to the SMP. This section does not apply to shoreline structures or shoreline modifications as described in SCC 14.26.620 - 650.
- (2) Enlargement and expansion of the use is not allowed except that a nonconforming use may be expanded into any part of its existing structure.
- (3) Change of the use to another nonconforming use requires a Conditional Use Permit, which may be approved only upon findings that:
  - (a) no reasonable alternative conforming use is practical;
  - (b) the proposed use will be at least as consistent with the policies and provisions of the SMA and this SMP and as compatible with the uses in the area as the preexisting use; and
  - (c) the use demonstrates consistency with the review criteria in [SCC 14.26.730](#).

**Commented [A156]:** Required per Ecology to ensure this section addresses uses and not structures and modifications. Ecology also recommends that this section clarifies that not all existing uses are subject to these limitations – they should only apply to using that were legally established, but which do not conform to present use regulations due to subsequent changes to the SMP.

#### 14.26.670 Abandonment.

- (1) **Applicability.** This section applies to any pre-existing land use or structure regulated by this Part.
- (2) If a legally established pre-existing use of land or a structure ceases for any reason for 12 consecutive months or for 12 months during any two-year period, the rights under this Part expire and any subsequent use must conform to current law.
- (3) The Department must use the procedure for verifying abandonment described in SCC 14.16.880.

## Part VII: Administration

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### 14.26.700 Purpose

- (1) RCW 90.58.140(3) requires local governments to establish an SMP, consistent with the rules adopted by the Washington Department of Ecology, for the administration and enforcement of shoreline development. Also, in accordance with RCW 90.58.050, which provides that this SMP is intended to establish a cooperative program between Skagit County and the State, Skagit County has the primary responsibility for administering the regulatory program and Ecology acts primarily in a supportive and review capacity.
- (2) The application of this SMP is intended to be consistent with constitutional and other legal limitations on the regulation of private property. The Administrative Official must give adequate consideration to mitigation measures, dimensional variances, and other possible methods to prevent undue or unreasonable hardships upon property owners.
- (3) Pursuant to the Shoreline Management Act at RCW 90.58.080 and WAC 173-26-090, local governments must periodically review, and where appropriate, amend their Shoreline Master Program. Consistent with state law, Skagit County has established a process to evaluate and consider amendments to this Master Program.

### 14.26.710 Applications

- (1) Procedures. Applications are processed per SCC Chapter 14.06, Permit Procedures, as now adopted or hereafter amended. Where this Part requires procedures different than those in SCC Chapter 14.06, the provisions of this Part control.
- (2) Application Level. Shoreline applications are classified by application level in SCC Chapter 14.06 Permit Procedures.
  - (a) Shoreline exemptions are a type of Level I application. A Notice of Development Application is not required for shoreline exemptions.
  - (b) Shoreline substantial development permits are a type of Level I application. Notice must be consistent with WAC 173-27-110.
  - (c) Conditional Use Permits are a type of Level II application. Notice must be consistent with WAC 173-27-110. A public hearing is required.
  - (d) Administrative Variances are a type of Level I application. Notice must be consistent with WAC 173-27-110.
  - (e) Hearing Examiner Variances are a type of Level II application. Notice must be consistent with WAC 173-27-110. A public hearing is required.
- (3) Application Requirements. Permit applications must be consistent with SCC 14.06.090 Application Requirements; additional application requirements in this SMP; and WAC 173-27-180.
  - (a) The application must demonstrate compliance with the development standards in the applicable sections in SMP Part IV, Shoreline Uses and Modifications.
  - (b) Where this SMP requires more information than the minimum required by WAC 173-27-180, the Administrator may vary or waive requirements beyond WAC 173-27-180 if the information is unnecessary to process the application.
  - (c) The Administrative Official may require additional specific information or geotechnical, hydrological, or biological studies if required by the nature of the proposal or the presence of sensitive ecological features, to ensure compliance with other local requirements or the provisions of this SMP.
  - (d) Where this SMP requires a demonstration that a use meets the definition of a water-oriented use (i.e., water-dependent, water-related, or water-enjoyment use), the application must demonstrate that to the satisfaction of the Administrative Official.

**Commented [A157]:** SCC 14.06 has not been updated. Subsections added per County recommendation to clarify noticing requirements

- (e) The applicant must submit a mitigation sequencing analysis if required by the provisions of this SMP.

**Commented [A158]:** For consistency per Ecology recommendation

- (4) Fees. The applicant must pay the application fee at the time of application.

#### 14.26.715 Shoreline Permits

- (1) Permit Required. A shoreline permit is required for projects occurring within shoreline jurisdiction in accordance with the requirements and procedures set forth in Chapter 173-27 WAC, as amended, and this SMP, unless specifically excluded from this requirement as set forth in [SCC 14.26.720](#), Exemptions, Developments Not Required to Obtain Shoreline Permits or Local Review and Developments Not Subject to the SMA.

**Commented [A159]:** Per TWC, recommended as a best practice; helps clarify changes to .720 as well.

- (2) The Shoreline Management Act Guidelines in WAC 173-26 and Shoreline Management Permit and Enforcement Procedures in WAC 173-27 establish three types of shoreline permits: substantial development permits, conditional use permit, and variance permit. Proposals for development or activities with shoreline jurisdiction may require one, two, or all three of those permit types.

**Commented [A160]:** Recommendation per Ecology for internal consistency and clarity regarding the use matrix which establishes that either a SD/E or CU are needed.

- (3) Initiation of Development. As set forth in WAC 173-27-190, each Substantial Development Permit, Conditional Use Permit, or Shoreline Variance, issued by local government must contain a provision that construction pursuant to the permit may not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of such filing have terminated.

- (4) Complete Compliance Required. Except as specified in [SCC 14.26.820](#) Revisions to Permits, the applicant must comply with all aspects of an approval granted under this Chapter, including conditions and restrictions.

- (5) Time Limits. Construction and activities authorized by a Shoreline Substantial Development Permit and any development authorized pursuant to a variance or conditional use permit approved under this SMP and SMA are subject to the time limitations of RCW 90.58.143 and WAC 173-27-090.

**Commented [A161]:** PC recommended adding Variance, but this should apply to CUPs too. Note, the added language is per RCW 90.58.143 and meets the PC recommendation.

- (6) Per WAC 173-27-130, the County's final decision on a Shoreline Permit is the order or ruling, whether approval or denial, established after all administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed.

#### 14.26.720 Exemption, Developments Not Required to Obtain Shoreline Permits or Local Review and Developments Not Subject to the SMA

- (1) Permit Exemptions. Some development, such as construction of a single-family residence or development less than a specified dollar threshold, is exempt from the requirement to obtain a Shoreline Substantial Development Permit. Shoreline Substantial Development

**Commented [A162]:** Per TWC, revised for consistency and clarity w/new provisions below

Permit-exempt development must still comply with the substantive requirements of the SMA and this SMP.

**Commented [A163]:** Per Ecology recommendation to use consistent terms.

- (2) What qualifies for an exemption from the shoreline substantial development permit process? A development listed in WAC 173-~~27~~-040 or RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, or 90.58.515 is exempt from the requirement to obtain a Substantial Development Permit.

**Commented [A164]:** Per periodic checklist, legislative update 2019a

**Commented [A165]:** Required per Ecology as this is not an exemption from the SDP process – this is excepted from even the exemption process and local review.

- (a) Per WAC 173-27-040(1)(d), if any part of a proposed development is not eligible for exemption, then a Shoreline Substantial Development Permit is required for the entire proposed development project.
- (b) Per WAC 173-27-040(1)(b), exemption from the permit requirement is not an exemption from the substantive requirements of the SMA or this SMP.

- (3) Letter of Exemption.

- (a) A letter of exemption is required for all development qualifying for a Substantial Development Permit exemption.
- (b) Contents. Consistent with WAC 173-27-050, a letter of exemption must contain the following:
- (i) the specific exemption provision from the WAC or RCW that is being applied to the development;
  - (ii) a summary of the County's analysis of the consistency of the project with this SMP and the SMA;
  - (iii) any conditions to the approval of an exemption that the Administrative Official determines are necessary to ensure consistency of the project with this SMP and the SMA; and
  - (iv) a statement that the exemption is not effective unless and until the applicant obtains all other necessary local, state, and federal permits.
- (c) Per WAC 173-27-050, for any project qualifying for a permit exemption that requires a Federal Rivers & Harbors Act §10 permit, Federal Clean Water Act §404 permit, or State Hydraulic Project Approval, the Administrative Official must transmit the permit exemption letter to the Department of Ecology.

- (4) Application and Interpretation of Exemptions.

- (a) Per WAC 173-27-040(1)(a), permit exemptions are construed narrowly. Only a development that meets the precise terms of one or more of the listed exemptions is exempt from the Shoreline Substantial Development Permit process.
- (b) Per WAC 173-27-040(1)(c), the burden of proof that a development or use is exempt from the permit process is on the applicant.
- (c) [A] development or use that qualifies for a permit exemption must still obtain any required Shoreline Conditional Use Permit or Shoreline Variance.

**Commented [A166]:** PC recommended adding noticing for neighboring properties, but this will be covered in 14.06 when completed. No change proposed.

- (5) [Developments Not Required to Obtain Shoreline Permits or Local Reviews. Those developments listed in RCW 90.58.140(12), RCW 90.58.355, RCW 90.58.356, or WAC 173-27-044, as amended, are not required to obtain a Substantial Development Permit, Conditional Use, Variance, or Letter of Exemption. These developments must still be consistent with this SMP and the SMA.]

**Commented [A167]:** Recommended per Ecology to provide a more complete list of applicable exceptions from local permits or review.

- (6) [Developments Not Subject to the SMA. Those developments listed in WAC 173-27-045, as amended, are not required to comply with the requirements of this SMP and the SMA.]

Slight modifications by the County for clarity

**Commented [A168]:** Revised per legislative update: 2017c

#### 14.26.725 Substantial Development Permit

- (1) Purpose. A Shoreline Substantial Development Permit is required for all development of shorelines, unless the proposal is specifically exempt per [SCC 14.26.720 Exemptions](#), Developments Not Required to Obtain Shoreline Permits or Local Review and Developments Not Subject to the SMA.
- (2) Review Criteria. A Substantial Development Permit may be granted only when the development proposed is consistent with the following:
  - (a) the policies and procedures of the SMA;
  - (b) the provisions of WAC 173-27-150; and
  - (c) this SMP.
- (3) An application for a limited utility extension, or the construction of a bulkhead or other measure to protect a single-family residence and its appurtenant structures from shoreline erosion must be processed consistent with the special time periods and procedures in WAC 173-27-120.
- (4) Skagit County may attach conditions to the approval of permits as necessary to ensure consistency of the project with the SMA and this SMP.
- (5) Filing with Ecology.

- (a) Per WAC 173-27-130, after the County’s final decision on a Substantial Development Permit application, the Administrative Official must submit the permit to the Department of Ecology. The County’s final decision does not require Ecology’s approval.
- (b) “Date of filing” of the County’s final decision involving approval or denial of a substantial development permit is the date of actual receipt by Ecology of the County’s final decision on the permit. ~~(When the substantial development permit is submitted simultaneously with a conditional use permit or variance, the “date of filing” is the date Ecology transmits its final decision on the conditional use permit or variance to the County and the applicant.)~~

**Commented [A169]:** Suggestion per Ecology for clarity – this is not optional –SDP must be filed simultaneously when there is an associated CUP or Variance.

**Commented [A170]:** Per legislative amendment 2017d

#### 14.26.730 Conditional Use Permit

- (1) Purpose. The purpose of a Conditional Use Permit is to provide flexibility in authorizing uses in a manner consistent with RCW 90.58.020. Accordingly, special conditions may be imposed to prevent undesirable effects of the proposed use and ensure consistency of the project with the SMA and this SMP.
- (2) Review Criteria. A Shoreline Conditional Use Permit may be granted only if the applicant can demonstrate all of the following:
  - (a) That the proposed use will be consistent with the policies of RCW 90.58.020, WAC 173-27-160, and the policies of this SMP; and with the regulations in any applicable use sections in Part IV;
  - (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 SMP;
  - (d) That the proposed use will result in no significant adverse effects or a net loss to the shoreline environment in which it is to be located;
  - (e) That the public interest will suffer no substantial detrimental effect; and
  - (f) That the proposed use will not result in substantial adverse effects or net loss of shoreline ecosystem functions and that consideration has been given to the cumulative impact of additional requests for like actions in the area.

- (3) Filing with Ecology.
  - (a) Pursuant to WAC 173-27-200, after the County's final decision on a Conditional Use Permit application, the Administrative Official must submit the permit to the Department of Ecology for its approval, approval with conditions, or denial.
  - (b) "Date of filing" of the County's final decision involving approval or denial of a conditional use permit is the date Ecology transmits its final decision on the conditional use permit to the County and the applicant.
- (4) Notice. Pursuant to WAC 173-27-200, upon receipt of Ecology's decision, the Administrative Official must notify those interested persons who requested notification of such decision.

#### **14.26.735 Shoreline Variance**

- (1) Purpose. The purpose of a variance is to grant relief from specific bulk, dimensional, or performance standards set forth in this SMP where there are extraordinary circumstances related to the property such that the strict implementation of this SMP would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited.
- (2) Types. There are two types of variances: administrative variances and Hearing Examiner variances.
  - (a) Administrative variance. An application to reduce a standard buffer width by 50% or less is an administrative variance.
  - (b) Hearing Examiner variance. Any other variance application, e.g. for relief from specific bulk, dimensional, or performance standards of this SMP, is a Hearing Examiner variance.
- (3) Application Requirements. In addition to the general application requirements, a Shoreline Variance application must include a view analysis.
  - (a) The view analysis must include photographs, videos, photo-based simulations, computer-generated simulations, or some combination thereof, demonstrating projected view obstruction within a 1,000-foot radius of the proposed development.
  - (b) For phased developments, the view analysis must be prepared in the first phase and include all proposed buildings.
  - (c) The view analysis must demonstrate how the site design provides for view corridors between buildings through the use of building separation, setbacks, upper story setbacks, pitched roofs, or other methods.

- (4) Review Criteria. These criteria apply to the review of both administrative and Hearing Examiner variances.
- (a) The Shoreline Variance may be authorized only if the structure will not obstruct views from public property or a substantial number of residences, as informed by the view analysis.
- (b) Per WAC 173-27-170(2), for development or a use to be located landward of the OHWM, or landward of any wetland as defined in RCW 90.58.030(2)(h), a variance may be authorized if the applicant can demonstrate all of the following:
- (i) That the strict application of the bulk, dimensional, or performance standards set forth in this SMP precludes, or significantly interferes with, reasonable use of the property;
  - (ii) That the hardship described in criterion (i) of this subsection 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 this SMP, and not, for example, from deed restrictions or the applicant's own actions;
  - (iii) That the 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 SMP and will not cause adverse impacts to the shoreline environment;
  - (iv) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
  - (v) That the variance requested is the minimum necessary to afford relief; and
  - (vi) That the public interest will suffer no substantial detrimental effect.
- (c) Per WAC 173-27-170(3), for development or a use to be located waterward of the OHWM, or within any wetland as defined in RCW 90.58.030(2)(h), a variance may be authorized if the applicant can demonstrate all of the following:
- (i) That the strict application of the bulk, dimensional, or performance standards set forth in this SMP precludes all reasonable use of the property;
  - (ii) That the proposal is consistent with the other review criteria of subsections (a) and (b)(ii) – (vi) above; and
  - (iii) That the public rights of navigation and use of the shorelines will not be adversely affected.

**Commented [A171]:** Per Ecology, use of the term "unique" is per WAC 173-27-170.

**Commented [A172]:** Required: per Ecology for consistency with WAC 173-27-170.

- (d) Cumulative impact. Per WAC 173-27-170(4), in the granting of all variances, consideration must 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 must also remain consistent with the policies of RCW 90.58.020 and must not cause substantial adverse effects to the shoreline environment.
- (5) **Filing with Ecology.**
  - (a) Per WAC 173-27-200(1), after the County's final decision on a variance application, the Administrative Official must submit the permit to the Department of Ecology for final approval, approval with conditions, or denial.
  - (b) "Date of filing" of the County's final decision involving approval or denial of an administrative variance or Hearing Examiner variance is the date Ecology transmits its final decision on the variance to the County and the applicant.

**Commented [A173]:** Required per Ecology: All variance submittals should follow the same process.

#### 14.26.740 Permit Revision

- (1) A revision to an approved shoreline permit is required whenever an applicant proposes substantive changes to the design, terms, or conditions of the permit. Changes that are not substantive in effect do not require a revision.
  - (a) 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, this SMP, the policies and provisions of RCW Chapter 90.58, or both.
  - (b) The Administrative Official must determine that the proposed revision is within the scope and intent (as defined in WAC 173-27-100(2)) of the original permit, and the revision is consistent with this SMP and the SMA, prior to approving the revision.
  - (c) If the sum of the revision and any previously approved revisions exceed the scope and intent (as defined in WAC 173-27-100(2)) of the original permit, the applicant must apply for a new permit.
  - (d) A revision may not extend the time requirements or authorize substantial development beyond the time limits of the original permit.
- (2) Application Requirements. An application for a revision must include detailed plans and text describing the proposed changes.
- (3) A Notice of Development Application and a comment period are not required for a shoreline permit revision.

- (4) Contents of Revision. The decision of the Administrative Official on a revision must include the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes.
- (5) Filing with Ecology.
  - (a) Revision to a Substantial Development Permit. After the County's final decision on an application for a revision to a Substantial Development Permit, the Administrative Official must submit the revision to the Department of Ecology. The revision is effective immediately upon final decision by the Administrative Official.
  - (b) Revision to a variance or conditional use permit. After the County's final decision on an application for a revision to a variance or conditional use permit, the Administrative Official must submit the revision to Ecology for approval, approval with conditions, or denial, and must indicate that the revision is being submitted under the requirements of WAC 173-27-100. The revision is effective upon final action by Ecology.
- (6) Notice. The Administrative Official must notify all parties of record of the revision.
- (7) Administrative appeals.
  - (a) Issues on appeal are limited to whether the revision is within the scope and intent of the original permit.
  - (b) If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision does not affect the validity of the original permit.
- (8) Appeals
  - (a) Appeals of revision decisions shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of the County's decision, or action by Ecology, when necessary.
  - (b) Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline.

#### **14.26.750 Moratoria**

The Administrative Official may adopt moratoria or other interim official control as necessary and appropriate to implement the SMA and this SMP. Such action must be accomplished consistent with WAC 173-27-085.

**Commented [A174]:** Required per Ecology. This is not an administrative appeal – appeals of revisions are subject to RCW 90.58.180 and filed with the State shorelines hearings board.

This section needs to be amended for consistency with WAC 173-27-100(8).

**Commented [A175]:** SCC 14.06 has not been updated. Section added per County recommendation to clarify moratoria options.

#### 14.26.760 Enforcement

Whenever a person has violated any provision of the SMA, any provision of this SMP, or any other regulation promulgated under the SMA, Skagit County may take enforcement action pursuant to SCC Chapter 14.44, Enforcement/Penalties, consistent with RCW 90.58.210-230 and WAC 173-27-240 through 310. The Department of Ecology may also take enforcement action pursuant to WAC 173-27-240 through 310.

#### 14.26.780 Permit Appeals

- (1) Administrative appeals must be in accordance with SCC Chapter 14.06. Where standards or procedures in this Part differ from those in SCC Chapter 14.06, the provisions of this Part control.
  - (a) Any person aggrieved by the granting, denying, rescinding or revision of a conditional use, or Hearing Examiner shoreline variance permit may request a reconsideration before the Hearing Examiner or submit an appeal to the Board of County Commissioners in accordance with SCC 14.06, provided all requests for reconsideration or appeals must be submitted within five days of the date of the Hearing Examiner's written decision, or decision after reconsideration.
- (2) Appeals of the County's final shoreline decision must be in accordance with RCW 90.58.180.

Commented [A176]: SCC 14.06 has not been updated. Section added per County recommendation to clarify appeal process

#### 14.26.785 Interpretations

- (1) The Administrative Official may issue interpretations of this SMP consistent with SCC 14.06.040 Administration and Interpretation.
- (2) Consistent with WAC 173-26-140, the Administrative Official must consult with Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of RCW Chapter 90.58 and WAC Chapter 173-26.

#### 14.26.790 Monitoring

- (1) Skagit County must track all shoreline permits and exemption activities to evaluate whether this SMP is achieving no net loss of shoreline ecological functions.
- (2) Consistent with WAC 173-26-201(2)(b), Skagit County must conduct system-wide monitoring of shoreline conditions and development activity that occur in shoreline jurisdiction outside of critical areas and their buffers, whenever practical. Such monitoring should include permit tracking of development, conservation, restoration, and mitigation, such as:
  - (a) new shoreline development;

- (b) Shoreline Variances and the nature of the variance;
  - (c) compliance issues;
  - (d) net changes in impervious surface areas, including associated stormwater management;
  - (e) net changes in fill or armoring;
  - (f) net change in linear feet of levee and distance between OHWM and any levees;
  - (g) net changes in vegetation including in area and character.
- (3) Using this information and information about the outcomes of other actions and programs of other County departments, the Administrative Official must prepare a no-net-loss report every eight years as part of the SMP evaluation or Comprehensive Plan Update process. If the no-net-loss report shows degradation of the baseline condition documented in the County's Shoreline Analysis Report (2012), the Administrative Official must propose changes to this SMP, or Shoreline Restoration Plan, or both, at the time of the eight-year update to prevent further degradation and address the loss of ecological function.

#### 14.26.795 SMP Amendments

- (1) General Provisions.
- (a) Consistent with the review schedule required by the SMA, the County must review and, if necessary amend, this SMP to ensure:
    - (i) that this SMP complies with applicable law and guidelines in effect at the time of the review;
    - (ii) consistency among this SMP and the County's comprehensive plan and development regulations and other local requirements; and
    - (iii) Consideration of changed circumstances, new information, or improved data.
  - (b) This SMP and all amendments to it become effective in accordance with RCW 90.58.090(7).
  - (c) The SMP may be amended annually or more frequently as needed per RCW 36.70A.130(2)(a)(iii).
- (2) Types of Amendments.

- (a) **Locally Initiated Master Program Amendment:** an amendment to this SMP that addresses specific procedural and/or substantive topics and that is not intended to meet the complete requirements of a comprehensive master program update or periodic review.
  - (b) **Periodic Review:** a review of this SMP at least once every eight years on a schedule established in the SMA. This review and revision is referred to in this section as the periodic review.
  - (c) **Comprehensive Master Program Update:** an update to this SMP that fully achieves the procedural and substantive requirements of Ecology’s shoreline master program guidelines.
- (3) **Locally Initiated Amendment Process and [Criteria]**
- (a) **Petition.** Any person or organization or the Department may suggest amendments to this SMP by filing a petition on forms provided by the Department.
  - (b) **Initiation of review.** To initiate review of a petition to amend the SMP, the Board of County Commissioners must adopt a resolution adding the proposed amendment project to the Department’s legislative work program.
  - (c) **Review process.** The County must review the proposed amendment consistent with the public participation process described in SCC Chapter 14.08 with the docketing exception described in SCC 14.08.050, and the procedures of the SMA and implementing rules, including but not limited to, RCW 90.58.080, WAC 173-26-100, RCW 36.70A.106 and 130, and WAC Chapter 365-196.
  - (d) **Required findings.** To approve the amendment, the County must make findings that the amendment would accomplish the following:
    - (i) The proposed amendment would make this SMP more consistent with the SMA, or applicable Ecology Guidelines, or both, including the amendment review criteria set forth in WAC 173-26-201(1)(c);
    - (ii) The proposed amendment would make this SMP more equitable in its application to persons or property due to changed conditions in an area;
    - (iii) The proposed amendment would ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of the effective date of this SMP.

**Commented [A177]:** Per TWC recommendation for WAC consistency. The SMP should include the criteria for limited SMP amendments as outlined under 173-26-201(1)(c) or reference the citation.

Reference added to (d)(i), below

**Commented [A178]:** Required per Ecology to reflect 2017 amendments to WAC 173-26-090. This includes reference to Periodic Review. Additional text is consistent with periodic update requirements.

- (e) Upon adoption by the Board of County Commissioners, the Administrative Official must forward the amendment to Ecology for review and approval in accordance with RCW Chapter 90.58 and WAC 173-26-110.

## Part VIII: Definitions

### 14.26.810 Applicability

Scope. The definitions in this Part apply to terms used in SCC Chapter 14.26 and the rest of the Skagit County Shoreline Master Program. The definitions in SCC Chapter 14.04 apply to terms used in SCC Chapter 14.26, but in the event of a conflict between a definition in SCC 14.04 and this Chapter, this Chapter's definitions control.

In addition, the definitions provided by the SMA and Guidelines within RCW 90.58, WAC 173-26, WAC 173-27 and WAC 173-22 apply within the shoreline jurisdiction. In the event of a conflict with state definitions, the definitions provided in RCW or WAC shall control.

### 14.26.820 Definitions

**Accessory use:** means any structure or use incidental, subordinate, and usually near a primary shoreline development or use.

**Accretion shoreform:** a shoreline with a continuous, relatively wide backshore which has been built up by long term deposition of sand and gravel carried by littoral drift or stream currents along a driftway with the material coming from a feeder or erosion bluff, upstream river banks, or other sources. Such shoreforms are scarce locally in a natural condition and include barrier beaches, points, spits, pocket beaches, and point or channel bars in streamways.

**Aesthetic qualities or resources:** values such as public views, landscaping, and compatible site design.

**Agricultural activities:** per RCW 90.58.065, 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 equipment or facilities:** per RCW 90.58.065, includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables.

**Commented [A179]:** Recommended per Ecology since the County has some, but not all the applicable definitions from the SMA, Guidelines, and process Rule. Adding this reference to applicable SMA and Guideline definitions sections will provide clarification for implementation and ensure the purpose, intent, and goals of the SMA are appropriately considered during any interpretations of these definitions. Note: Ecology, during review, and the Shorelines Hearings Board, during appeal, will rely on the definitions referenced here.

**Agricultural land:** per RCW 90.58.065, those specific land areas on which agricultural activities are conducted as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

Commented [A180]: Per WAC 173-26-020

**Agricultural products** per RCW 90.58.065, includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products.

Commented [A181]: Per WAC 173-26-020

**Allowed:** as applies to uses in this SMP, a use or modification that is authorized after applicable shoreline review and approval.

**Appurtenance:** per WAC 173-27-040, a structure that is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the OHWM and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the OHWM.

**Aquaculture:** defined in [SCC 14.26.415](#) Aquaculture.

**Archaeological resources:** physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

**Associated wetlands:** per WAC 173-22-030, wetlands that are in proximity to tidal waters, lakes, rivers or streams that are subject to the SMA and either influence or are influenced by such waters. Factors used to determine proximity and influence include, but are not limited to: location contiguous to a shoreline water body, formation by tidally influenced geo-hydraulic processes, presence of a surface connection including through a culvert or tide gate, location in part or whole within the floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

**Average grade level:** the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure: In the case of structures to be built over water, average grade level is the elevation of the OHWM. Calculation of the average grade level is made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

**Backshore:** the area on marine shores located above the OHWM or high tide level, except during storms and unusually high tides; it is normally composed of deposited sand and/or gravel materials and includes all marshes or meadows which may form behind such a berm of material.

**Beach feeding:** an artificial process in which selected beach material is deposited at one or several locations in the updrift portion of the drift sector. The material is then naturally transported by waves or currents downdrift to stabilize or restore accretion shoreforms and berms, which may be eroding due to artificial obstructions in the shore process corridor.

**Breakwater:** defined in [SCC 14.26.425](#) Breakwaters, Groins, and Jetties.

**Bulkhead:** a wall-like structure normally constructed parallel to shore and near the high water mark and are for protecting the shore and uplands from erosion by current and wave action; they may also be for retaining uplands and fills that are prone to sliding, mass movement, or erosion.

**Channel migration zone (CMZ):** the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

**Channelization:** the straightening, deepening or lining of stream channels, and/or prevention of natural meander progression of streamways, through artificial means such as relocation of channels, dredging, and/or placement of continuous levees or bank revetments along significant portions of the stream. Dredging of sediment or debris alone is excluded.

**Commercial development:** defined in [SCC 14.26.430](#) Commercial Development.

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

**Development:** per RCW 90.58.030, 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 chapter at any state of water level. **“Development” does not include dismantling or removing structures if there is no other associated development or re-development.**

**Commented [A182]:** Legislative amendment (2017b)

**Dike:** a man-made embankment or revetment normally setback from the river bank or channel in the floodplain for the purpose of keeping floodwaters from inundating adjacent land; material is normally river sand or gravel.

**Dredge material or spoils:** the material removed by dredging.

**Dredging:** defined in [SCC 14.26.435](#) Dredging and Dredge Material Disposal.

**Ecological functions or Shoreline 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.

**Commented [A183]:** Per County, revised for clarity

**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.

**Eelgrass:** *Zostera marina*, not including any non-native species, such as *Zostera japonica*.

**Essential Public Facilities:** defined in [SCC 14.26.430](#) Commercial Development.

**Fair market value:** per WAC 173-27-030, the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development includes the fair market value of any donated, contributed or found labor, equipment or materials.

**Feasible:** per WAC 173-26-020, the fact that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

- (a) the action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
- (b) the action provides a reasonable likelihood of achieving its intended purpose; and
- (c) the action does not physically preclude achieving the project's primary intended legal use.

In cases where this SMP requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the County may weigh the action's relative public costs and public benefits, considered in the short- and long-term timeframes.

**Feeder bluff:** any bluff or cliff experiencing erosion from waves, or sliding or slumping, whose eroded sand and gravel material is naturally transported via a driftway to an accretion shoreform.

**Fill:** defined in [SCC 14.26.440](#) Fill, Excavation, and Grading.

**Floating homes:** a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, including both permanently or temporarily fixed or docked units utilized for full or part time residential purposes. A floating home is not a vessel, even though it may be capable of being towed.

**Floating on-water residence** means any floating structure other than a floating home, as defined in WAC 173-26: (a) that is designed or used primarily as a residence on the water and has detachable utilities; and (b) whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

**Commented [A184]:** Required per Ecology for consistency with RCW 90.58.270.

**Commented [A185]:** Legislative amendment 2011c

**Commented [A186]:** Recommendation per Ecology for consistency with legislative amendment and included in WAC. Also see change in Boating Facilities and Residential Use sections of SMP.

**Floodplain:** per WAC 173-22-030, the 100-year floodplain, meaning that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year, based on the floodplain maps adopted per SCC Chapter 14.34, Flood Damage Prevention.

**Floodway:** the area that has been established in Federal Emergency Management Agency flood insurance rate maps or floodway maps. The floodway does not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

**Commented [A187]:** Per County, use FEMA definition

**Forest practices:** defined in [SCC 14.26.445](#) Forest Practices.

**Geohydraulic:** the action of erosion - transport - accretion that produces, alters, or maintains a shoreform.

**Grading:** defined in [SCC 14.26.440](#) Fill, Excavation, and Grading.

**Groin:** defined in [SCC 14.26.425](#) Breakwaters, Groins, and Jetties

**Hard surface:** an [impervious surface](#), a permeable pavement, or a vegetated roof.

**Height:** per WAC 173-27-030, a measurement from average grade level to the highest point of a structure. Television antennas, chimneys, and similar appurtenances may not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines. Temporary construction equipment is excluded in this calculation.

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

**Industrial development:** defined in [SCC 14.26.450](#) Industrial Development.

**Infeasible:** not feasible.

**Instream structure:** defined in [SCC 14.26.455](#) Instream Structures.

**Institutional development:** defined in [SCC 14.26.430](#) Commercial Development.

**Jetty:** defined in [SCC 14.26.425](#) Breakwaters, Groins, and Jetties.

**Legally established pre-existing:** a use, development, or structure that was in lawful use at the effective date of adoption or amendment as appropriate, of this SMP, which is either prohibited by or does not conform to regulations and policies of this SMP.

**Letter of exemption:** a written statement by the Administrator that a particular development proposal is exempt from the requirement to obtain a shoreline substantial development permit, but which must otherwise comply with applicable provisions of the Act and the local master program.

**Liveaboard:** a vessel principally used as an overwater residence. Principle use as an overwater residence means occupancy in a single location, for a period exceeding 60 days in any calendar year.

**Marine:** per WAC 173-26-020, 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.

**Mining:** defined in [SCC 14.26.460](#) Mining

**Nonwater-oriented use:** per WAC 173-26-020, a use that is not water-dependent, water-related, or water-enjoyment.

**Normal maintenance:** per WAC 173-27-040, those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition.

**Normal repair:** per WAC 173-27-040, 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 constitutes 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.

**Official sign:** directional or other sign or notice erected and maintained by public offices or agencies pursuant to and in accordance with city, county, state or federal law for the purpose of carrying out an official duty or responsibility.

**OHWM:** Ordinary High Water Mark.

**Ordinary High Water Mark:** defined in WAC 173-22-030.

**Overwater homes** are all structures utilized on a full- to part-time residential basis that are permanently and rigidly affixed to the land, docks, piling or other permanent anchor systems over water bodies.

**Permeable pavement:** pervious concrete, porous asphalt, permeable pavers or other forms of pervious or porous paving material intended to allow passage of water through the pavement section.

**Primary Structure:** A structure housing the main or principal use of the lot on which the structure is situated. This term shall not include decks, patios or similar improvements, and accessory uses, structures or activities.]

**Commented [A188]:** Ecology recommends adding definition for Primary Structure since the term is used in the SMP

**Public access:** per WAC 173-26-221, the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access includes physical access that is either lateral (areas paralleling the shore) or perpendicular (an easement or public corridor to the shore), and visual access facilitated by means such as scenic roads and overlooks, viewing platform, and other public sites or facilities.

**Recreational development:** defined in [SCC 14.26.465](#) Recreational Development.

**Residential development:** defined in [SCC 14.26.470](#) Residential Development.

**Riprap:** hard, angular quarry rock used for stream bank stabilization or other flood control works.

**Shorelands:** those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the OHWM; 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 which are subject to the provisions of this chapter; the same to be designated as to location by the Department of Ecology.

**Shoreline jurisdiction:** the jurisdiction of this SMP as described in [SCC 14.26.140](#) Shoreline Jurisdiction.

**Shoreline modification:** means an action that modifies the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. A modification can include other actions, such as clearing, grading, or application of chemicals.

**Shoreline permit:** for the purpose of this SMP, any substantial development, variance, conditional use permit, or revision authorized under RCW Chapter 90.58.

**Shoreline review:** a shoreline permit, letter of exemption, or the review necessary to determine consistency with this SMP and the SMA.

Commented [A189]: Ecology Recommended

**Shoreline stabilization:** defined in 14.26.480 Structural Shoreline Stabilization.

**Shorelines:** per RCW 90.58.030, all of the water areas of the state, including reservoirs, and their associated wetlands, together with the lands underlying them, except:

- (a) Shorelines of Statewide Significance;
- (b) shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and
- (c) shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.

**Shorelines of statewide significance:** defined in RCW 90.58.030.

**Shorelines of the state:** per RCW 90.58.030, all "shorelines" and "shorelines of statewide significance" within the state.

**Significant tree:** a tree over eight inches in diameter as measured 4.5 feet above grade (diameter-at-breast height).

**Single-family residence:** per WAC 173-27-040(2)(g), a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance.

**SMA:** the Washington State Shoreline Management Act of 1971 (RCW Chapter 90.58), as amended.

**SMP:** this Shoreline Master Program, including the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW are considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, are considered a part of the county or city's development regulations.

**Structure:** per WAC 173-27-030, 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.

**Substantial development:** per WAC 173-27-040(2)(a), means any development:

- (1) that materially interferes with the normal public use of the water or shorelines of the state; or
- (2) of which the total cost or fair market value exceeds the inflation-adjusted value threshold set by the Washington State Office of Financial Management at the time of permit application. The total cost or fair market value of the development includes the fair market value of any donated, contributed, or found labor, equipment, or materials.

**Timber:** means forest trees, standing or down, of a commercial species including Christmas trees.

**Transportation facilities:** defined in [SCC 14.26.485](#) Transportation Facilities.

**Upland:** those areas landward of the OHWM except backshores, natural wetlands, and floodplains.

**Utilities:** defined in [SCC 14.26.490](#) Utilities.

**Variance:** per WAC 173-27-030, a grant of relief from the specific bulk, dimensional, or performance standards of this SMP; not available to vary from the uses allowed on a shoreline.

**Vessel:** per WAC 173-27-030, includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

**Water-dependent use:** per WAC 173-26-020, a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

**Water-enjoyment use:** per WAC 173-26-020, a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's

ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

**Water-oriented use:** per WAC 173-26-020, a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

**Water quality:** the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term “water quantity” refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

**Water-related use:** per WAC 173-26-020, a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- (a) the use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- (b) the use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

## Appendices

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(A) Appendix 1 — List of Lakes, Streams and Rivers in Shoreline  
Jurisdiction