

**DRAFT**

**CITY OF TUMWATER**

**SHORELINE MASTER PROGRAM**



September 1, 2011 Draft

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*Cover photograph: Tumwater Falls Park by David Ginther, Senior Planner*

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# Chapter 1

## General Provisions

### 1.1 Purposes

The purposes of this Shoreline Master Program are to:

- A. Guide the future use and development of the City of Tumwater's shorelines in a positive, effective and equitable manner consistent with the Washington State Shoreline Management Act of 1971 (Revised Code of Washington (RCW) 90.58) as amended; and
- B. Promote the health, safety and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for use and development of City of Tumwater shorelines; and
- C. Ensure, at minimum, no net loss of shoreline ecological functions and processes; and
- D. Plan for restoring shorelines that have been impaired or degraded in the past; and
- E. Adhere to the policies contained in RCW 90.58.020 for shorelines of the state:

*"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 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, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:*

- (1) Recognize and protect the statewide interest over local interest;*
- (2) Preserve the natural character of the shoreline;*
- (3) Result in long term over short term benefit;*
- (4) Protect the resources and ecology of the shoreline;*

- (5) Increase public access to publicly owned areas of the shorelines;*
- (6) Increase recreational opportunities for the public in the shoreline;*
- (7) 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, shoreline recreational uses including but 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 use of the shorelines of the State, and other development that will provide an opportunity for substantial numbers of the 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."*

## **1.2 Applicability**

- A. All proposed uses and development, as defined in sections 5 and 6, occurring within shoreline jurisdiction shall comply with this Program and RCW 90.58. This Program applies to all uses and developments within shoreline jurisdiction whether or not a shoreline permit or statement of permit exemption is required. This Program shall apply to:
  - 1. Every person, individual, firm, partnership, association, organization, local or state governmental agency, public or municipal corporation, or other non-federal entity; and
  - 2. All non-federal uses and developments undertaken on federal lands and on lands subject to non-federal ownership, lease, or easement, even though such lands may fall within the external boundaries of federally owned lands.
- B. The Program's shoreline uses and developments shall be classified as follows:
  - 1. Permitted uses and developments - Uses and developments that are consistent with this Program and RCW 90.58. Such uses/developments shall require a shoreline substantial development permit, a shoreline conditional use permit, shoreline variance, and/or a statement that the

- use/development is exempt from a shoreline substantial development permit.
2. Prohibited uses and developments - Uses and developments that are inconsistent with this Program and/or RCW 90.58 and which cannot be allowed through any permit or variance.
- C. Classification of a use or development as permitted does not necessarily mean the use/development is allowed. It means the use/development may be permitted subject to review and approval by the City and/or the Washington State Department of Ecology. Many permitted uses/developments, including those that do not require a substantial development permit, can individually or cumulatively affect adjacent properties and/or natural resources and therefore must comply with the Program in order to avoid or minimize such adverse impacts. The City may attach conditions of approval to any permitted use via a permit or statement of exemption as necessary to assure consistency of the project with the Shoreline Management Act and this Program.
  - D. Federal agencies are subject to this Program and RCW 90.58, as provided by the Coastal Zone Management Act (Title 16 United States Code §1451 et seq.; and Washington Administrative Code (WAC) 173-27-060(1)).
  - E. The provisions of this Program shall not apply to lands held in trust by the United States for Indian Nations, tribes or individuals.

### **1.3 Governing Principles of this Master Program**

- A. The goals, policies and regulations of this Program are based on the governing principles in WAC 173-26-186 and the policy statements of RCW 90.58.020.
- B. Any inconsistencies between this Program and RCW 90.58 must be resolved in accordance with the RCW.
- C. The planning policies of this Program may be achieved by diverse means, one of which is regulation. The City may also acquire land, implement capital projects and programs, encourage voluntary measures, create incentive programs, or use other means to implement the Program planning policies.
- D. When regulating use and development of private property, the City's actions must be consistent with all relevant legal limitations including constitutional limitations. This Program must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.
- E. The regulatory provisions of this Program are limited to shorelines of the state, whereas the planning functions of this Program may extend beyond shoreline jurisdiction.

- F. The policies and regulations of this Program must be integrated and coordinated with the policies and rules of the City of Tumwater Comprehensive Plan (Comprehensive Plan) and its implementing development regulations adopted under the Growth Management Act (RCW 36.70A).
- G. The policies and regulations of this Program are intended to protect shoreline ecological functions by:
1. Requiring that current and potential ecological functions be identified and understood when evaluating new uses and developments;
  2. Requiring adverse impacts to be mitigated in a manner that ensures no net loss of shoreline ecological functions. Mitigation sequencing, as described in Section 5.1(B) shall include avoiding first, then minimizing, and then replacing/compensating for lost functions and/or resources.
  3. Ensuring that all uses and developments, including preferred uses and uses that are exempt from a shoreline substantial development permit, will not cause a net loss of shoreline ecological functions.
  4. Preventing, to the greatest extent practicable, cumulative impacts from individual developments.
  5. Fairly allocating the burden of preventing cumulative impacts among development opportunities.
  6. Including regulations and regulatory incentives to restore shoreline ecological functions where such functions have been degraded by past actions.

#### **1.4 Program Title**

This document shall be known and may be cited as the Shoreline Master Program (SMP) for the City of Tumwater, Washington.

#### **1.5 Short titles – Shoreline Master Program and Tumwater Municipal Code**

This document may be referred to internally as the Master Program or Program. The Tumwater Municipal Code will be referred to as TMC.

## 1.6 Authority

Authority for enactment and administration of this SMP is the Shoreline Management Act of 1971, Chapter 90.58, Revised Code of Washington (RCW), also referred to herein as the "SMA". All SMPs must satisfy the requirements of Chapter 173-26 WAC, State master program approval/amendment procedures and master program guidelines, and Chapter 173-27 WAC, Shoreline permitting and enforcement procedures.

## 1.7 Relationship to Other Land Use Regulations

- A. In the case of development subject to the shoreline permit requirement of this program, the Administrator shall not issue a building permit for such development until a shoreline permit has been granted. Also, any permit issued by the Administrator for such development shall be subject to the same terms and conditions that apply to the shoreline permit.
- B. In the case of development subject to regulations of this program but exempt from the shoreline substantial development permit requirement, any required statement of exemption shall be obtained prior to issuance of the building permit; provided that, for single family residences, a building permit reviewed and signed off by the Administrator may substitute for a written statement of exemption. A record of review documenting compliance with bulk and dimensional standards as well as policies and regulations of this program shall be included in the permit review.
- C. In the case of zoning conditional use permits and/or variances required by Title 18 of the Tumwater Municipal Code for development that is also within shorelines, the Administrator shall document compliance with bulk and dimensional standards as well as policies and regulations of this Program in consideration of recommendations from the Administrator. The Administrator shall attach conditions to such permits and variances as required to make such development consistent with this Program.
- D. In the case of land divisions, such as short plats, long plats, planned unit developments, and binding site plans that require City approval, the Administrator shall document compliance with bulk and dimensional standards as well as policies and regulations of this Program and attach appropriate conditions and/or mitigating measures to such approvals to ensure that the design, development activities and future use associated with such land division(s) are consistent with this Program.
- E. Developments within shoreline jurisdiction shall also comply with City development standards, and applicable state and federal regulations, where they do not conflict with the shoreline goals, shoreline policies, and development regulations of this Program.
- F. Critical areas including frequently flooded areas, wetlands, fish and wildlife habitats and geologically hazardous areas that are located within

shoreline jurisdiction are regulated by this Program as detailed in Section 5.2.

### **1.8 Liberal Construction**

As provided for in RCW 90.58.900, the SMA is exempted from the rule of strict construction; the SMA and this Program shall therefore be liberally construed to give full effect to the purposes, goals, objectives and policies for which the SMA and this Program were enacted and adopted, respectively.

### **1.9 Severability**

If any provision of this Program or its application to any person or legal entity or circumstances is held invalid, the remainder of the Program, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

The SMA and this Program adopted pursuant thereto comprise the basic state and City regulations for the use of shorelines in the City. In the event that provisions of this Program conflict with other applicable City policies or regulations, the more restrictive shall prevail. Should any section or provision of this Program be declared invalid, such decision shall not affect the validity of this Program as a whole.

### **1.10 Amendments**

Amendments to the Program including changes to the mapped shoreline environment designations shall be processed per WAC 173-26.

### **1.11 Effective Date**

This Program and all amendments thereto shall become effective immediately upon final approval and adoption by the Washington State Department of Ecology.

## **Chapter 2**

### **Shoreline Permits**

#### **2.1 General Provisions**

- A. All development and use of shorelines of the state shall be consistent with this Program and the policy of the Act as required by RCW 90.58.140(1), whether or not a shoreline permit or statement of exemption is required.
- B. No use, land or water alteration, or development shall be undertaken within shoreline jurisdiction of the Shoreline Management Act by any person without first obtaining a permit, except when the Administrator may issue a letter of exemption from a substantial development permit under Section 2.5.
- C. In the granting of all shoreline permits, consideration shall be given to the cumulative impact of additional requests for similar actions in the area. For example, if shoreline permits were granted for other developments in the area where similar circumstances exist, the total of the uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

#### **2.2 Substantial Development Permit**

- A. A shoreline substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempted by Section 2.5
- B. In order to be approved, the decision Administrator shall find that the proposal is consistent with the following criteria:
  - 1. All applicable regulations of this Program appropriate to the shoreline environment designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under Section 2.4.
  - 2. All policies of this Program appropriate to the shoreline environment designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.
  - 3. Consideration shall be given to the cumulative environmental impact of additional requests for similar actions in the shoreline vicinity. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

- C. The City is the final authority for a Shoreline Substantial Development Permit, unless there is an appeal filed with the State Shorelines Hearings Board.

### **2.3 Shoreline Conditional Use Permit**

The purpose of a shoreline conditional use permit is to provide a system within the Program which allows flexibility in the application of use regulations in a manner that is consistent with the policies of RCW 90.58.020. In authorizing a shoreline conditional use, the City or Department may attach special conditions to the permit to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Act and this Program.

- A. Uses which are classified or set forth in this Program as conditional uses may be authorized provided that the applicant demonstrates all of the following:
1. The proposed use is consistent with the policies of RCW 90.58.020 and this Program;
  2. The proposed use will not interfere with the normal public use of shorelines;
  3. The proposed use of the site and 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 Program;
  4. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
  5. The public interest suffers no substantial detrimental effect.
- B. Other uses which are not classified or set forth in this Program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in this Program.
- C. Uses which are specifically prohibited by this Program may not be authorized.
- D. The Washington State Department of Ecology is the final authority for a conditional use permit, unless there is an appeal filed with the State Shorelines Hearings Board.

### **2.4 Shoreline Variance Permit**

The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in this Program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of

this Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

- A. Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances, the applicant must demonstrate that extraordinary circumstances exist and that the public interest shall suffer no substantial detrimental effect.
- B. Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), and/or landward of any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided that the applicant can demonstrate all of the following:
  1. The strict application of the bulk, dimensional or performance standards set forth in this Program precludes, or significantly interferes with, reasonable use of the property.
  2. The hardship 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 Program, and not, for example, from deed restrictions or the applicant's own actions.
  3. The design of the project is compatible with other authorized uses within the area and with uses planned for the area under the City's comprehensive plan and this Program and will not cause adverse impacts to the shoreline environment;
  4. The variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
  5. The variance requested is the minimum necessary to afford relief; and
  6. The public interest will suffer no substantial detrimental effect.
- C. Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030(2)(b), or within any wetland as defined in RCW 90.58.030(2)(h), may be authorized provided that the applicant can demonstrate all of the following:
  1. The strict application of the bulk, dimensional or performance standards set forth in this Program precludes all reasonable use of the property;
  2. The proposal is consistent with the criteria established under Section 2.4(B); and
  3. The public rights of navigation and use of the shorelines will not be adversely affected.

- D. Variances from the use regulations of this Program are prohibited.
- E. The Washington State Department of Ecology is the final authority for a variance, unless there is an appeal filed with the State Shorelines Hearings Board.

## **2.5 Shoreline Exemptions**

- A. A letter of exemption shall be obtained from the City for exempt activities. An exemption from the substantial development permit is not an exemption from compliance with the Act or this Program, or from any other regulatory requirements.

Letters of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Administrator, including compliance with applicable bulk and dimensional standards and policies and regulations of this Program. The Administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and this Program.

- B. Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemptions from the substantial development permit.
- C. The burden of proof, that a development or use is exempt, is on the applicant or proponent.
- D. If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire project.
- E. A development or use, that is an unlisted use, must obtain a shoreline conditional use permit, even if the development or use does not require a shoreline substantial development permit.
- F. When a development or use does not comply with the bulk, dimensional and/or performance standards of this Program, such development or use shall only be authorized by approval of a shoreline variance, even if the development or use does not require a substantial development permit.
- H. Exemptions listed. The following shall be considered exempt from the requirement to obtain a shoreline substantial development permit in accordance with RCW 90.58.030 and WAC 173-27-040, or their successors.
  - 1. Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand seven hundred eighteen dollars (\$5,718), or as adjusted by WAC 173-27-040, if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purpose of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of the development that is occurring on

shorelines of the state as defined in RCW 90.58.030(2)(g) or successor. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

2. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements;
3. Construction of the normal protective bulkhead common to single-family residences;
4. Emergency construction necessary to protect property from damage by the elements;
5. Construction and practices normal or necessary for farming, irrigation and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary for farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;
6. Construction or modification of navigational aids such as channel markers and anchor buoys;
7. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five (35) feet above average grade level and which meets all requirements of the Department or the City other than requirements imposed pursuant to this Program;
8. Construction of a dock, including a community dock, designed for pleasure craft only, for the private non-commercial use of the owner, lessee or contract purchaser of single and multiple family residences. This exception applies if either:
  - a. In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars (\$2,500); or
  - b. In fresh waters, the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500) occurs within five (5) years of completion of the

- prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Program;
9. 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 for the irrigation of lands;
  10. The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;
  11. Operation and maintenance of any system of dikes, ditches, drains or other facilities existing on May 21, 1976, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;
  12. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this Program, if:
    - a. The activity does not interfere with the normal public use of the surface waters;
    - b. The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;
    - c. The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;
    - d. A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the City to ensure that the site is restored to pre-existing conditions; and
    - e. The activity is not subject to the permit requirements of RCW 90.58.550;
  13. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of a herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department jointly with other state agencies under RCW 43.21C.

## **2.6 Unspecified Uses**

This Program does not attempt to identify or foresee all conceivable shoreline uses or types of development. When a use or development is proposed which is not specifically classified within an existing use or development category, the Administrator shall identify and apply those program policies and regulations which will best promote the policies of the Act and this Program, with special reference to the policies of the environmental designation in which the use will be located.

## **2.7 Inspections**

Pursuant to RCW 90.58.200, the Administrator may enter the subject property to enforce the provisions of this Program during business hours. Entry shall be at reasonable times.

## **2.8 Penalties and Enforcement**

The Shoreline Management Act imposes significant penalties for violation of the Act and this Program. A violation constitutes a gross misdemeanor, which is punishable by fine or imprisonment (RCW 90.58.220). In addition to the criminal penalty, the Act imposes liability on any person violating the Act or conditions of a permit for all damage to public or private property resulting from the violation. Furthermore, if liability has been established for the cost of restoring an area affected by a violation, the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party. (RCW 90.58.230). Violations are also subject to TMC 1.10, Civil Enforcement of Code.

## **Chapter 3**

### **Shoreline Jurisdiction and Environment Designations**

#### **3.1 Shorelines of the State**

The jurisdiction of this Program is “shorelines of the state”, which includes all "shorelines" as defined in RCW 90.58.030.

#### **3.2 Shoreline Jurisdiction for Lakes**

Shoreline jurisdiction for lakes larger than twenty (20) acres in size shall include:

- A. Those lands which extend landward two (200) hundred feet as measured on a horizontal plane from the ordinary high water mark; and
- B. Those wetlands which are in proximity to and either influence or are influenced by the lake. This influence includes but is not limited to either or both of the following: Periodic inundation; or hydraulic continuity.

#### **3.3 Shoreline Jurisdiction for Streams and Floodplains**

Shoreline jurisdiction for streams where the mean annual flow is twenty (20) cubic feet per second or greater shall include the greater of the following:

- A. Those lands which extend landward two (200) hundred feet as measured on a horizontal plane from the ordinary high water mark;
- B. All of the one hundred (100) year floodplain within 200 feet of the floodway;
- C. Those wetlands which are in proximity to and either influence or are influenced by the stream. This influence includes but is not limited to one or more of the following: Periodic inundation; location within a floodplain; or hydraulic continuity; and
- D. Those lands within a river delta floodplain except for 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.

#### **3.4 Shorelines within the City of Tumwater and its Urban Growth Area**

The City of Tumwater shall have authority over those shorelines within its municipal boundaries. Those shorelines within the City of Tumwater and its Urban Growth Area which have been inventoried and found to meet the criteria of Sections 3.2 and 3.3 are listed below and are shown on the Shoreline Environment Designations Map (*Appendix A*).

A. Lakes:

1. Barnes Lake
2. Black Lake
3. Capitol Lake
4. Munn Lake
5. Lake Susan
6. Trosper Lake

B. Streams and Floodplains:

1. Black Lake Drainage Ditch
2. Deschutes River
3. Percival Creek (portions thereof; refer to Appendix A, City of Tumwater Shoreline Environment Designations Map)

### **3.5 Shoreline Environment Designations**

The Shoreline Master Program Guidelines (Chapter 173-26 WAC) recommend a classification system for designating shorelines. The purpose, designation criteria, and management criteria for each of these “Shoreline Environment Designations” or “SEDs” are described in sections 3.6 to 3.10.

### **3.6 Aquatic**

- A. 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.
- B. The “aquatic” environment designation shall be applied to lands waterward of the ordinary high-water mark.

### **3.7 Natural**

- A. 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 intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, planning for restoration of degraded shorelines should be included within this environment.
- B. The “natural” environment designation shall be applied to shoreline areas if any of the following characteristics apply:
  1. The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity. Ecologically intact shorelines, as used here, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not

necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris.

Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, the term “ecologically intact shorelines” is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

The term “ecologically intact shorelines” applies to all shoreline areas meeting the below criteria ranging from larger reaches that may include multiple properties to small areas located within a single property.

2. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or
3. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.
4. The shoreline includes largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats. Shorelines inside or outside urban growth areas may be designated as “natural.”
5. Areas with significant existing agriculture lands should not be included in the “natural” designation, except where the existing agricultural operations involve very low intensity uses where there is no significant impact on natural ecological functions, and where the intensity or impacts associated with such agriculture activities is unlikely to expand in a manner inconsistent with the “natural” designation.

### **3.8 Urban Conservancy**

- A. 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.
- B. The "urban conservancy" environment designation shall be applied to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie

in incorporated municipalities and urban growth areas if any of the following characteristics apply:

1. Shoreline areas that are suitable for water-related or water-enjoyment uses;
2. Shoreline areas that are open space, floodplain or other sensitive areas that should not be more intensively developed;
3. Shoreline areas that have potential for ecological restoration;
4. Shoreline areas that retain important ecological functions, even though partially developed; or
5. Shoreline areas that have the potential for development that is compatible with ecological restoration.
6. Lands that may otherwise qualify for designation as urban conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "urban conservancy" environment that allows mining and associated uses in addition to other uses consistent with the urban conservancy environment.

### **3.9 Shoreline Residential**

- A. The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant structures that are consistent with this Program, and to provide appropriate public access and recreational uses.
- B. The "shoreline residential" environment designation shall be applied to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, and incorporated municipalities in areas that are predominantly developed with single-family or multi-family residential development or are planned and platted for residential development.

### **3.10 Urban Intensity**

- A. The purpose of the "urban 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 previously degraded.
- B. The "urban intensity" environment designation shall be assigned to shoreline areas within incorporated municipalities and urban growth areas if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

### **3.11 Official Map**

- A. Shoreline Jurisdiction and the Shoreline Environment Designations are delineated on a map, hereby incorporated as a part of this SMP (*Appendix A*) that shall be known as the “Shoreline Environment Designations Map.”
- B. The boundaries of shoreline jurisdiction on the map are approximate. The extent of shoreline jurisdiction shall be based upon an on-site inspection and the criteria found in Sections 3.1 to 3.4.
- C. The official copy of this map shall reside with the Washington State Department of Ecology.
- D. Copies of this map are available for public use from the City of Tumwater Community Development Department.

### **3.12 Conflicts between Designation and Criteria**

In the event that any of the boundaries shown on the maps conflict with the criteria outlined in Sections 3.5 to 3.10, the criteria shall control.

### **3.13 Shoreline Areas not Mapped or Designated**

Per WAC 173-26-211 (2) (e), all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned an urban conservancy designation until the shoreline can be re-designated through a master program amendment.

### 3.14 Table of Uses and Activities by Shoreline Environment Designation

USES & ACTIVITIES	Urban Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
<b>Agriculture</b>	P	P	P	P <sup>3</sup>	NA
<b>Aquaculture</b>	P	P	P	P <sup>4</sup>	P <sup>4</sup>
<b>Boating Facilities</b>					
• Launch Ramps	P	P	P	C <sup>5</sup>	P*
• Marinas	P	P	X	X	P*
• Aquatic Management Access	P <sup>7</sup>	P <sup>7</sup>	X	X	P*
<b>Commercial</b>					
• Water-dependent	P	X	C	X	X
• Water-related	P	X	C	X	X
• Water-enjoyment	P	X	C	X	X
• Non-water oriented	P	X	X	X	X
<b>Forest Practices</b>	X	X	X	X	X
<b>Industrial</b>					
• Water-dependent	P	X	C	X	P*
• Water-related	P	X	C <sup>6</sup>	X	C*
• Non-water oriented	C	X	X	X	X
<b>Mining</b>	X	X	X	X	NA

P = Permitted Use; Use may require substantial development permit or statement of exemption approval

C = Requires a Shoreline Conditional Use Permit

X = Prohibited; not eligible for a Substantial Development or Conditional Use Permit

NA = Not applicable, refer to the appropriate Master Program section for additional standards

1 = Within one hundred (100) feet from the ordinary high water mark (OHWM)

2 = Greater than one hundred (100) feet from the OHWM to the edge of the shoreline jurisdiction

3 = Low-intensity agriculture is allowed provided the activities are consistent with the applicable policies, intent and the development standards of this program, and provided it does not cause significant ecological impacts

4 = Aquaculture allowed in Aquatic Environment subject to applicable policies, intent and the development standards of the abutting upland shoreline environment designation. Aquaculture is allowed in the Natural Environment provided the activities are consistent with the applicable policies, intent and the development standards of this program, it does not require structures, facilities or mechanized harvest practices and it will not result in the alteration of natural systems or features.

5 = Launch ramps allowed in Natural Environment to facilitate hand launching of non-motorized watercraft provided activities are consistent with applicable policies, intent and the development standards of this Program, and provided the size and design are compatible with the site.

6 = Use permitted if significant public benefit is provided with respect to the objectives of the Act such as providing public access and ecological restoration, and provided further that the use is either part of a mixed use project that includes a water-oriented use or is proposed on a site where navigability is severely limited.

7 = Use must be temporary with the intent of implementing an adopted vegetation management plan for Barnes Lake

\* = Use may be allowed in the Aquatic Environment if it is allowed in the adjacent upland shoreline environment

### 3.14 Continued – Table of Uses and Activities by Shoreline Environment Designation

USES & ACTIVITIES	Urban Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
<b>Recreation</b>					
• Water-dependent	P	P	P	P	P
• Water-related	P	P	P	P	P
• Water-enjoyment	P	P	P	P	C
• Non-water oriented	P	C <sup>1</sup> / P <sup>2</sup>	C <sup>1</sup> / P <sup>2</sup>	X <sup>1</sup> / P <sup>2</sup>	X
<b>Residential</b>					
• Single-Family	P	P	P	C	X
• Attached Single-Family & Multi-Family	P	P	P	X	X
<b>Solid Waste Disposal</b>	X	X	X	X	X
<b>Transportation</b>					
• Roads and Railroads	P	C <sup>1</sup> / P <sup>2</sup>	C <sup>1</sup> / P <sup>2</sup>	C <sup>1</sup> / P <sup>2</sup>	C*
• Shared Use Path/Trail	P	P	P	P	P*
<b>Utilities</b>					
• <b>Primary</b>	P	C <sup>1</sup> / P <sup>2</sup>	C <sup>1</sup> / P <sup>2</sup>	C <sup>1</sup> / P <sup>2</sup>	C*
• <b>Accessory to primary use</b>	<i>Refer to primary use</i>	<i>Refer to primary use</i>	<i>Refer to primary use</i>	<i>Refer to primary use</i>	<i>Refer to primary use</i>

- P = Permitted Use; Use may require substantial development permit or statement of exemption approval
- C = Requires a Shoreline Conditional Use Permit
- X = Prohibited; not eligible for a Substantial Development or Conditional Use Permit
- NA = Not applicable, refer to the appropriate Master Program section for additional standards
- 1 = Within one hundred (100) feet from the ordinary high water mark (OHWM)
- 2 = Greater than one hundred (100) feet from the OHWM to the edge of the shoreline jurisdiction
- \* = Use may be allowed in the Aquatic Environment if it is allowed in the adjacent upland shoreline environment designation

### 3.15 Table of Regulations

***Important Note:*** Critical area buffers apply to all shorelines regulated by this Program. Refer to Section 5.2 (Critical Areas and Shoreline Vegetation Conservation). Critical areas regulations impose buffer requirements that are established on a case-by-case basis and will require a plan prepared by a qualified professional. The Ordinary High Water Mark (OHWM) setbacks prescribed below apply to water-oriented uses (i.e. water-dependent, water-related and water-enjoyment uses) that may be allowed within the critical area buffer per Section 5.2(B)(13). The purpose of the setback is to ensure that a separation exists between water-oriented uses and the shoreline.

REGULATIONS	Urban Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
<b>Agriculture</b> OHWM Setback Building height	* 35'	* 35'	* 35'	* 35'	NA NA
<b>Aquaculture</b> OHWM setback Building height	15' 35'	15' 35'	25' 35'	50' 35'	NA 10'
<b>Boating Facilities</b> <i>(Boat Launches &amp; Marinas)</i>  <b>Water-dependent</b> OHWM setback Building height  <b>Water-related</b> OHWM setback Building height	  0' 35'  15' 35'	  0' 30'  15' 30'	  0' 30'  15' 30'	  0' 25'  25' 25'	  NA 20'  NA NA
<b>Commercial &amp; industrial Development</b>  <b>Water-dependent</b> OHWM Setback Building Height  <b>Water-related &amp; enjoyment</b> OHWM Setback Building Height  <b>Non-water-oriented</b> OHWM Setback Building Height	  0' 75'  15' 75'  * 75'	  NA NA  NA NA  NA NA	  25' 35'  50' 35'  * 50'	  NA NA  NA NA  NA NA	  NA 35'  NA 35'  NA NA

OHWM = Ordinary high water mark

NA = Not applicable, refer to the appropriate Master Program section for additional standards

1 = Within one hundred (100) feet from the ordinary high water mark (OHWM)

2 = Greater than one hundred (100) feet from the OHWM to the edge of the shoreline jurisdiction

\* = Use must be located outside of the Critical area buffer. See Section 5.2(B)(13) Certain exceptions apply.

**3.15 – Table of Regulations Continued**

<b>REGULATIONS</b>	<b>Urban Intensity</b>	<b>Shoreline Residential</b>	<b>Urban Conservancy</b>	<b>Natural</b>	<b>Aquatic</b>
<b>Recreation Development</b>					
<b>Water-dependent</b>					
OHWM Setback	25'	25'	25'	25'	NA
Building Height	35'	25'	25'	25'	10'
<b>Water-related &amp; enjoyment</b>					
OHWM Setback	50'	50'	50'	50'	NA
Building Height	35'	25'	25'	25'	10'
<b>Non-water-oriented</b>					
OHWM Setback	*	*	*	*	NA
Building Height	35'	25'	25'	25'	NA
<b>Residential Development</b>					
<b>Single-Family Dwellings</b>					
Maximum Net Density <sup>3</sup>	NA	8 du/ac	1 du/ac	1 du/10 ac	NA
OHWM Setback	*	*	*	*	NA
Building Height	35'	35'	35'	35'	NA
Maximum Impervious Surfaces	NA	50%	30%	10%	NA
<b>Attached Single-Family &amp; Multi-Family Dwellings</b>					
Maximum Net Density <sup>3</sup>	NA	8 du/ac	1 du/ac	NA	NA
OHWM Setback	*	*	*	NA	NA
Building Height	40 <sup>1</sup> / 70 <sup>2</sup>	35'	35'	NA	NA
Maximum Impervious Surfaces	NA	50%	30%	NA	NA
<b>Transportation</b>					
<b>Roads and Railroads</b>					
OHWM setback	*	*	*	*	NA
<b>Trails/Shared Use Paths</b>					
OHWM setback	*	*	*	*	NA
<b>Utilities</b>					
OHWM setback	*	*	*	*	NA
Building height	25 <sup>1</sup> / 35 <sup>2</sup>	25 <sup>1</sup> / 35 <sup>2</sup>	25 <sup>1</sup> / 35 <sup>2</sup>	20 <sup>1</sup> / 30 <sup>2</sup>	NA
Accessory to primary use	<i>Refer to Primary Use</i>	<i>Refer to Primary Use</i>	<i>Refer to Primary Use</i>	<i>Refer to Primary Use</i>	<i>Refer to Primary Use</i>

OHWM = Ordinary high water mark

NA = Not applicable, refer to the appropriate Master Program section for additional standards

1 = Within one hundred (100) feet from the ordinary high water mark (OHWM)

2 = Greater than one hundred (100) feet from the OHWM to the edge of the shoreline jurisdiction

3 = Net density is described in Section 7.10(B)(4)

\* = Use must be located outside of the Critical area buffer. See Section 5.2(B)(13) Certain exceptions apply.

**3.16 Table of Modifications by Shoreline Environment Designation**

SHORELINE MODIFICATIONS	Urban Intensity	Shoreline Residential	Urban Conservancy	Natural	Aquatic
<b>Dredging</b>	NA	NA	NA	NA	C
<b>Fill</b>					
Ecological Restoration Project	P	P	P	P	P
All Other Activities	P	C	C	X	C
<b>Buoy</b>	P	P	P	C	*
<b>Pier and Dock</b>	P	C <sup>1</sup> / P <sup>2</sup>	C <sup>1</sup> / P <sup>2</sup>	C	*
<b>Recreational Float</b>	P	P	P	C	*
<b>Shoreline Stabilization</b>					
Restoration and Enhancement	P	P	P	P	P
Bioengineering	P	P	P	C	C
Revetment and Gabion	C	C	C	X	C
Bulkhead	C	C	C	X	C
Breakwater, Jetty, Groin and Weirs	C	C	C	X	C
Dike, Levee and In-stream Structure	C	C	C	X	C*
<b>Stair Tower</b>	C/P <sup>3</sup>	C/P <sup>3</sup>	C/P <sup>3</sup>	X	X

P = Modification may be permitted subject to the policies and regulations of the Master Program. Modification may require substantial development permit or statement of exception approval. See section 7.2 for details.

C = Requires a shoreline Conditional Use Permit

X = Prohibited; not eligible for a Substantial Development or Conditional Use Permit

NA = Not applicable, refer to the appropriate Master Program section for additional standards

1 = Serving one (1) property

2 = Serving two (2) or more properties

3 = Stair tower for public access or to provide water access for five (5) or more waterfront or upland parcels. Recording of the easements will be a requirement of the shoreline permit.

\* = The shoreline modification may be allowed in the Aquatic Environment if it is allowed in the adjacent upland environment.

## **Chapter 4**

### **Master Program Goals**

This section describes the overall goals of the Master Program, which apply to all uses and developments within shoreline jurisdiction regardless of the designated shoreline environment in which they occur. These goals are guided by WAC 173-26 and the governing principles described in Section 1.3. The general policies and regulations in Section 5 and the shoreline modification and specific use policies and regulations in Sections 6 and 7 are the means by which these goals are implemented. Achievement of these goals shall be consistent with the state's policies of avoiding cumulative impacts and ensuring no net loss of shoreline processes, functions and values. These goals are not listed in order of priority.

#### **4.1 Conservation**

##### **A. Purpose**

As required by RCW 90.58.100(2)(f), the conservation goals address the protection of natural resources, scenic vistas, aesthetics and vital shoreline areas for fish and wildlife for the benefit of present and future generations.

##### **B. Goals**

1. Preserve, enhance and protect shoreline resources (i.e. wetlands, fish and wildlife habitats, native shoreline vegetation) for their ecological functions and values, and aesthetic and scenic qualities.
2. Maintain and sustain natural shoreline formation processes through effective shoreline management.
3. Promote restoration and enhancement of areas that are biologically and/or aesthetically degraded, while maintaining appropriate use of the shoreline.

#### **4.2 Economic Development**

##### **A. Purpose**

As required by RCW 90.58.100(2)(a), the economic development goals address the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines.

##### **B. Goals**

1. Encourage viable, orderly economic growth through economic activities that benefit the local economy and are environmentally sensitive. Such activities should not disrupt or degrade the shoreline or surrounding environment.

2. Accommodate and promote water-oriented industrial and commercial uses and development, giving highest preference to water-dependent uses.
3. Encourage water-oriented recreational use as an economic asset that will enhance public enjoyment of the shoreline.
4. Encourage economic development in areas already partially developed with similar uses when consistent with this Program and the Tumwater Comprehensive Plan.

#### **4.3 Historic, Archeological, Cultural, Scientific and Educational Resources**

##### **A. Purpose**

As required by RCW 90.58.100(2)(g), these goals address protection and restoration of buildings, sites and areas having historic, archeological, cultural, scientific or educational significance.

##### **B. Goals**

1. Maintain finite and irreplaceable links to the past by identifying, preserving, protecting, and where appropriate, restoring historic, archaeological, cultural, scientific and educational (HACSE) sites.
2. Protect HACSE sites and buildings identified on national, state or local historic registers from destruction or alteration, and from encroachment by incompatible uses.
3. Foster greater appreciation for shoreline management, maritime activities, environmental conservation, natural history and cultural heritage by educating and informing citizens of all ages through diverse means.
4. Ensure that tribal organizations and the State Office of Archaeology and Historic Preservation are involved in the review of projects that could potentially affect such resources.

#### **4.4 Public Access**

##### **A. Purpose**

As required by RCW 90.58.100(2)(b), the public access goals address the ability of the public to reach, touch and travel on the shorelines of the state and to view the water and the shoreline from adjacent locations.

##### **B. Goals**

1. Increase the ability of the general public to reach, touch and enjoy the water's edge, to travel on the waters of the state, and/or to view the water and the shoreline from adjacent locations, provided that private rights, the public safety, and shoreline ecological functions and

processes are protected consistent with the U.S. and State constitutions, and state statutes.

2. Locate, design, manage and maintain public access in a manner that protects shoreline ecological functions and processes and the public health and safety.
3. Design and manage public access in a manner that ensures compatibility with water-dependent uses.
4. Where appropriate, acquire access to shorelands. Encourage cooperation among the City and Thurston County, adjacent cities, landowners, developers, other agencies and organizations to enhance and increase public access to shorelines as specific opportunities arise.
5. Require public access to and along the shorelines as a condition of approval for shoreline development activities commensurate with the impacts of such development and the corresponding benefit to the public, and consistent with constitutional limitations.
6. Develop and manage public access to prevent adverse impacts to adjacent private shoreline properties and developments.

#### **4.5 Recreation**

##### **A. Purpose**

As required by RCW 90.58.100(2)(c), the recreation goals address the creation and expansion of water-oriented public recreational opportunities.

##### **B. Goals**

1. Encourage diverse recreational opportunities in shoreline areas that can support such use and development without human health, safety and/or security risks, and without adverse effects on shoreline functions, processes, values, private property rights, and/or neighboring uses.
2. Plan for future shoreline recreational needs and acquire (i.e. through purchase, donation or other agreement) shoreline areas that have a high potential to provide recreation areas.
3. Provide for both active and passive recreational needs when developing recreational areas.
4. Support other governmental and non-governmental efforts to acquire and develop additional shoreline properties for public recreational uses.

## 4.6 Restoration and Enhancement

### A. Purpose

As required by WAC 173-26-186, the restoration and enhancement goals address reestablishment, rehabilitation and improvement of impaired shoreline ecological functions, values and/or processes.

### B. Goals

1. Improve impaired shoreline ecological functions and/or processes through voluntary and incentive-based public and private programs and actions that are consistent with this Program and other approved restoration plans.
2. Provide fundamental support to restoration work by various organizations by identifying shoreline restoration priorities, and by organizing information on available funding sources for restoration opportunities.
3. Target restoration and enhancement towards improving habitat requirements of priority and/or locally important wildlife species.
4. Require improvement of impaired shoreline ecological functions and/or processes to mitigate impacts from new development.

## 4.7 Shoreline Use

### A. Purpose

As required by RCW 90.58.100(2)(e), the shoreline use goals address the general distribution, location, and extent of housing, business, industry, transportation, agriculture, natural resources, aquaculture, recreation, education, navigation and other categories of public and private land use.

### B. Goals

1. Ensure that shoreline use patterns are compatible with the ecological functions and values of the shoreline.
2. Protect water quality and aquatic habitat with all new shoreline development.
3. Increase protection of shoreline ecological resources by properly siting and regulating water-dependent and residential uses that have preferred status for use of waterfront lands.
4. Encourage uses that allow for or include restoration so that areas affected by past activities or catastrophic events can be improved.
5. Ensure that all new development is consistent with the Tumwater Comprehensive Plan.
6. Limit development intensity in ecologically sensitive and fragile areas.

7. Reduce health and safety risks by limiting development in areas subject to flooding, erosion, landslides, channel migration and other hazards.
8. Give consideration to the statewide interest in the prevention and minimization of flood damages.
9. Protect single family residences and appurtenant structures against damage or loss due to shoreline erosion.

#### **4.8 Transportation and Utilities**

##### **A. Purpose**

As required by RCW 90.58.100(2)(d), transportation and utilities goals address circulation and the general location and extent of thoroughfares, transportation routes, and other public utilities and facilities.

##### **B. Goals**

1. Develop efficient and economical transportation systems and utility services and facilities, such as those that produce, transmit, carry, store, process, or dispose of electric power, gas, water, sewage, communications, and oil, in a manner that assures the safe movement of people, goods and services without adverse effects on shoreline use and development, or shoreline ecological functions, processes or values.

## Chapter 5

# General Policies and Regulations

The following general policies and regulations apply to all shorelines of the state that are located in Tumwater, regardless of the specific shoreline environment designation in any one location.

General policies and regulations are not listed in order of priority. These policies and regulations:

- Help implement the Master Program goals in Section 2;
- Are informed by the guiding principles in Section 1;
- Work in concert with all the other policies and regulations contained in this Program; and
- Are based on the state shoreline guidelines (WAC 173–26).

### 5.1 Environmental Impact Mitigation

#### A. Policies

1. All shoreline uses and developments should be carried out in a manner that avoids and minimizes adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas identified in Section 5.2 that are located in the shoreline. Should a proposed use and development potentially create significant adverse environmental impacts not otherwise avoided or mitigated by compliance with this Program, the Administrator should require mitigation measures to ensure no net loss of shoreline ecological functions.

#### B. Regulations

1. To the extent Washington’s State Environmental Policy Act of 1971 (SEPA) chapter 43.21C RCW is applicable, the analysis of environmental impacts from proposed shoreline uses or developments shall be conducted consistent with the rules implementing SEPA (TMC 16.04 and WAC 197-11).
2. Mitigation Sequencing. Where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority:
  - a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action;
  - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

- c. Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
  - d. Reducing or eliminating the impact over time by preservation and maintenance operations;
  - e. Compensating for the adverse impact by replacing, enhancing, or providing substitute resources or environments; and
  - f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
3. In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be not feasible or inapplicable.
  4. Required mitigation shall not be in excess of the minimum necessary to assure that proposed uses or development will result in no net loss of shoreline ecological functions.
  5. Mitigation actions shall not have a significant adverse impact on other shoreline functions fostered by the policies of the Shoreline Management Act.
  6. When compensatory measures are appropriate pursuant to the priority of mitigation sequencing above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

## **5.2 Critical Areas and Shoreline Vegetation Conservation**

Native vegetation along the shoreline provides and supports many ecological functions or processes which include but are not limited to:

- Providing shade necessary to maintain cool temperatures required by salmonids, spawning forage fish, and other aquatic biota;
- Providing organic inputs critical for aquatic life;
- Providing food in the form of various insects and other benthic macroinvertebrates;
- Stabilizing banks, minimizing erosion, and reducing the occurrences of landslides;

- Reducing fine sediment input into the aquatic environment through storm water retention and vegetative filtering;
- Improving water quality through filtration and vegetative uptake of nutrients and pollutants;
- Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species;
- Regulating the microclimate in stream-riparian corridors; and
- Providing habitat for wildlife, including connectivity for travel and migration corridors.

#### A. Policies

1. Adopt regulations to assure that development within the shoreline jurisdiction results in no net loss of ecological functions necessary to sustain the natural shoreline.
2. Provide a level of protection to critical areas within the shoreline that is at least equal to that which is provided by the City's critical areas regulations adopted pursuant to the Growth Management Act and the City's Comprehensive Plan. If conflicts between the SMP and the critical area regulations arise, the regulations that are most consistent with the SMA or its WAC provisions will govern.
3. Allow activities in critical areas that protect and, where possible, restore the ecological functions and ecosystem-wide processes of the City's shoreline.
4. Preserve, protect, restore and/or mitigate wetlands and habitat protection areas within and associated with the City's shorelines to achieve no net loss of wetland and habitat protection areas and their functions.
5. Developments in shoreline areas that are identified as geologically hazardous or pose a foreseeable risk to people and improvements during the life of the development should not be allowed.
6. Limit the removal of vegetation along the shoreline to the minimum necessary to accommodate the approved shoreline development.
7. Preserve existing native vegetation along the shoreline and require planting when it does not exist.
8. Provide flexibility when balancing overlapping shoreline policies regarding vegetation conservation, a preference for water-oriented uses, and requirements to provide public access.

#### B. Regulations

1. All shoreline uses and activities shall be located, designed, constructed

- and managed to protect and/ or enhance the ecological functions and ecosystem-wide processes provided by critical areas including, but not limited to: wetlands, fish and wildlife habitats, geologically hazardous areas and frequently flooded areas as defined and designated by Titles 16 (Environment) and 18 (Zoning) of the Tumwater Municipal Code (TMC).
2. The following regulations of the TMC pertaining to the protection of critical areas shall be adopted as a part of this Program.
    - a. TMC 16.20, *Geologically Hazardous Areas* (last amended by Ordinance No. O2004-019 on 5/17/2005);
    - b. TMC 16.28, *Wetland Protection Standards* (last amended by Ordinance No. O2006-026 on 4/3/2007);
    - c. TMC 16.32, *Fish and Wildlife Habitat Protection* (last amended by Ordinance No. O2008-011 on 9/2/2008); and
    - d. TMC 18.38, *Floodplain Overlay* (last amended by Ordinance No. O2007-004 on 9/4/2007).
  3. Exceptions to the applicability of the critical areas regulations in shoreline jurisdiction are listed below.
    - a. “Reduction of standard buffer zone width” (TMC 16.20.057; 16.28.170; 16.32.065): any reduction greater than 25% of the standard critical area buffer width within shoreline jurisdiction will require a shoreline variance.
    - b. “Standard buffer width averaging” (TMC 16.28.170; 16.32.065): critical area buffer averaging within shoreline jurisdiction is allowed if no net loss of ecological functions is demonstrated and the project is subject to mitigation sequencing in Section 5.1(B).
    - c. “Reduction to wetland replacement ratios” (TMC 16.28.220): a reduction of the wetland replacement ratio within shoreline jurisdiction will require a shoreline variance.
    - d. “Reasonable use exception” (TMC 16.28.190; 16.32.097): within shoreline jurisdiction, a shoreline variance will serve as a reasonable use exception review.
    - e. “Nonconforming uses and structures” (TMC 16.28.290; 16.32.095): nonconforming provisions in Section 8.0 of this Program apply.
    - f. “Exceptions – Public Agency and Utility” (TMC 16.28.115; 16.32.098) will require a shoreline conditional use permit.
  4. Any provision of the critical areas regulations that is not consistent with the Shoreline Management Act Chapter, 90.58 RCW, and

supporting Washington Administrative Code chapters shall not apply in shoreline jurisdiction.

5. The provisions of the City's critical areas regulations do not extend shoreline jurisdiction beyond the limits specified in this Program.
6. Critical area buffers apply to all shorelines regulated by this Program. During any development activity within the shoreline jurisdiction, native plant communities located within the shoreline buffer shall be protected, maintained, or enhanced per the regulations established in the City's critical areas regulations.
7. Critical area buffers are established on a case-by-case basis and require a plan prepared by a qualified professional. Wetland buffers are set forth in TMC 16.28.070. Fish and wildlife riparian habitat buffers which apply to streams and rivers are described in TMC 16.32.065.

Lakes are subject to the requirements of TMC 16.32.060, fish and wildlife habitat buffers; provided that this SMP establishes the following minimum habitat buffer widths for lakes under shoreline jurisdiction. These minimum buffer widths when applied to lakes are measured from the Ordinary High Water Mark and may be increased based on a habitat protection plan required by TMC 16.32.060.

<u>Shoreline Environment</u>	<u>Minimum Buffer Width</u>
Urban Intensity	50 Feet
Shoreline Residential	50 Feet
Urban Conservancy	75 Feet
Natural	100 Feet

8. Required critical area buffers shall be considered vegetation conservation areas. These areas shall consist of an undisturbed area of native vegetation or areas identified for restoration. Existing native vegetation shall be preserved to the maximum extent feasible within the vegetation conservation area consistent with safe construction practices, and other provisions of this section. Native trees and shrubs shall be preserved to maintain and provide shoreline ecological functions such as habitat, shade and slope stabilization.
9. Within vegetation conservation areas, no more than fifteen percent (15%) of the area with native shoreline vegetation shall be cleared. All native trees in the vegetation conservation area over four (4) inches in diameter at breast height shall be retained. Trees determined by the City to be hazardous or diseased may be removed in accordance with the provisions set forth in TMC 16.08 (Protection of Trees and Vegetation).

10. The Shoreline Administrator may allow removal of vegetation exceeding that described above in accordance with the provisions of TMC 16.08 where an applicant agrees to replacement plantings that are demonstrated to provide greater benefit to shoreline ecological functions than would be provided by strict application of this section.
11. Critical area buffer regulations shall not apply to the removal of aquatic weeds and fresh water algae undertaken pursuant to WAC 173-201.
12. In the absence of a development proposal, existing, lawfully established landscaping and gardens within a vegetation conservation buffer may be maintained in its existing condition including but not limited to, mowing lawns, weeding, removal of noxious and invasive species, harvesting and replanting of garden crops, pruning and replacement planting of ornamental vegetation or indigenous native species to maintain the condition and appearance of such areas as they existed prior to adoption of this Program, provided this does not apply to areas previously established as mitigation sites, or other areas protected via conservation easements or similar restrictive covenants.
13. The following uses are allowed within critical area buffers without a shoreline variance permit, provided the uses comply with TMC 18.38 (Floodplain Overlay) and are constructed and maintained in a manner that minimizes adverse impacts on shoreline ecological functions and complies with this Program.
  - a. Uses and activities allowed in TMC 16.28 (Wetland Protection Standards) and 16.32 (Fish and Wildlife Habitat Protection) when also allowed in the applicable shoreline environment;
  - b. Shared use paths/trails when located on abandoned railroad corridors or boardwalks, or on bridges providing pedestrian access across a surface water body;
  - c. Pedestrian trail access from upland areas to the shoreline, piers, docks, launch ramps, viewing platforms, wildlife viewing blinds and other similar water-oriented uses;
  - d. Allowed water-oriented uses in all shoreline environments. The uses must increase public access to the shoreline, provided that development is located, designed, constructed and operated to minimize critical area disturbance to the maximum extent feasible. Such development or redevelopment shall restore or enhance degraded ecological functions. Such development shall not be exempt from the provisions of Section 5.1, Environmental Impact Mitigation; and

- e. Allowed nonwater-oriented uses within Shoreline Reach CAP-1 to accommodate future use and/or redevelopment of the historic Old Brewhouse located adjacent to the Deschutes River and the south portion of Capitol Lake. The uses must increase public access to the shoreline, provided that development is located, designed, constructed and operated to minimize critical area disturbance to the maximum extent feasible. Such development or redevelopment shall restore or enhance degraded ecological functions. Such development shall not be exempt from the provisions of Section 5.1, Environmental Impact Mitigation.

Below is an excerpt from the City's Comprehensive Plan which describes the unique history of this property:

*“The Old Brewhouse is seen by tens of thousands of people every day from Interstate 5 and is one of the community's most iconic structures. It has influenced the design of many new buildings in the region including Tumwater's City Hall, Fire Station, and the Library. The importance of the structure was recognized in 1978 when the property was placed on the National Register of Historic Places.”*

### 5.3 Public Access

#### A. City of Tumwater Existing and Planned Public Access Opportunities

The Tumwater Park, Recreation and Open Space Plan contains several sections relevant to shoreline areas in Tumwater and the Tumwater Urban Growth Area:

***Section 2.4 - Trail and corridor access systems: Water Trails***

*Incorporate and improve a freshwater system of boat ramps, landings, and other improvements route for appropriate motorized craft on Black, Capital, and Munn Lakes.*

*Incorporate and extend a freshwater trail network for hand-carry or car-top craft including canoes, kayaks, and lorries on the Deschutes River extending the length of the navigable river from Deschutes Ridge through Pioneer Park to Tumwater Falls, and from the Old Tumwater Brewery into Capital Lake. Provide hand-carry access to the smaller navigable water bodies including Black Lake Ditch, and Barnes, Trooper, Trails End Lakes, Henderson Pond, and a number of other unnamed water features within the urban growth area.*

***Section 2.5 - Resource parks: Waterfront access and facilities***

*Acquire and develop additional freshwater shoreline access for waterfront fishing, beachcombing, wading, swimming, and other related recreational activities and pursuits – especially including sites on the Deschutes River,*

*Barnes and Trails End Lakes, Henderson Boulevard, Olympia Mitigation, Restawhile, Kenneydell, Belmore, Railroad, and Rhondo Ponds.*

Current Tumwater Subdivision Code provides additional opportunities for public access along shorelines:

**Title 17 – Section G**

*Open space/park areas shall be held in single ownership where such ownership assumes full responsibility for maintenance and operation, or held in common ownership by all of the owners in the development area through a homeowners association or similar organization. The City as a condition of approval may chose to accept dedication, or the maintenance and operation responsibilities for the area, when the area to be dedicated is one or more of the following.*

- *Greater than 5 acres*
- *Adjacent to an established or future City park or school grounds*
- *Includes access to a body of water, wetland, important fish/habitat, or other environmentally sensitive area.*

Table 5.3 highlights existing public access, planned public access, and other opportunities for public access within Tumwater and the urban growth area.

**TABLE 5.3:** EXISTING, PLANNED, AND OPPORTUNITIES FOR PUBLIC ACCESS FOR TUMWATER AND UGA.

Type	Existing Public Access	Planned Public Access	Other Opportunities
<b>Rivers/Streams</b>			
Black Lake Drainage Ditch		Conserve and provide access to the wetland stormwater retention areas (Tumwater Parks Plan).	
Deschutes River	Pioneer Park (City of Tumwater) (includes hand-carry boat launch and trails)  Tumwater Falls Park (non-profit ownership) includes trails	Plans for a Deschutes Watershed Center at Pioneer Park (City of Tumwater and WDFW – includes a hatchery).  Deschutes Valley Trail will provide additional points of public access and interpretative areas (City of Tumwater).  Conserve and provide access to the woodlands and wetlands from Pioneer Park south (Parks Plan).	A portion of the former Brewery Property may be considered for acquisition by the City of Tumwater for a park.

Percival Creek	Very small segment of this creek (under SMA Jurisdiction) is in Tumwater.		
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Type	Existing Public Access	Planned Public Access	Other Opportunities
<b>Lakes</b>			
Barnes Lake	None at this time.	City of Tumwater Park planned for this lake with public viewing access.	Tumwater School District owns property on east side of lake.  State owns property on south side of lake.
Black Lake	Boat ramp (State).  Kennydell Park (Thurston County) – swimming beach and trails on east side of the lake.  Guerin County Park (Thurston County – rural area) – undeveloped park on west shore of the lake.		
Capitol Lake	Tumwater Historic Park (City of Tumwater) – public boat ramp is adjacent to this park and owned by the State.		Redevelopment of the Historic Brewhouse property may include opportunities for public access.
Lake Susan & Munn Lake	Lake Munn Park (Thurston County) boat ramp.		
Trosper Lake	Trosper Lake Site (City of Tumwater – Undeveloped SW Neighborhood Park Site with informal public access).	No formal plans for public access at this site – which is planned to be the SW Neighborhood Park.	

**B. Policies**

1. The City of Tumwater should seek to increase the amount and diversity of public access to shorelines consistent with the City of Tumwater Parks, Recreation and Open Space Plan, the natural shoreline character, property rights and public safety.
2. Public access should be maintained, enhanced and increased in accordance with the following priorities unless found infeasible:

- a. Maintain existing public access sites and facilities, rights of way and easements;
  - b. Provide new or enhance existing public access opportunities on existing public lands and easements;
  - c. Acquire property or easements to add public access opportunities to implement the Tumwater Park, Recreation and Open Space Plan;
  - d. Encourage public access to shorelines as part of shoreline development activities; and
  - e. Require physical or visual access to shorelines as part of new or expanded residential, commercial, industrial, recreational and public facility development when the development would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights, unless such access is shown to be incompatible due to reasons of safety, security or impact to shoreline ecological functions.
3. Public access requirements should be commensurate with the scale and character of the development and should be reasonable to all affected parties including but not limited to the land owner and the public.
  4. Public access design should provide for public safety and minimize potential impacts to private property and individual privacy.
  5. Developments, uses and activities on or near the shoreline should not impair or detract from the public's access to the water or the rights of navigation.
  6. Public access should be provided near the water's edge without causing ecological impacts, and should be designed in accordance with the Americans with Disabilities Act.

#### C. Development Standards

1. Public access shall consist of a dedication of land, easement or 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 and/or physical approach to public waters and may include interpretive centers and displays.
2. New or expanded uses and development shall provide public access where any of the following conditions are present:
  - a. Where a development or use will interfere with an existing public access, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking

- access or discouraging use of existing on-site or nearby public access;
- b. Proposed commercial or industrial developments;
  - c. Residential developments involving the creation of more than four residential lots or dwelling units;
  - d. Where the development is proposed or funded by a public entity or on public lands, except where public access improvements would adversely affect publicly funded restoration actions.
3. Public access shall not be required for the following uses or activities except as determined on a case-by-case basis in accordance with mitigation sequencing regulations in Section 5.1.
- a. Single-family residential developments consisting of four (4) or fewer residential lots or dwelling units;
  - b. Agriculture;
  - c. Dredging;
  - d. Ecological restoration or enhancement activities not associated with development;
  - e. Instream structures;
  - f. Landfill and excavation;
  - g. Private docks serving four (4) or fewer dwelling units; and
  - h. Shoreline stabilization.
4. In addition to the list of uses in Section 5.3(C)(3) above, the Administrator may waive public access requirements when one or more of the following provisions apply:
- a. Health or safety hazards to the public exist that cannot be prevented by practical means;
  - b. Security requirements of the use cannot be satisfied through the application of alternative design features or other practical solutions;
  - c. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long-term cost of the proposed development;
  - d. Significant environmental impacts will result from the public access;
  - e. Significant conflict between any access provisions and the proposed use and/or adjacent uses would occur.
5. Parcels within shoreline jurisdiction, which do not front onto a lake, stream or wetland shoreline will not be required to provide shoreline public access. They may be required to provide public access to other parcels along the shoreline (e.g. water's edge), where appropriate.

6. If public access on shoreline parcels is demonstrated to be infeasible or inappropriate on site due to significant interference to operations or hazards to life and property, alternative visual access opportunities may be provided at a location not directly adjacent to the water such as a viewpoint, observation tower, or other areas serving as a means to view public waters.
7. Public access sites shall include improvements that conform to the requirements of the Americans with Disabilities Act (ADA) when feasible and appropriate.
8. This master program shall seek opportunities to increase public access to existing publicly owned shorelines, such as street ends, and unopened rights-of-way. Public access to the shoreline shall be balanced with the preservation of shoreline habitat and ecological functions on a case-by-case basis.
9. Where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological functions and/or processes, a public pedestrian access walkway parallel to the ordinary high water mark of the shoreline is permitted subject to the following:
  - a. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the water's edge where appropriate;
  - b. Fencing may be provided to control damage to plants and other sensitive ecological features, where appropriate; and
  - c. Trails located in vegetation conservation areas shall be constructed in accordance with Section 5.2(B)(13)(b).
10. Trails shall be limited in width to the minimum necessary to reduce impacts to ecologically sensitive resources. The use of permeable materials is encouraged.
11. Public access shall be located adjacent to other public areas, accesses and connecting trails, connected to the nearest public street.
12. Where views of the water or shoreline are available and physical access to the water's edge is not present or appropriate, a public viewing area shall be provided.
13. Design shall minimize intrusions on privacy by avoiding locations adjacent to windows and/or outdoor private open spaces, or by screening or other separation techniques.
14. Design shall provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The Administrator may authorize a

public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.

15. Public amenities appropriate to the use of a public access area such as covered shelters, benches or picnic tables shall be provided.
16. The minimum width of public access easements or dedications for shared use paths/trails shall be based on the standards of the Tumwater Park, Recreation and Open Space Plan.
17. Required public access sites shall 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.

## **5.4 Water Quality**

### **A. Policies**

1. Locate, design, construct and maintain shoreline uses and activities to avoid significant ecological impacts by altering water quality quantity, or hydrology.
2. Require reasonable setbacks, buffers and storm water storage basins, and encourage low-impact development techniques and materials to achieve the objective of lessening negative impacts on water quality.
3. Locate, design, construct and maintain measures for controlling erosion, stream flow rates or flood waters through the use of stream control works consistent with best management practices in the Drainage Design and Erosion Control Manual.
4. The City will seek to improve water quality, quantity and flow characteristics in order to protect and restore ecological functions and ecosystem-wide processes of shorelines within Shoreline Management Act jurisdiction. This will be implemented through the regulation of development and activities, through the design of new public works, such as roads, drainage and water treatment facilities, and through coordination with other local, state and federal water quality regulations and programs.
5. Prohibit uses and activities that pose a risk of contamination of ground or surface waters, such as:
  - a. Storage, disposal or land application of waste (excluding secondary/tertiary treated effluent from municipal sewer systems), including solid waste landfills;
  - b. Operations for confinement feeding of animals;

- c. Junk yards and auto-wrecking yards;
- d. Storage of hazardous or dangerous substances within a floodplain; and
- e. Alterations to structures and uses served by septic systems that do not meet county septic requirements.

#### B. Development Standards

1. Stormwater management facilities for new uses and development shall be constructed and maintained in accordance with the current City Stormwater Drainage Manual.
2. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan, or administrative conditions.
3. The use of wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited.
4. All structures that may come in contact with water shall be constructed of materials such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain or runoff.

### 5.5 Flood Hazard Reduction

#### A. Policies

1. The City should manage flood protection through the City's Comprehensive Plan, Drainage Design and Erosion Control Manual and Floodplain Overlay zoning regulations.
2. Discourage development within the floodplains associated with the City's shorelines that would individually or cumulatively result in an increase to the risk of flood damage.
3. Restrict or prohibit uses which are dangerous to human health, safety or property in times of flood, or cause increased flood heights or velocities.

#### B. Regulations

1. Development within the floodway or 100-year floodplain shall be in accordance with TMC 18.38 (Floodplain Overlay) and the City of Tumwater Drainage Design and Erosion Control Manual.

2. Dikes, levees, berms and similar flood control structures shall be shaped and planted with vegetation suitable for wildlife habitat unless otherwise found impractical.
3. New structural public flood hazard reduction measures, such as dikes and levees shall dedicate and provide or improve public access unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, significant ecological impacts that cannot be mitigated, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.
4. Removal of gravel from the river channel for flood management purposes is prohibited.
5. Refer to Section 6.6 for additional regulations that apply to dikes, levees and instream structures.

## **5.6 Parking**

### **A. Policies**

1. Allow parking within the shoreline jurisdiction only for an approved use.
2. Design and construct parking facilities to minimize off-site light and glare.
3. Link parking facilities with the shoreline and to the buildings they serve by walkways.

### **B. Development Standards**

1. Parking facilities within shoreline jurisdiction are only allowed as necessary to support an authorized use. Any other type of parking is prohibited.
2. Parking facilities serving individual buildings shall be located landward, if feasible, to minimize adverse impacts on the shoreline, except when the parking facility is within or beneath the structure and adequately screened or in cases when an alternate orientation would have less adverse impact on the shoreline.
3. Over-water parking facilities are prohibited.
4. Parking facilities shall be designed and landscaped to minimize adverse impacts upon adjacent shorelines and abutting properties.
5. Lighting for parking areas are subject to the City's exterior illumination standards in TMC 18.40.
6. Parking facilities shall provide safe and convenient pedestrian circulation within the parking area and to the shoreline.

7. Parking associated with launch ramps and other shoreline access shall be located fifty (50) feet from the ordinary high water mark.
8. Refer to Section 5.4(B) for the water quality development standards which include on-site stormwater control measures.
9. Additional parking regulations can be found in TMC 18.50.

## **5.7 Signage**

### **A. Policies**

1. Design signs within shoreline jurisdiction so that they interfere as little as possible with visual access to the shoreline.
2. Design and locate signs to insure compatibility with the shoreline environment designation, and adjacent land and water uses.
3. Prohibit billboards within all shoreline environment designations.

### **B. Development Standards**

1. Off-premise signs are prohibited within any shoreline environment designation. Traffic and “wayfinding” signs are not to be considered as off-premise signs.
2. All public access shall be marked with signs approved by the Administrator.
3. Signs for a marina or launch ramp facility shall be limited to one advertising sign oriented to the water, Signs for a marina, launch ramp facility or fueling facility shall not exceed fifteen (15) feet in total height as measured from the ordinary high water mark. Signs incorporating the pump-out logo shall be provided identifying the location of waste disposal facilities, if available.
4. Additional sign regulations can be found in TMC 18.44.

## **5.8 Historical or Archaeological Resources**

### **A. Policies**

1. Coordinate development review within the shoreline with the Washington Department of Archaeology and Historic Preservation, Certified Local Governments and affected Indian tribes, regarding historic or archaeological interest.

2. Provide for the protection, rehabilitation, restoration and reconstruction of historic structures listed on the federal, state or local historic registers.
3. Report the discovery of a historic or prehistoric site during excavation or development, to the Washington Department of Archeology and Historic Preservation and to the affected Indian tribes.
4. Allow for the reconstruction of replicas of historic buildings within national historic districts.
5. Encourage the enrollment of historic structures or sites on the Federal, state or local historic registers.

#### B. Development Standards

1. The protection, rehabilitation, restoration, and reconstruction of historic structures shall be governed by *The Secretary of Interior's Standards for Rehabilitation & Illustrated Guidelines for Applying the Standards* (1992), as amended.
2. The discovery of a historic or pre-historic site during excavation or development shall be reported to the Administrator, the Washington State Department of Archaeology and Historic Preservation, and the affected Indian tribes.
3. The construction of historical replica buildings may be allowed within the boundaries of a national historic district, with a shoreline conditional use permit.
4. The City shall consult with the Washington State Department of Archaeology and Historic Preservation and the affected Indian tribes when known sites are proposed for development.

### 5.9 Scientific or Educational Uses

#### A. Policies

1. Conduct scientific studies and educational uses of the shoreline in a way to minimize impacts, in accordance with the applicable environment designations.
2. Require a shoreline permit for scientific and educational activities which may significantly affect water quality or natural systems.

#### B. Development Standards

1. Scientific or educational uses and activities are limited to those which will not:
  - a. Jeopardize existing wildlife populations or organisms;
  - b. Permanently alter the character of biological habitats; and

- c. Degrade the character of the shoreline environment in which they are located.
2. Proposals for shoreline development or use in or on known sites of scientific value that would adversely affect, damage or diminish such resources shall be prohibited. Such proposals may be allowed by shoreline conditional use permit if it is shown that the materials, artifacts or resources are recoverable and transferrable through adequate evaluation by qualified personnel.
3. Temporary disruptions of biological systems may be permitted when a scientific activity will result in their restoration or improvement.
4. Temporary facilities necessary for the conduct of a scientific project shall be removed at the conclusion of the research activity period.
5. Permits encompassing a variety of activities over an extended period of time may be granted, provided limits on the duration of approval are established.

## **Chapter 6**

### **Shoreline Modifications Policies and Regulations**

The policies and development standards in this section apply to all types of shoreline modifications. Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin or fill, but modifications can include other actions such as clearing, grading, application of chemicals or significant vegetation removal. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial use), or dredging (shoreline modification) to allow for a marina (boating facility use).

Policies and regulations are not listed in order of priority. These policies and regulations:

- Are guided by the governing principles in Section 1;
- Help implement the Master Program goals in Section 4;
- Are consistent with all the other policies and regulations contained in this Program; and
- Are based on the state shoreline guidelines (WAC 173–26).

Refer to Table 3.16 for a list of shoreline modifications by shoreline environment.

#### **6.1 General Policies**

- A. Design and locate residential development so that the following shoreline modifications are not necessary: filling, beach feeding, bulkheading, shoreline berms, construction groins or jetties, or substantial grading of the site.
- B. Insure that permits for shoreline modifications use the mitigation sequencing outlined in Section 5.1.
- C. Prioritize shoreline stabilization projects based on the following order of preference:
  1. No action (allow the shoreline to retreat naturally), increased building setbacks, and structure relocation away from the shoreline
  2. Upland vegetation enhancement and drainage controls.
  3. Flexible protective measures constructed of natural materials including soft shore protection, bioengineering, beach nourishment, protective berms or vegetative stabilization.
  4. Rigid protective measures such as bulkheads and bluff walls constructed of artificial materials such as riprap or concrete. Construction materials for shoreline stabilization should be selected based on long-term durability, ease of maintenance, compatibility with

- local shore features, including aesthetic values and flexibility for future uses.
5. Applications that cannot propose the above preferred methods must demonstrate why these methods cannot be followed.
- D. Design and locate structures to stabilize the shoreline such that the need for future shoreline stabilization is avoided.
- E. Locate and design shoreline stabilization to:
1. Protect and maintain shoreline ecological functions and the integrity of shoreline features; and
  2. Not unnecessarily interfere with public access to public shorelines or with other appropriate shoreline uses including, but not limited to, navigation, seafood harvest or private recreation.
- F. Locate and design shoreline stabilization on streams to fit the physical character and hydraulic energy potential of a specific shoreline reach, which may differ substantially from adjacent reaches.
- G. Locate and design public or quasi-public development shoreline stabilization projects for multiple use, restoration, and/or public access, where feasible.
- H. Design land subdivisions to assure that future development on the created lots will not require structural shoreline stabilization.
- I. Limit new or expanded structural shoreline stabilization when:
1. It is conclusively demonstrated by a geotechnical analysis to be necessary to protect an existing primary structure or use that is in danger of loss or substantial damage caused by tidal action, currents or waves;
  2. The erosion is not being caused by upland conditions such as vegetation loss and drainage problems;
  3. Non-structural solutions will not be feasible or sufficient; and
  4. Impacts can be mitigated so that they will not result in a net loss of ecosystem-wide processes and shoreline ecological functions.
- J. Restrict larger shoreline stabilization projects (such as jetties, breakwaters, weirs or groin systems) when:
1. Water-dependent use benefits to the region outweigh resource losses from such projects, and
  2. Mitigation provided results in no net loss of shoreline ecological functions and processes.

- K. Prohibit shore stabilization projects on publicly owned shorelines which result in a long-term decrease in public use of the shoreline.
- L. Prohibit shore stabilization for the purpose of filling shorelines.
- M. Prohibit structural shoreline stabilization to be located on or at the base of eroding bluffs, except where existing structures are threatened or non-structural methods have been determined to be infeasible.
- N. Give preference in permitting to shore stabilization efforts which coordinate affected property owners and public agencies for a whole drift sector (net shore-drift cell) to address ecological and geo-hydraulic processes, sediment conveyance and beach management issues. Encourage the creation of a comprehensive management program where beach erosion threatens existing development.
- O. Remove failing, harmful, unnecessary or ineffective structures, and restore shoreline ecological functions and process by using less harmful long-term stabilization measures.

## 6.2 Bioengineering

### A. Policies

1. Encourage bioengineering projects which incorporate self-maintaining vegetation and materials over those which require routine maintenance.
2. Bioengineering is a preferred way to protect an existing single-family residence or to maintain access to an authorized shoreline use, rather than hard shoreline stabilization structures such as bulkheads, landfills, levees, dikes, groins or jetties.
3. Design and construct bioengineering projects to:
  - a. Ensure that water quality, fish and wildlife habitats and flood holding capacity are not degraded, and timed so that the survival of new plantings is optimized;
  - b. Maximize the use of native vegetation;
  - c. Minimize the structural soil stabilization components, including riprap, to last only until vegetation is well established; and.
  - d. Include vegetative buffers, fencing and/or other measures to avoid disturbance of the project site by livestock and vehicles.
4. Limit the waterward extent of bioengineering projects to that which is necessary to achieve the intended results.

### B. Regulations

Bioengineering may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

2. Bioengineering shall be used when a geotechnical analysis confirms a need to prevent potential damage to a primary structure or use, but the need is not as immediate as within three (3) years.
3. Bioengineering projects shall incorporate the following:
  - a. Use a diverse variety of native plant materials, including trees, shrubs and grasses, unless demonstrated not feasible for the particular site.
  - b. All cleared areas shall be replanted following construction, and irrigated (if necessary) to ensure that all vegetation is fully re-established within three years. Areas that fail to adequately re-establish vegetation shall be replanted with approved plant materials until such time as the plantings are viable.
  - c. An undisturbed buffer shall be incorporated into the site design to allow bank protection plantings to become established for a minimum of three years. The buffer shall exclude livestock, vehicles and activities that could disturb the site.
  - d. All bioengineering projects shall be monitored and maintained as necessary. Areas damaged by pests and/or the elements shall be promptly repaired.
  - e. All construction and planting activities shall be scheduled to minimize impacts to water quality and fish and wildlife aquatic and upland habitat, and to optimize survival of new vegetation.

### **6.3 Breakwaters, Jetties, Groins and Weirs**

#### **A. Policies**

1. Design and construct breakwaters as floating structures anchored in place which do not impede long-shore sand and gravel transport unless such impedence is found to be beneficial to the natural system.
2. Require applications for breakwaters, jetties, groins, weirs and similar structures to be processed as a shoreline conditional use permit.

#### **B. Regulations**

Breakwaters, jetties, groins and weirs may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

##### General Regulations

1. Mitigation shall be required for all adverse impacts to assure no net loss of shoreline ecological functions.
2. Breakwaters, jetties, groins and weirs located waterward of the ordinary high-water mark shall only be allowed where necessary to

- support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
3. The design of breakwaters, jetties, groins and weirs shall conform to all applicable requirements established by the Washington Department of Fish and Wildlife and the U.S. Army Corps of Engineers.
  4. The design of breakwaters, jetties, groins and weirs shall be certified by a registered civil engineer.
  5. Breakwaters, jetties, groins and weirs shall be designed and constructed in a manner that will prevent detrimental impacts on water circulation, sand movement and aquatic life. The design shall also minimize impediments to navigation and to visual access from the shoreline.
  6. Breakwaters, jetties, groins and weirs shall not intrude into salmon and steelhead habitats unless the following conditions are met:
    - a. An alternative location or alignment is not feasible;
    - b. The project is designed to minimize its impacts on the environment;
    - c. The facility is in the public interest; and
    - d. If the project will create significant unavoidable adverse impacts, the impacts are mitigated by creating similar replacement habitat near the project. Where similar replacement mitigation is not feasible, rehabilitating degraded habitat may be required as a substitute.
  7. Evaluate the movement of sand and beach materials as a part of the permit review. Those projects which are found to block littoral drift or cause new erosion of down-drift shoreline shall be required to establish and maintain an adequate long-term beach feeding program. This may include artificially transporting sand to the down-drift side of an inlet with jetties; or artificial beach feeding in the case of breakwaters, groins and weirs.
  8. Proposals for breakwaters, jetties, groins and weirs shall notify all shoreline landowners within the same drift sector, by US mail. If it is not possible to make a reasonable determination of the drift sector, all shoreline land owners within one (1) mile of the project proposal shall be notified.

#### Breakwater Regulations

9. Breakwaters are only allowed when a need can be documented for the protection of navigation, harbor, water-dependent industrial activities or a marina.

10. Breakwaters are prohibited in lakes.
11. Only open-pile or floating breakwaters are allowed unless it can be shown that solid breakwaters will have no significant adverse effect on the aquatic biology and shore processes, or that such adverse effects can be adequately mitigated.

#### Jetty, Groin and Weir Regulations

12. Jetties, groins and weirs are only allowed when there is a documented need for the protection of navigation, a harbor, water dependent industrial activities, a marina, fisheries or habitat enhancement project, or a comprehensive beach management plan.
13. Jetties, groins and weirs that would result in a net adverse impact on adjacent or nearby properties and shoreline's functions are prohibited.

### **6.4 Bulkheads**

#### A. Policies

1. Locate and design residential development along shorelines so that the following shoreline stabilization projects are not necessary: filling, bulkheading and substantial grading of the site.
2. Require applications for new and repairs to single-family residence bulkheads to be processed as a shoreline conditional use permit.

#### B. Regulations

Bulkheads may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

1. Mitigation shall be required for all adverse impacts to assure no net loss of shoreline ecological functions.
2. A bulkhead may be allowed to protect an existing single-family residence or to maintain access to an authorized shoreline use, after the Administrator has determined that other techniques such as beach restoration and enhancement, or bioengineering are not feasible.
3. A bulkhead is prohibited on estuarine shores, in wetlands, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.
4. A bulkhead shall not be located waterward of the ordinary high-water mark.
5. Installation of a bulkhead to protect a lot where no structure presently exists is prohibited.
6. The construction of a bulkhead for the primary purpose of retaining or creating dry land is prohibited, except as allowed by the fill regulations in Section 6.8.

7. Bulkheads are prohibited on shores where valuable geohydraulic, hydraulic or biological processes are sensitive to interference and critical to shoreline conservation, such as feeder bluffs, marshes and other wetlands or accretion shoreforms such as spits, hooks, bars or barrier beaches.
8. Bulkheads are prohibited if they will cause significant erosion or beach degradation.
9. The design of a bulkhead shall incorporate proper consideration of:
  - a. Data on local geophysical conditions;
  - b. Data on stream flow, velocity and flood capacity; and
  - c. Effects on adjacent properties.
10. The design and construction of bulkheads shall conform to all other applicable state agency policies and regulations including the Washington Department of Fish and Wildlife criteria governing the design of bulkheads.
11. Stairs or other permitted structures may be built into a bulkhead, but shall not extend waterward of its face.

## **6.5 Buoy**

### **A. Policies**

1. Locate moorage buoys so as to:
  - a. Cause minimal interference with navigable waters and the public's use of the shoreline, and
  - b. Avoid locations where they will adversely impact shoreline ecological functions or processes, including currents and littoral drift, water circulation and quality, and fish and wildlife habitat.

### **B. Regulations**

Buoys may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

1. A private mooring buoy for an individual waterfront lot is allowed only if shared moorage was not developed as a part of that subdivision or development.
2. To prevent the proliferation of moorage facilities, only one mooring buoy or recreational float shall be allowed per waterfront lot unless there is a demonstration of need, and subject to a shoreline conditional use permit. Such demonstration may include a community park or residential development where lot owners both on and away from the shoreline share a shoreline open space area.

3. Mooring buoys shall not be located farther waterward than existing mooring buoys or established swimming areas, and shall not significantly interfere with use of navigable waters.
4. Moorage buoys must be visible under normal daylight conditions at a minimum of one hundred (100) yards, and must have reflectors for night visibility.
5. Moorage buoys shall comply with standards of the Washington Department of Fish and Wildlife and the aquatic lease requirements of the Washington Department of Natural Resources.

## **6.6 Dikes, Levees and Instream Structures**

### **A. Policies**

1. Encourage non-structural solutions over structural flood control devices, such as:
  - a. Limiting development in historically flood-prone areas or historic channel migration areas;
  - b. Regulating and limiting increases in peak stormwater runoff from new upland development; and
  - c. Land acquisition for additional flood storage.
2. Limit structural solutions to reduce shoreline damage to only when it can be demonstrated that non-structural solutions would not be able to reduce the damage.
3. Limit flood control works to when it is necessary to protect existing development and where non-structural flood hazard reduction measures have been determined to be infeasible.
4. Locate, design, and construct flood hazard management projects to provide:
  - a. Protection of the physical integrity of the stream corridor and other properties that may be damaged by interruptions of the geohydraulic system;
  - b. Protection of water quality and natural ground water movement;
  - c. Protection of fish, vegetation and other life forms and their habitat that are vital to the aquatic food chain;
  - d. Protection of recreation resources and aesthetic values such as point and channel bars, islands and other shore features and scenery;
  - e. Dedicated public access where appropriate; and

- f. Protection of natural hydrologic and geomorphic channel and floodplain processes.
5. Prohibit new or expanding development or uses in the shoreline, including subdivision of land that would likely require structural flood control within a stream, channel migration zone or floodway over the life of the development.
6. Prohibit structural flood control projects where they will result in any of the following:
  - a. Increased residential, commercial or industrial development in undeveloped 100-year floodplains or channel migration areas;
  - b. Loss of flood storage capacity in undeveloped 100-year floodplains; and
  - c. Deflecting or reducing flood flows to a degree that will result in increased flood levels on unprotected properties.
7. Locate, design and construct flood control projects and instream structures so that:
  - a. Their effects on geo-hydraulic shoreline processes will not cause significant damage to other properties or valuable shoreline resources; and
  - b. The physical integrity of the shoreline process corridor is maintained.
8. Design and construct instream structures to be:
  - a. Consistent with and incorporate elements from applicable watershed management plans, restoration plans and/or surface water management plans; and
  - b. Compatible with continued long-term multiple use of shoreline resources by all appropriate user groups.
9. Remove existing dikes, levees and instream structures when possible.
10. Require that instream structures and associated facilities provide for the protection and preservation of natural and cultural resources including, but not limited to, fish, wildlife and water resources, sensitive areas such as wetlands, sensitive geologic and geohydraulic areas and waterfalls, erosion and accretion shoreforms and natural scenic vistas.
11. Require that applications for instream structures and associated facilities minimize adverse impacts to the shoreline and the surrounding area through the design, location, security and construction of access roads, impoundment structures and reservoirs, penstocks and power houses.

## B. Regulations

Dikes, levees and instream structures may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

### General Regulations

1. Mitigation shall be required for all adverse impacts to assure no net loss of shoreline ecological functions.
2. When dikes, levees and instream structures are allowed, mitigation shall be required if there will be a loss of fish and wildlife resources, natural systems including wetlands, or other critical areas. In this case, dikes, levees and instream structures shall be subject to the following:
  - a. The mitigation required shall be commensurate to the value and type of resource or system lost. No net loss in ecological function, value or acreage shall occur from such development.
  - b. Where mitigation for loss of ecological functions is required, a mitigation plan shall be prepared by the applicant/proponent that details the objectives of the mitigation activities.
  - c. Mitigation activities shall be monitored to determine the effectiveness of the mitigation plan. Monitoring shall be accomplished by a third party subject to the approval of the City and the Department of Ecology.
  - d. If mitigation is found to be ineffective, corrective action that satisfies the mitigation objectives shall be required.
  - e. If the mitigation is found to be inadequate or if adequate mitigation is determined to be impossible, the application shall be denied.

### Dike and Levee Regulations

3. New dikes and levees may be constructed as part of a shoreline environmental restoration project, a state-approved comprehensive flood control management plan, an approved watershed plan, or an approved stormwater drainage basin plan.
4. Dikes and levees shall not be constructed with material dredged from the adjacent wetland or stream area unless part of a comprehensive flood and habitat plan.
5. Dikes and levees shall not be placed in the floodway except for current deflectors necessary for protection of bridges and roads.
6. Dikes and levees shall:
  - a. Be located and designed to protect shoreline ecological processes and functions;

- b. Be limited to the minimum height required to protect adjacent lands from the protected flood stage;
- c. Be set back to the greatest extent feasible landward of the floodway and ordinary high water mark;
- d. Be located near the tangent to outside meander bends so that the stream can maintain normal meander progression and utilize most of its natural flood water storage capacity;
- e. Not interfere with channel migration except to protect existing structures;
- f. Be designed and constructed to meet Natural Resources Conservation Service technical manual standards; and
- g. Be constructed in coordination with the Washington Department of Fish and Wildlife.

#### Instream Structure Regulations

7. Instream structures shall be planned and constructed based on a state-approved comprehensive flood control management plan, when available, and in accordance with the local National Flood Insurance Program.
8. Instream structures shall be permitted only when it is demonstrated by engineering and scientific evaluations that:
  - a. They are necessary to protect health/safety and/or existing development;
  - b. Non-structural flood hazard reduction measures are infeasible; and
  - c. Measures are consistent with an adopted comprehensive flood hazard management plan that evaluates cumulative impacts to the watershed system.
9. Instream structures shall preserve valuable recreation resources and aesthetic values such as point and channel bars, side channels, islands and braided channels.
10. A new instream structure (such as, but not limited to, high flow bypass, sediment ponds, instream ponds, retention and detention facilities, tide gates, dams and weirs) shall be allowed only as part of an approved mitigation or restoration project, or approved watershed basin plan.
11. Instream structures shall be designed to avoid modifying flows and water quality in ways that may adversely affect critical fish species.
12. Instream structures shall be constructed and maintained in a manner that does not degrade the quality of affected waters.

## 6.7 Dredging

### A. Policies

1. Design and locate new development to minimize the need for new maintenance dredging.
2. Conduct dredging such that it minimizes damage to natural systems in both the area to be dredged and the area for deposit of dredged materials.
3. Dispose the dredged material at an alternative disposal site when it contains chemicals in high concentrations that can cause significant harm to resident biota.
4. Plan and conduct dredging that minimizes interference with navigation and adverse impacts to other shoreline uses, properties and values.
9. Allow dredging for the following activities:
  - a. In conjunction with a water-dependent use of water bodies or adjacent shorelands;
  - b. In conjunction with a bridge, navigational structure or wastewater treatment facility for which there is a documented public need and where other feasible sites or routes do not exist;
  - c. Maintenance of irrigation reservoirs, drains, canals or ditches for agricultural and stormwater purposes;
  - d. Maintenance dredging of established navigation channels and basins is restricted to maintaining previously dredged and/or existing authorized location, depth and width;
  - e. Expanding, relocating or reconfiguring navigation channels where necessary to assure safe and efficient accommodation of existing navigational uses;
  - f. Removal of gravel for flood management purposes consistent with an adopted flood hazard reduction which demonstrates through a biological and geomorphological study that the extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of shoreline ecological processes and functions, and is part of a comprehensive flood management solution;
  - g. Restoration or enhancement of shoreline ecological processes and functions benefiting water quality and/or fish and wildlife habitat;
  - h. Minor trenching to allow the installation of necessary underground pipes or cables if no alternative, including boring, is feasible, and:

- i. Impacts to fish and wildlife habitat are avoided to the maximum extent possible;
- ii. The utility installation does not increase or decrease the natural rate, extent or opportunity of channel migration;
- iii. Appropriate best management practices are employed to prevent water quality impacts or other environmental degradation.
- j. Dredging to establish, expand or relocate or reconfigure navigation channels and basins only when significant ecological impacts are minimized and when mitigation is provided;
- k. Dredging of established navigation channels and basins to maintain previously authorized and/or dredged location, depth and width; and
- l. Dredging in locations where a comprehensive management plan has been evaluated and authorized by local and state government entities.

#### B. Regulations

Dredging may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

1. All projects which include dredging shall have a dredging plan which includes the following information:
  - a. A description of the applicable purpose of the proposed dredging and an analysis of compliance with the policies and regulations of this Program.
  - b. A detailed description of the existing physical character, shoreline geomorphology and biological resources (including migratory, seasonal and spawning use) of the area proposed to be dredged, including:
    - i. A site plan map outlining the perimeter of the proposed dredge area. The map must also include the existing bathymetry depths based on Mean Lower Low Water (MLLW) and have data points at a minimum of 2-foot-depth increments.
    - ii. A habitat survey must be conducted, and Washington State Department of Fish and Wildlife (WDFW) must be contacted to ensure that the survey is conducted according to the most recent WDFW eelgrass/macroalgae survey guidelines.
    - iii. Information on stability of bedlands adjacent to proposed dredging and spoils disposal areas.
  - c. A detailed description of the physical, chemical and biological characteristics of the dredge spoils 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 method of materials removal, including facilities for settlement and movement, specifying:
    - i. Dredging procedure: length of time to complete dredging, method of dredging, and amount of materials removed.
    - ii. Frequency and quantity of project maintenance dredging.
  - e. Detailed plans for dredge spoil disposal, including specific land disposal sites and relevant information on the disposal site, including but not limited to:
    - i. Spoils disposal area, including:
      - (1) Physical characteristics including location, topography, existing drainage patterns, surface and ground water;
      - (2) Size and capacity of disposal site;
      - (3) Means of transportation to the disposal site;
      - (4) Proposed dewatering and stabilization of spoils;
      - (5) Methods of controlling erosion and sedimentation; and
      - (6) Future use of the site, and conformance with land use policies and regulations.
    - ii. Total initial spoils volume.
    - iii. Plan for disposal of maintenance spoils for at least a fifty (50) year period.
  - f. Hydraulic modeling studies by a qualified professional sufficient to identify existing geo-hydraulic patterns and probable effects of dredging.
2. Toxic dredge spoil deposits shall not be placed on sites from which toxic leachates could reach shorelines and/or associated wetlands.
3. Dredging and dredge disposal shall be prohibited on archaeological sites that are listed on the Washington State Register of Historic Places until such time that they are taken off the Register.
4. No permit shall be issued for dredging unless it has been shown that the material to be dredged will not exceed the U.S. Environmental

- Protection Agency and/or Washington State Department of Ecology criteria for toxic sediments.
5. Dredging for the sole purpose of obtaining landfill material is prohibited.
  6. Permits for dredging shall be granted only if the project is consistent with the zoning and/or the land use designation for the property.
  7. The disposal of dredged material at an open-water disposal site may be allowed when it is found:
    - a. To comply with Department of Natural Resources leasing practices, Ecology Water Quality Certification process, and the U.S. Army Corp of Engineers permit requirements,
    - b. To have been reviewed under the criteria and guidelines established in the Puget Sound Dredged Disposal Analysis (PSDDA) report.
    - c. That the disposal within the nearshore environment is not feasible for the restoration or enhancement of shoreline ecological functions and processes, such as beach nourishment or feeding, and
    - d. To protect or enhance shoreline ecological functions and processes, such that:
      - i. Offshore habitat will be protected, restored or enhanced;
      - ii. Adverse effects on water quality or biologic resources from contaminated materials will be mitigated;
      - iii. Shifting and dispersal of spoil will be minimal; and
      - iv. Water quality will not be adversely affected.
  8. Dredging to construct canals or small basins for water-ski landings or swimming holes is prohibited.
  9. In-water dredge spoil disposal sites shall be prohibited in critical salt water habitats or in locations where the disposal of dredge spoil materials is likely to result in the deposit of sediments in critical salt water habitats.
  10. Limit dredging to support water-dependent uses, navigation, public access, and restoration. Prohibit dredging which will damage shallow water habitat used by salmon and steelhead for migration corridors, rearing, feeding and refuge, unless the proponent demonstrates that all of the following conditions are met:
    - a. An alternative alignment or location is not feasible.
    - b. The project is designed to minimize its impacts on the environment.

- c. The facility is in the public interest.
  - d. If the project will create significant unavoidable adverse impacts, the impacts are mitigated by creating similar replacement habitat near the project. Where similar replacement mitigation is not feasible, rehabilitating degraded habitat may be required as a substitute.
  - e. Dredging for flood control when performed as an action needed in the course of implementing a solution for a sediment transport problem identified in a flood hazard management plan.
11. The removal of river gravel bars may be allowed when all of the following conditions can be met:
- a. The gravel removed from the river or stream does not exceed the average annual recruitment of bedload material as shown by an approved geomorphic and sediment transport analysis prepared by a qualified hydrologist or geomorphologist. Additional gravel may be removed where the applicant can demonstrate that the channel capacity has been significantly reduced.
  - b. The gravel is removed from the area between the existing water level and the permanently vegetated portions of the bank.
  - c. The project will not cause any adverse impacts on salmon and steelhead habitat, especially through increased sedimentation.
12. Material dredged from the adjacent wetland or stream area shall not be used to construct dikes and levees unless part of a Comprehensive Flood and Habitat Management Plan.
13. Proposals for dredging shall include all feasible mitigating measures to minimize adverse impacts such as turbidity, release of nutrients, heavy metals, sulfides, organic material or toxic substances, dissolved oxygen depletion, disruption of food chains, loss of benthic productivity, and disturbance of fish runs and important localized biological communities.

## **6.8 Fill**

### **A. Policies**

1. Design and locate shoreline developments to minimize the need for fill.
2. Use mitigation sequencing per Section 5.1 to limit the size and location of fills.
3. Design and locate shoreline fills to prevent significant damage to existing ecological values or natural resources, or create a risk of significant injury to life or adjacent property.

4. Design the perimeter of a fill to avoid or eliminate erosion and sedimentation impacts, both during initial landfill activities and over time. Natural appearing and self sustaining control methods are preferred over structural methods.
5. Prioritize fills for water-dependent uses.
6. Limit the size of fills, and minimize its potential adverse impacts.
7. Allow fills in limited instances to:
  - a. Restore uplands where recent erosion has rapidly reduced upland area;
  - b. Build beaches and protective berms for shore stabilization or recreation;
  - c. Restore or enhance degraded shoreline ecological functions and processes; or
  - d. Moderately elevate low uplands consistent with the Barnes Lake Management Plan to make such uplands more suitable for purposes consistent with this Program. Reuse of dredged materials can be used consistent with the Barnes Lake Management Plan.
8. Allow the deposit of dredge material in water areas:
  - a. For habitat improvement;
  - b. For beach enhancement; or
  - c. At an approved Puget Sound Dredged Disposal Analysis (PSDDA) deep water disposal site.
9. Require a shoreline conditional use permit for any fill placed waterward of the ordinary high-water mark for any use except ecological restoration.
10. Require fill projects to provide mitigation to prevent a net loss of shoreline ecological functions.

#### B. Regulations

Fill may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

1. The use of solid waste and organic debris, such as wood and other vegetative materials, in a fill are prohibited.
2. Fills shall consist of clean materials including such earth materials as clay, sand and gravel, and also including oyster or clam shells. In addition, concrete may be included in fill material if it is not likely to pollute ground water and is approved by the Administrator.

3. Fills, except for beach enhancement, shall be designed, constructed and maintained to prevent, minimize and control all material movement, erosion and sedimentation from the affected area.
4. Fill areas shall be covered with sufficient earth material to support native vegetative ground cover and replanted with vegetation to blend with the surrounding environment.
5. Fills may be allowed only when it can be demonstrated that the proposed action will not:
  - a. Result in significant damage to water quality, fish, shellfish and/or wildlife habitat; and
  - b. Adversely alter natural drainage and circulation patterns, currents, river and tidal flows, or significantly reduce flood water capacities.
6. Artificial beach maintenance may be allowed as a type of shoreline stabilization.
7. Fill which will interfere with public rights of navigation shall not be permitted unless there is an overriding public interest.
8. Fill for the purpose of providing land for a septic tank drainfield is prohibited.
9. Fill for the sole purpose of creating new dry land is prohibited.
10. Fill within a 100-year floodplain shall meet the requirements of TMC 18.38 (Floodplain Overlay).
12. Fill within a floodway is prohibited, except if necessary for water-dependent uses or as provided in Title 18 (zoning), and if processed as a shoreline conditional use permit.
13. Fill located waterward of the ordinary high water mark for the purpose of ecological restoration may be allowed subject to a shoreline substantial development permit.
14. Use of beach material for backfill in a shoreline stabilization project is prohibited.
15. Fill disposal sites shall adhere to the following conditions:
  - a. Containment dikes and settling basins shall be built and maintained so that the site's discharge water carries a minimum of suspended sediment. Required basins shall be designed to maintain at least one-foot depth of standing water at all times to ensure proper settling.
  - b. Proper diversion of surface discharge shall be provided to maintain the integrity of the natural streams, wetlands and drainages.

- c. Shoreline ecological functions and processes will be preserved. Erosion, sedimentation, floodwaters or runoff will not cause adverse impacts to shoreline ecological functions and processes or property.
- d. Runoff water shall be controlled so as to enter a waterway through grassy swales or other treatment features that ensure protection of water quality and other environmental resources.
- e. Underground springs and aquifers shall be identified and protected.
- f. The outside face of dikes shall be sloped at 1-1/2 to 1 (horizontal to vertical) or flatter, and seeded with grass and/or native vegetation.
- g. Sites shall be adequately screened from view. Dredge disposal in shoreline areas shall not impair scenic views.

## **6.9 Piers and Docks**

A pier or dock serves four (4) or fewer boats. A pier or dock designed to serve five (5) or more boats, is considered a marina. See Section 7.4 for marina policies and regulations.

### **A. Policies**

1. The use of mooring buoys should be encouraged in preference to either piers or docks.
2. Require applications for piers and docks on individual properties to provide the following:
  - a. Document why a moorage buoy or recreational float would not provide suitable access to the water, and
  - b. Describe the mitigation to be provided so that the project will not cause a net loss in shoreline ecological functions.
3. Locate piers and docks so as to:
  - a. Minimize obstructions to scenic views;
  - b. Cause minimum interference with navigable waters and the public's use of the shoreline; and
  - c. Avoid locations where they will adversely impact shoreline ecological functions or processes, including currents and littoral drift, water circulation and quality, and fish and wildlife habitat.
4. Construct piers and docks of materials that will not adversely affect water quality or aquatic plants and animals.
5. Minimize the length and size of any dock, pier or float, and use materials that will allow light to pass through the deck floor for walkways or boardwalks in nearshore areas.

6. Encourage the development of public fishing piers access to public waters as part of an overall recreation plan or development.
7. Encourage the cooperative use of docking, parking, cargo handling and storage facilities in waterfront industrial areas over the addition and/or proliferation of new facilities.
8. Limit the length and width of industrial docks and piers to the minimum necessary.
9. Prohibit covered moorage.

## B. Regulations

Piers and docks may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

1. Residential moorage shall include no more than one moorage type (i.e. buoy or pier/dock) per waterfront lot.
2. Prior to approval of a residential pier or dock, the applicant shall document why the use of a mooring buoy or shared moorage are not feasible.
3. Shared moorage proposed for lease to upland property owners shall be reviewed as a marina.
4. Docks and piers are prohibited on lakes where the distance to the opposite shore is one hundred fifty (150) feet or less. This is to insure the maintenance of navigation.
5. Prior to final plat recording of a residential development, a usable area shall be set aside for a pier or dock unless there is no suitable area. Only one dock or pier is permitted in a new residential development.
6. All pier and dock development shall be painted, marked with reflectors, or otherwise identified to prevent hazardous conditions for water surface users.
7. There is no maximum length and width for commercial piers or docks; however, the proponent must show that the size proposed is the minimum necessary.
8. New docks shall not exceed the average length of the existing docks within three hundred (300) feet of the property lines. If a dock exists on one side of a new proposed dock but not on the other, the average to be used for the side without a dock shall be fifty (50) feet. If there are no docks within three hundred (300) feet, the length shall not exceed fifty (50) feet as measured from the ordinary high water mark.
9. The standards for new or existing piers or docks are as follows:

- a. Only piers or ramps can be located within the first thirty (30) feet waterward of the ordinary high water mark.
- b. Pier and dock surface coverage shall not exceed; four hundred and eighty (480) square feet for single user structures, seven hundred (700) square feet for two (2) party joint use, and one thousand (1,000) square feet for three (3) or more users.
- c. Piers shall not exceed four (4) feet in width and must be grated with at least sixty (60) percent open area.
- d. Ramps shall not exceed three (3) feet in width and must be one hundred (100) percent grated.
- e. Docks shall not rest on the fresh water substrate at any time. Stoppers on the pilings anchoring the dock or stub pilings shall be installed so that the bottom of the dock's floatation is a minimum of one (1) foot above the level of the beach substrate.
- f. Except for docks with floats, the bottom of all structures shall be a minimum of one and one half (1.5) feet above the ordinary high water elevation.
- g. The first in-water (nearest shore) set of pilings shall be steel, a maximum of four (4) inches in diameter and at least eighteen (18) feet from the ordinary high water mark. Additional piling shall be spaced a minimum of eighteen (18) feet apart and shall not exceed twelve (12) inches in diameter.
- h. Docks with floats or ells shall be limited to one of the following size options:
  - i. Up to six (6) feet wide by twenty (20) feet long with a two (2) foot strip of grating in the center;
  - ii. Up to six (6) feet wide by twenty-six (26) feet long with grating, provided that there is a sixty (60) percent open area over the entire ell or float; or
  - iii. A single two (2) feet wide by twenty (20) feet long, with one hundred (100) percent grated finger ell.
- i. Docks and piers shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long-term. Materials used for submerged portions of a dock or pier, decking and other components that may come in contact with water shall be approved by applicable state agencies for use in water to avoid discharge of pollutants from wave splash, rain or runoff. Construction materials shall be limited to untreated wood, approved plastic composites, concrete or steel.

- j. New covered moorage over fresh water is prohibited.
- 11. Docks and piers shall be setback from the side property line ten (10) feet.
- 12. The required side yard setbacks may be waived with a shared used moorage facility for two (2) or more property owners. The applicants shall file with the Thurston County Auditor a legally enforceable joint use agreement or other legal instrument that addresses the following as a condition of permit approval:
  - a. Maintenance responsibilities for the facility and associated upland area in perpetuity by identified responsible parties;
  - b. Use restrictions; and
  - c. Easements and liability agreements. The easement must acknowledge that each property owner is giving up the right to construct a separate single-family dock or pier.

## **6.10 Recreational Floats**

### **A. Policies**

1. Shoreline residents should consider joint-use of a recreational float.
2. Locate recreational floats so as to:
  - a. Minimize obstructions to scenic views;
  - b. Cause minimum interference with navigable waters and the public's use of the shoreline; and
  - c. Avoid locations where they will adversely impact shoreline ecological functions or processes, including currents and littoral drift, water circulation and quality, and fish and wildlife habitat.
3. Construct recreational floats of materials that will not adversely affect water quality or aquatic plants and animals.
4. Minimize the length and size of any recreational float and use materials that will allow light to pass through the deck floor in nearshore areas.

### **B. Regulations**

Recreational floats may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

1. To prevent the proliferation of moorage facilities, only one mooring buoy or recreational float shall be allowed per waterfront lot unless there is a demonstration of need, and subject to a shoreline conditional use permit. Such demonstration may include a community park or

- residential development where lot owners both on and away from the shoreline share a shoreline open space area.
2. A recreational float shall not be located farther waterward than existing floats or designated swimming areas.
  3. Single property owner recreational floats shall not exceed sixty-four (64) square feet. Multiple property owner recreational floats shall not exceed ninety-six (96) square feet.
  4. The standards for recreational floats are as follows:
    - a. Recreational floats anchored offshore and used for residential recreational uses shall comply with the following standards:
      - i. The applicant shall contact the Washington Department of Natural Resources to inquire on the need for an aquatic lease for locating recreational floats within state aquatic areas; and
      - ii. When feasible, floats shall be removed seasonally and placed in an appropriate upland location.
    - b. Recreational floats shall not rest on the tidal substrate at any time. Floats shall be located (anchored) at sufficient depth to maintain a minimum of one (1) foot of draft between the float and the beach substrate at low tide.
    - c. Recreational floats shall not exceed third (30) feet in length.
    - d. Recreational float width shall comply with the following standards:
      - i. Floats with a width of six (6) feet or less shall incorporate a minimum of thirty (30) percent functional grating in the dock surface area.
      - ii. Floats with a width greater than six (6) feet that does not exceed eight (8) feet in width shall incorporate a minimum of fifty (50) percent functional grating into the dock surface area.
      - iii. Recreational floats shall be anchored utilizing either helical screw or “duckbill” anchor; anchor lines shall not rest on or disturb the substrate.
  5. Recreation floats must be visible under normal daylight conditions at a minimum of one hundred (100) yards, and must have reflectors for night visibility.

## 6.11 Restoration and Enhancement

### A. Policies

#### General Policies

1. Encourage and facilitate cooperative restoration and enhancement programs between local, state and federal public agencies, tribes, non-profit organizations and landowners to protect shorelines with impaired ecological functions and/or processes.
2. Ensure that restoration and enhancement are consistent with the biological recovery goals for early Chinook, bull trout populations and other species and/or populations for which a recovery plan is available.
3. Integrate restoration and enhancement with other parallel natural resource management efforts such as the *WRIA 13 Salmonid Recovery Plan*, *Puget Sound Salmon Recovery Plan*, and the *City of Tumwater Comprehensive Plan*.
4. Prioritize restoration actions and stand-alone projects in the following order:
  - a. Create dynamic and sustainable ecosystems;
  - b. Restore connectivity between stream/river channels, floodplains and hyporheic zones;
  - c. Restore natural channel-forming geomorphologic processes;
  - d. Mitigate peak flows and associated impacts caused by high stormwater runoff volume;
  - e. Reduce sediment input to streams and rivers and associated impacts;
  - f. Improve water quality;
  - g. Restore native vegetation and natural hydrologic functions of degraded and former wetlands;
  - h. Replant native vegetation in riparian areas to restore functions; and
  - i. Remove obsolete shoreline modifications.
5. Recognize that restoration and enhancement may result from:
  - a. Mitigation of impacts from new development; and
  - b. Adoption of vegetation conservation areas which are based upon shoreline ecological functions and processes.

### Beach Restoration and Enhancement Policies

6. Beach restoration and enhancement is a preferred way to protect an existing single-family residence or to maintain access to an authorized shoreline use, rather than hard shoreline stabilization structures such as bulkheads, landfills, levees, dikes, groins or jetties.
7. Design and construct beach enhancement projects so that they will not degrade aquatic habitats, water quality and flood holding capacity.
8. Encourage self-maintaining designs over those which depend upon regular maintenance.
9. Require supplementary beach nourishment where structural stabilization is likely to reduce existing beach materials at or downdrift from the project site.
10. Limit the waterward extent of beach enhancement to that which is necessary to achieve the intended results.
11. Encourage the use of dredged materials for beach restoration and enhancement projects when it has suitable organic and physical properties.

### B. Regulations

Restoration and enhancement may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

#### General Regulation

1. Restoration shall be carried out in accordance with an approved restoration plan and the policies and regulations of this Program.

#### Beach Restoration and Enhancement Regulations

2. Beach restoration and enhancement may be permitted to restore or enhance degraded shoreline functions.
3. The location and design of beach restoration and enhancement projects shall utilize the best available technology such as gravel berms, small "drift sill" groins, large woody debris, and sediment mixtures designed to either move within the drift cell or to resist the normal wave action of the site.
4. Beach restoration and enhancement projects shall demonstrate that they will not:
  - a. Cause significant change in littoral drift or river currents;
  - b. Adversely affect adjacent properties;
  - c. Adversely affect adjacent spawning grounds or other areas of biological significance; and

- d. Interfere with the normal public use of the navigable waters of the state.

## 6.12 Revetments and Gabions

### A. Policies

1. Locate and design residential development along shorelines so that revetments and gabions are not necessary.
2. Require applications for new and repairs to revetments and gabions to be processed as a shoreline conditional use permit.

### B. Regulations

Revetments and gabions may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

1. Mitigation shall be required for all adverse impacts to assure no net loss of shoreline ecological functions.
2. Revetments or gabions may be allowed to protect an existing single-family residence or to maintain access to an authorized shoreline use, after the administrator has determined that other techniques such as beach restoration and enhancement, or bioengineering are not feasible.
3. Replacement revetments or gabions shall not be located waterward of the ordinary high-water mark.
4. Revetments or gabions are prohibited on estuarine shores, in wetlands, on point and channel bars, and in salmon and trout spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.
5. Installation of a revetment or gabion to protect a lot where no structure presently exists is prohibited.
6. The design of revetments or gabions shall incorporate proper consideration of:
  - a. Data on local geophysical conditions;
  - b. Data on stream flow, velocity and flood capacity; and
  - c. Effects on adjacent properties.
7. Revetments or gabions shall incorporate downed logs, snags or large rocks into the design, as appropriate.
8. The design of revetments shall be in accordance with Washington Department of Fish and Wildlife's most current edition of *Stream Habitat Restoration Guidelines* for freshwater shorelines.

9. Riprap used for revetments or gabions shall consist of clean quarried rock, free of loose dirt and any pollutants, and shall be of sufficient size and weight to prevent movement by wave or current action.
10. When located on the convex (inside) bend of a stream or river, a proposed revetment shall be setback to allow stream to maintain point bars and associated aquatic habitat through normal accretion. Where revetments or similar structures have already cut off point bars from the stream, consideration shall be given to their relocation.

### 6.13 Stair Towers

#### A. Policies

1. Design and locate a stair tower to minimize the impact on views, conform to the existing topography, minimize impervious surfaces, and shall not extend waterward of the ordinary high water mark.
2. Encourage stair towers for public access.

#### B. Regulations

Stair towers may be allowed as listed in Table 3.16, and shall be subject to the regulations below:

1. Stair towers shall be located and designed to minimize obstructing the views enjoyed by adjoining residences.
2. The design of the stair tower shall conform to the existing topography, minimize impervious surfaces, and shall not extend waterward of the ordinary high water mark.
3. The stair treads shall not exceed four (4) feet in width, except that when ADA requirements apply, it may be increased to six (6) feet in width.
4. All stair towers meeting one of the following conditions must be designed by a licensed civil engineer:
  - a. The location proposed is mapped as "Unstable" or "Intermediate Stability" in the *Washington Coastal Zone Atlas* prepared by the State Department of Ecology;
  - b. All stair towers twenty-four (24) feet in height or taller; or
  - c. Other instances where the building official determines that site conditions dictate the preparation of plans by a licensed civil engineer.

## **Chapter 7**

### **Uses and Activities Policies and Regulations**

This section describes policies and regulations that apply to specific uses and activities in shoreline jurisdiction. Policies and regulations are intended to be consistent with all other policies and regulations contained in this Program.

Uses and activities shall be subject to the policies and development standards for that specific use or activity. When there are no development standards for a specific use or activity, the proposed use shall assure no net loss of shoreline ecological functions.

Some proposed developments or uses will be subject to more than one regulatory section of this Program. For example, a proposed marina may be subject to regulations concerning “Dredging,” “Fill,” “Boating Facilities,” “Commercial” and “Parking.” A proposed development must be reviewed for consistency with the regulations of each applicable section. In the event of a conflict between requirements, the requirement which better promotes the priorities and policies of the Shoreline Management Act should prevail. In addition, the more specific requirement should prevail over a general requirement. Finally, the extent to which conflicting requirements are reconciled will largely depend upon a reasonable integration of requirements in the context of the specific project and its unique situation.

Refer to Table 3.14 for a list of shoreline uses and activities by shoreline environment.

#### **7.1 General Policies**

- A. Evaluate new shoreline development or use for their effects on public health.
- B. Assess project-specific impacts and a project’s potential for net loss of ecosystem-wide processes or ecological functions during permit review.
- C. Require mitigation of site specific development impacts to protect existing ecological functions.
- D. Prohibit private or public development which would degrade existing ecological functions.
- E. Eliminate prohibited shoreline uses and poor quality shoreline conditions when authorizing a new shoreline development or activity.
- F. Require developers, property owners, community groups and others to enhance degraded shorelines, and return them to an ecologically functioning condition.

- G. Provide appropriate enforcement measures which insure that all conditions are met, and require that improvements or mitigation is installed.
- H. Monitor and track developments approved within shoreline jurisdiction so that this data will be available during future reviews and updates of this Program.

## **7.2 Agriculture**

### **A. Policies**

- 1. Prevent soil erosion and minimize siltation, turbidity, pollution and other environmental degradation in watercourses with new and expanded agricultural practices.
- 2. Utilize appropriate farm management techniques to prevent contamination of nearby water bodies and adverse effects on plant, fish and animal life from fertilizer and pesticide use and application.
- 3. Prohibit the creation of new agricultural lands by diking, draining or filling tidelands, tidal marshes and associated wetlands.
- 4. Agriculture is a preferred use in floodplains.

### **B. Regulations**

Agricultural uses and activities may be allowed by shoreline environment designation as listed in Table 3.14, and shall be subject to the regulations of Table 3.15 and the regulations listed below:

- 1. Agricultural development shall conform to applicable state and federal policies and regulations.
- 2. Agricultural uses and development in support of agricultural uses shall:
  - i. Be located and designed to have a no net loss of ecological functions, and
  - ii. Not have a significant adverse impact on other shoreline resources and values.
- 3. Confinement lots, feeding operations, stockpiles of manure solids and storage of noxious chemicals are prohibited in shoreline areas.

## **7.3 Aquaculture**

### **A. Policies**

- 1. Operate aquaculture enterprises in a manner that allows navigational access to shorelines and commercial traffic.
- 2. Minimize the detrimental impact that aquaculture development might have on views from upland property.

3. Design, locate and operate aquaculture activities in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes. This includes upland fish hatcheries.
4. Prohibit aquaculture where it would interfere with other water-dependent uses.
5. Review proposed surface installations for conflicts with other uses in areas that are utilized for moorage, recreational boating, sport fishing, commercial fishing or commercial navigation. Incorporate features to reduce use conflicts.

#### B. Regulations

Aquaculture uses and activities may be allowed by shoreline environment designation as listed in Table 3.14, and shall be subject to the regulations of Table 3.15 and the regulations listed below:

1. Design, locate and operate aquaculture activities in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes.
2. The applicant shall demonstrate that the degree of proposed substrate modification is the minimum necessary for feasible aquaculture operations at the site.
3. There shall be no net loss of shoreline ecological functions, no significant adverse impact on natural dynamic shoreline processes, and no interference with other water-dependent uses.
4. Upland fish hatcheries are allowed if they are designed, located, and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes.
5. Aquaculture structures and activities that are not water-dependent (e.g., warehouses for storage of products, parking lots) shall be required to minimize any detrimental impact to the shoreline.
6. Proposed aquaculture processing plants shall provide buffers, to screen operations from adjacent uses.

#### 7.4 Boating Facilities (Boat Launches and Marinas)

A marina is designed to serve five (5) or more boats. A pier or dock is designed to serve four (4) or fewer boats and is not considered a marina. See Section 6.9 for pier and dock policies and regulations.

## A. Policies

1. Prohibit marinas in shallow water embayments, areas of active channel migration where channel dredging will be required, and where valuable shoreline ecological functions and processes will be degraded.
2. Locate marinas and boat launch ramps to avoid the net loss of shoreline ecological functions or processes, and to eliminate or minimize the need for maintenance activities such as offshore or foreshore dredging, spoil disposal and filling.
3. Require fuel handling and storage procedures that minimize accidental spillage and provide satisfactory means for handling those spills that do occur.
4. Provide pump-out and holding or treatment facilities where wet moorage is offered.
5. Locate marinas and boat launching facilities in areas where parking and access to the facility can be accommodated without causing adverse impacts upon the adjacent properties.
6. Allow temporary aquatic management access to Barnes Lake for the purpose of aquatic vegetation treatment and/or removal consistent with an approved aquatic management plan.
7. Require parking areas associated with marinas and boat launching facilities to be landscaped.
8. Design and construct the site so as to minimize off-site light and glare by using fully shielded and appropriately aimed fixtures to provide appropriate lighting levels.
9. Design marinas to provide for as many compatible shoreline dependent recreational uses as possible, according to the size and extent of the facilities.
10. Prohibit covered moorage over fresh water.

## B. Regulations

Boating facilities may be allowed by shoreline environment designation as listed in Table 3.14, and shall be subject to the regulations of Table 3.15 and the regulations listed below:

1. Aquatic management access shall be permitted as a temporary use to implement an adopted vegetation management plan for Barnes Lake. If the access is proposed to be permanent, then the use must meet the regulations of this section that apply to launch ramps. Shoreline restoration of the site shall occur upon removal of the temporary use.

2. Marinas and their accessory facilities shall be located, designed, constructed and operated so as not to result in a net loss of shoreline ecological functions.
3. Marinas shall conform to the commercial and parking use regulations of this program.
4. Marinas and launch ramps shall be located in areas where there is adequate water mixing and flushing, and shall be designed not to retard or negatively influence flushing characteristics.
5. Marinas and launch ramps shall be located on stable shorelines where water depths are adequate to eliminate or minimize the need for offshore or foreshore channel construction dredging, maintenance dredging, spoil disposal, filling, beach feeding and other river, lake, harbor and channel maintenance activities.
6. All boating facilities shall utilize effective measures to prevent the release of oil, chemicals or other hazardous materials onto or into the water. Such measures may include, but are not limited to dikes, catch basins or settling ponds, interceptor drains and planted buffers.
7. For marinas offering wet moorage, pump-out and holding or treatment facilities shall be provided to handle sewage contained on boats.
8. In sensitive areas, such as near wetlands, the applicant shall be required to demonstrate that the maximum protection of shore features, water quality and existing uses will be provided.
9. Parking areas shall be provided and landscaped in accordance with TMC 18.47 (Landscaping) and 18.50 (Off-Street Parking). The permit application shall identify the size, type and location of landscaping.
10. Marinas shall provide public access opportunities. Such access must not endanger public health and safety. If it is not physically feasible to develop public access, the project may be exempted from the requirement.
11. Accessory uses at marinas shall be limited to those uses that are water-dependent and of necessity to marina operation.
12. Marinas shall provide at least one method of boat launching, where feasible.
13. Restroom facilities shall be provided at marinas and boat launching facilities.
14. Covered moorage over fresh water is prohibited.
15. In marinas where the existing covered moorage does not comply with this Program, the following regulations will apply:
  - a. Repair and maintenance is allowed for existing structures.

- b. Relocation and replacement of new structures is allowed provided:
    - i. Area covered by the structure is not increased.
    - ii. The relocation and replacement preserves existing views between the adjacent inland property and the water, or between a public facility and the water.
    - iii. The appearance of the covered moorage is compatible with other covered structures in the marina and the surrounding environment.
16. Covered moorage on dry land for commercial purposes is only permitted in marinas and must comply with the following:
- a. A view corridor of not less than thirty-five (35) percent of the width of the ownership shall be maintained from the abutting street and waterway.
  - b. The structure shall not exceed thirty-five (35) feet in height.
  - c. The structure shall be visually compatible with the surrounding environment.
17. Marinas proposed waterward of the ordinary high water mark that must involve solid bulkhead, breakwater and/or land fill construction shall meet the following design criteria:
- a. Breakwaters built waterward in a perpendicular plane to the shoreline shall not be allowed as a continuous one-piece structure.
  - b. The toe of the breakwater may not extend waterward of the 0.0 ordinary high water mark tide level or more than two hundred and fifty (250) feet from mean higher high water mark.
  - c. Breakwaters shall be built so that the side slopes shall not be steeper than 1-1/2-foot horizontal to 1-foot vertical slope.
  - d. The opening between a shore breakwater and an isolated breakwater shall be not less than twenty (20) feet in width as measured at the toe of the slope.
  - e. Openings must be maintained at project depth at all times in order to insure proper circulation and fish passage.
  - f. Openings may also be used as navigational channels.
  - g. If a marina is constructed landward of the natural pre-existing beach line, there shall be no less than two openings to open water for ingress/egress and water circulation.
  - h. The opening must be sized (depth and/or width) so as to insure proper circulation inside the marina configuration and exchange with the outside bay. To facilitate this exchange, the volume of the

tidal prism (water present between mean low and mean high tide) shall be not less than 50 percent of the total volume of the basin.

- i. The depth of the openings shall be at least as deep as the average depth of the marina.
- j. Openings may be baffled to protect the marina against wave action but in no instance should the baffling impede water circulation or fish movement.

## 7.5 Commercial

### A. Policies

1. Encourage water-dependent or water-related commercial developments.
2. Locate new commercial developments in areas with existing commercial uses.
3. Provide public access to the shoreline.
4. Design and construct commercial developments to be aesthetically compatible with the surrounding area.
5. Locate parking facilities inland, and away from the ordinary high water mark and recreational beaches.
6. Prohibit commercial development which negatively impact upstream or downstream land uses, wildlife or stream hydrology.
7. Prohibit new overwater commercial buildings.

### B. Regulations

Commercial uses and activities may be allowed by shoreline environment designation as listed in Table 3.14, and shall be subject to the regulations of Table 3.15 and the regulations listed below:

1. Commercial development shall ensure that it will:
  - a. Not result in a net loss of shoreline ecological functions, and
  - b. Have no significant adverse impact to other shoreline uses, resources and values such as navigation, recreation and public access.
2. Over-the-water commercial buildings are prohibited.
3. Refer to Section 5.4 for water quality development standards which include on-site stormwater control measures.

## 7.6 Forest Practices

Resource areas for forest practices are designated in appropriate areas outside the Urban Growth Area and outside critical areas and shoreline areas. Forest practices are incompatible with goals for shoreline areas.

### A. Policy

Prohibit forest practices within all shoreline environment designations.

### B. Regulation

Forest Practices are prohibited in all shoreline environment designations. For the purpose of this Program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered forest practices, and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this Program including vegetation conservation, and shall be limited to the minimum necessary. Tree and vegetation removal activities shall also be reviewed for compliance with TMC 16.08 (Protection of Trees and Vegetation).

## 7.7 Industrial

### A. Policies

1. The first preference for the use of industrial lands within the shoreline jurisdiction should be for water-dependent industrial uses over non-water-dependent industrial uses.
2. The second preference for the use of industrial lands within the shoreline jurisdiction should be for water-related industrial uses over non-water-oriented industrial uses.
3. Locate future industrial uses in shoreline areas already devoted to or zoned for industrial use.
4. Minimize the expansion of such industry unless the property is already zoned for industrial land use.
5. Allow non-water dependent industrial uses when:
  - a. The uses provide public benefit by increasing public access to the shoreline; and
  - b. Restoration is undertaken, either on or off site, to restore lost ecological functions of the shoreline.
7. Design industrial docks and piers to be of open-pile or floating construction.
8. Restrict the length and width of industrial docks and piers to the minimum necessary.

9. Prohibit new overwater industrial buildings for non water-dependent uses.

## B. Regulations

Industrial uses and activities may be allowed by shoreline environment designation as listed in Table 3.14, and shall be subject to the regulations of Table 3.15 and the regulations listed below:

1. Industrial development shall be located, designed and constructed in a manner that is consistent with the purpose of the shoreline environment designation and that minimizes the impact on shoreline ecological functions.
2. Industrial development shall ensure that it will:
  - a. Not result in a net loss of shoreline ecological functions, and
  - b. Have no significant adverse impact to other shoreline uses, resources and values such as navigation, recreation and public access.
3. Industrial development shall provide the following:
  - a. Information on transportation and utility service corridors, traffic circulation, access to facility and effect of the proposed project on transportation and circulation in the vicinity.
  - b. Analysis of the impact upon and alteration to natural landform patterns.
  - c. Methods for treatment and control of waste disposal including any storm or sanitary sewer outfalls proposed.
  - d. Analysis of the impact upon ground water, hydrology, drainage patterns and soil erosion.
  - e. Analysis of air quality, noise level and light pollution impacts.
4. Issuance of a permit for the development, expansion or alteration of an industrial area shall be contingent upon the existence of emergency capabilities for controlling and eliminating potential water pollution impacts resulting from spills, leaks or operational failures.
5. Dry land and water storage and handling of logs is prohibited.
6. New over-the-water buildings for non water-dependent uses are prohibited.
7. Over-the-water water-dependent uses will only be allowed with a Shoreline Conditional Use Permit. This must include consideration of the following:
  - a. Adequate provision for water-dependent and water-related uses.

- b. View preservation, public access, traffic impacts, parking and other upland site development requirements.
  - c. Potential impacts to habitat posed by over-the-water construction.
8. Refer to Section 5.4 for the water quality development standards which include on-site stormwater control measures.

## **7.8 Mining**

Resource areas for mining are designated in appropriate areas outside the Urban Growth Area and outside critical areas and shoreline areas. Mining is incompatible with goals for shoreline areas.

### **A. Policy**

Prohibit mining within all shoreline environment designations.

### **B. Regulation**

Mining is prohibited in all shoreline environment designations.

## **7.9 Recreation**

### **A. Policies**

1. Acknowledge a priority for recreational development along shorelines.
2. Consider all recreational development projects on the basis of their compatibility with the environment.
3. Plan public access to recreational locations such as fishing streams, to prevent concentration of use pressures.
4. Link shoreline parks and public access points through linear open spaces. Such open space may include trails located in accordance with applicable policies and regulations of TMC 16.32 (Fish and Wildlife Habitat Protection).
5. Design recreational developments to preserve, enhance or create scenic views and vistas.
6. Locate parking areas inland, and away from the immediate edge of the water and recreational beaches. Link the parking to the shoreline by walkways.
7. Allow facilities for intense recreational activities only where sewage disposal and pest control can be accomplished to meet public health standards without altering the environment adversely.
8. Encourage the development of public fishing piers and access to public waters as part of a city recreation plan, or private development.
9. Encourage low intensity recreational uses on floodplains with largely intact ecological processes and functions, and allow high intensity

recreational uses on floodplains that have been modified and are upland of the ordinary high water mark.

## B. Regulations

Recreational uses and activities may be allowed by shoreline environment designation as listed in Table 3.14, and shall be subject to the regulations of Table 3.15 and the regulations listed below:

1. Assure that recreational development is given priority and is primarily related to access to enjoyment and use of the water and shorelines of the state.
2. Public recreational development and public access associated with those facilities shall be located, designed and operated in a manner that is consistent with the purpose of the shoreline environment designation and that minimizes the impact on shoreline ecological functions.
3. Events and temporary uses in the public interest may be approved by the Administrator when those uses will not damage the shoreline area.
4. Public or private recreation areas which cater to the use of all-terrain or off-road vehicles as the primary recreational activity are prohibited within the shoreline.
5. Recreational developments shall be designed with consideration of public access and public view corridors.
6. Public access points must provide parking spaces appropriate for the intended use, or document the rationale in a shoreline permit.
7. Recreational developments shall provide facilities for non-motorized access such as pedestrian, bicycle and/or equestrian path links to the shoreline.
8. All public access shall be marked with signs approved by the Administrator.
9. Pedestrian trails to and along the water's edge are allowed per Section 5.3(B), public access development standards.
10. Refer to Section 5.4 for the water quality development standards which includes on-site stormwater control measures.

## 7.10 Residential

### A. Policies

1. Plan and construct residential development to minimize adverse environmental and visual impacts and to assure no net loss of ecological functions.

2. Encourage the clustering of residential development to minimize the loss of shoreline ecological functions and to increase open spaces.
3. Provide access to the shoreline for residents of new development and the general public.
4. Provide open space in accordance with Titles 17 (Land Division) and 18 (Zoning) TMC.
5. Measures to conserve native vegetation along shorelines should be required for all residential development. Vegetation conservation must include avoidance or minimization of clearing or grading, restoration of areas of native vegetation or control of invasive or non-native vegetation.
6. Residential development should be designed to minimize impact to views from surrounding homes and viewpoints.
7. Prevent the segmentation of critical areas among many owners by requiring subdivisions to place critical areas within separate tracts.
8. Allow residential development only when there are adequate provisions for utilities, circulation and access.
9. Prohibit new over-water residential development.
10. Prohibit clustering within the Natural shoreline environment designation.

#### B. Regulations

Residential uses and activities may be allowed by shoreline environment designation as listed in Table 3.14, and shall be subject to the regulations of Table 3.15 and the regulations listed below:

1. The creation of new lots shall be approved if all of the following can be demonstrated:
  - a. A primary residence can be built on each new lot without any of the following being necessary:
    - i. New structural shoreline stabilization;
    - ii. New improvements in the required shoreline vegetation conservation areas;
    - iii. Causing significant vegetation removal that adversely impacts ecological functions;
    - iv. Causing significant erosion or reduction in slope stability; and
    - v. Causing increased flood hazard or erosion in the new development or to other properties.
  - b. Adequate sewer, water, access and utilities can be provided.

- c. The intensity and type of development is consistent with the City of Tumwater Comprehensive Plan and development regulations.
  - d. Potential significant adverse environmental impacts (including significant ecological impacts) can be avoided or mitigated to achieve no net loss of ecological functions, taking into consideration temporal loss due to development and potential adverse impacts to the environment.
2. Residential development over water is prohibited.
3. Residential development shall be arranged and designed to protect views, vistas and aesthetic values to minimize impacts to the character of the shoreline environment and the views of neighboring property owners.
4. The calculation of the applicable density requirement in Table 3.15 is based on the portion of the site that contains lots devoted to residential and associated uses (e.g., dwelling units, private community clubs, stormwater detention, treatment and infiltration). The following land is excluded from density calculations:
  - a. Land that is required to be dedicated for public use as open space, right-of-way, or land on which development is prohibited by Title 16 TMC – Environment and this Program, and land that is to be used for private roads. Provided, that portion of open space/park areas that consists of stormwater facilities and that is designed for active and/or passive recreation purposes in accordance with the Drainage Design and Erosion Control Manual for Tumwater shall not be excluded from density calculations.
  - b. Land that is intended for future phases of development created in accordance with the requirements in the Tumwater Zoning Code for a conversion plan.
  - c. Land that consists of lots devoted to uses other than residential and associated uses, including but not limited to churches, schools and support facilities (except for stormwater detention, treatment and infiltration facilities).
5. Refer to Section 5.4 for the water quality development standards which includes on-site stormwater control measures.
6. Subdivisions shall protect streams, wetlands, their buffers, floodways, channel migration zones, and geologic hazards by locating these features within a separate tract or parcels. Such areas shall be held in common by the subdivision landowners, or one landowner.

## 7.11 Solid Waste

### A. Policy

Prohibit facilities that handle solid waste within all shoreline environment designations.

### B. Regulation

Uses for which the primary purpose is the handling, storage and transfer of solid waste are prohibited within all shoreline environment designations.

## 7.12 Transportation

### A. Policies

1. Locate arterials, freeways and railways outside of shoreline jurisdiction unless there are no feasible alternatives.
2. Design roads, shared use paths/trails and railroads to be located as far landward as possible, to fit the topography, and utilize existing corridors so that minimum alterations of natural conditions will be necessary.
3. Design, construct and maintain roads, shared use paths/trails and railroads to minimize erosion, and to permit natural movement of ground water and flood waters.
4. Piers and bridges are preferred to the placement of fill within the shoreline for road, shared use path/trail and railroad crossings.
5. Dispose of construction debris, overburden and other waste materials in such a way as to prevent their entry by erosion from drainage, high water or other means into any surface water body.
6. Use mitigation sequencing per Section 5.1 to locate new transportation corridors within shoreline areas.
7. Rely upon the City of Tumwater Transportation Plan Element of the Comprehensive Plan to identify new transportation crossings or corridors within shoreline areas.

### B. Regulations

Transportation uses and activities may be allowed by shoreline environment designation as listed in Table 3.14, and shall be subject to the regulations of Table 3.15 and the regulations listed below:

1. Roads, shared use paths/trails and railroads shall be designed to cross shoreline areas by the shortest, most direct route feasible.

2. The placement of fill for roads, shared use paths/trails or railroads within shoreline jurisdiction shall be restricted to the smallest possible footprint for the intended purpose.
3. Bridges for roads, shared use paths/trails, and railroads may be located within salmon and steelhead habitats provided that the following conditions are met:
  - a. An alternative location is not feasible;
  - b. The project is located and designed to minimize its impacts on the environment;
  - c. Any adverse impacts are mitigated; and
  - d. Open-piling and piers required to construct the bridge may be placed waterward of the ordinary high water mark, if no alternative method is feasible.
4. The placement of fill for roads, shared use paths/trails and railroads may be allowed in water bodies, wetlands, side channels and on accretion beaches if:
  - a. All structural and upland alternatives have been proven to be infeasible; and
  - b. Such review is undertaken as a shoreline conditional use.
5. Appropriate design and erosion control techniques shall be used to construct or repair roads, shared use paths/trails and railroads so that there is no net loss of shoreline ecological functions and processes.
6. A shared use path/trail may be allowed within a required critical area buffer in accordance with the provisions of Section 5.2(B)(11) when on an abandoned railroad corridor or boardwalk. Riparian habitat restoration shall be provided if the path is located within these areas.
7. Refer to Section 5.4 for the water quality development standards which include on-site stormwater control measures.
8. New road crossings in the Natural Shoreline Environment are limited to serving a single private residence, or a planned collector or arterial as identified in the City of Tumwater Transportation Plan Element of the Comprehensive Plan.

## 7.13 Utilities

### A. Policies

1. Choose locations that do not obstruct or destroy scenic views.
2. Place utilities underground, or design them to do minimal damage to the aesthetic qualities of the shoreline area. Where compelling reasons exist to place utilities above ground, such as impacts to ecological functions or values, this may be permitted with full mitigation of aesthetic impacts.
3. Locate utilities outside of shoreline jurisdiction, unless there are no feasible alternatives. When necessary, locate them as far landward as possible, and preserve the natural landscape, shoreline ecology, and minimize conflicts with present and planned land uses.
4. Restore banks to their pre-project configuration, replanted with native species, and maintain the site until the new vegetation is established.
5. Design and locate sewage treatment, water reclamation, desalinization and power plants so as not to interfere with, and to be compatible with recreational, residential or other public uses of the water and shorelands.
6. Recycling or land disposal of sewage wastes is preferred to new sewage outfalls to shoreline waterbodies. Where no alternative to outfalls into water exist, the location is to be part of an approved regional sewage management plan.
7. Use utility rights-of-way for public access to and along shoreline waterbodies, where feasible.
8. Design and construct bridge-like structures for above-water crossing of utilities rather than fill.
9. Use best available science and mitigation sequencing per Section 5.1 to locate new utility corridors within shoreline areas. Co-locate new major transmission facilities along existing utility corridors where possible.

### B. Regulations

Utility uses and activities may be allowed by shoreline environment designation as listed in Table 3.14, and shall be subject to the regulations of Table 3.15 and the regulations listed below:

1. Utility facilities and lines shall be designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

2. Utility lines shall be located outside of the shoreline area where feasible. When a utility needs to be located within shoreline jurisdiction, mitigation sequencing pursuant to Section 5.1 shall be used to justify the location, and existing rights-of-way and utility corridors shall be used to the extent feasible.
3. In-water utility corridors may be located within salmon and steelhead habitat provided that the following conditions are met:
  - a. An alternative alignment is not feasible as determined by the Administrator;
  - b. The project is located and designed to minimize its impacts on the environment;
  - c. Any adverse impacts are mitigated;
  - d. Any fill is located landward of the ordinary high water mark; and
  - e. Open-piling and piers required to construct a bridge necessary for a utility crossing may be placed waterward of the ordinary high water mark, if no alternative method is feasible.
4. Utility facilities and lines shall document how the size of the facility or line has been minimized within the shoreline area. Utility facilities and lines shall identify the methods of revegetation of the affected area to pre-development elevation, replanted with native or pre-existing species, and provisions for the maintenance and care for the newly planted vegetation.
5. Installation of utility service to a development within shoreline jurisdiction shall not require a separate shoreline substantial development permit, but shall be regulated by the specific use regulations for the activity and the standards of this section.
6. Utilities shall be placed underground unless such placement would be economically or technically prohibitive, or would be significantly detrimental to the environment.
7. Utility facilities shall be designed for minimal environmental and aesthetic impact.
8. Underwater utilities shall be located at a depth sufficient to prevent interference between the utility and other shoreline use activities.
9. Utility facilities and lines shall identify safeguards to ensure that no long-term damage will be caused to the adjacent or downstream environment should an accident occur involving that facility or line.
10. Refer to Section 5.4 for the water quality development standards which include on-site stormwater control measures.

## Chapter 8

### Nonconforming Uses and Structures

Existing uses and structures within shoreline jurisdiction that do not meet the specific standards of this Program are subject to the nonconforming provisions of this section. For nonconforming uses and structures located in Reach CAP-1, or on the east side of Reaches DES-6 and DES-7 of the Deschutes River, refer to Section 8.2.

#### 8.1 Nonconforming Uses and Structures – General – **OPTION 1**

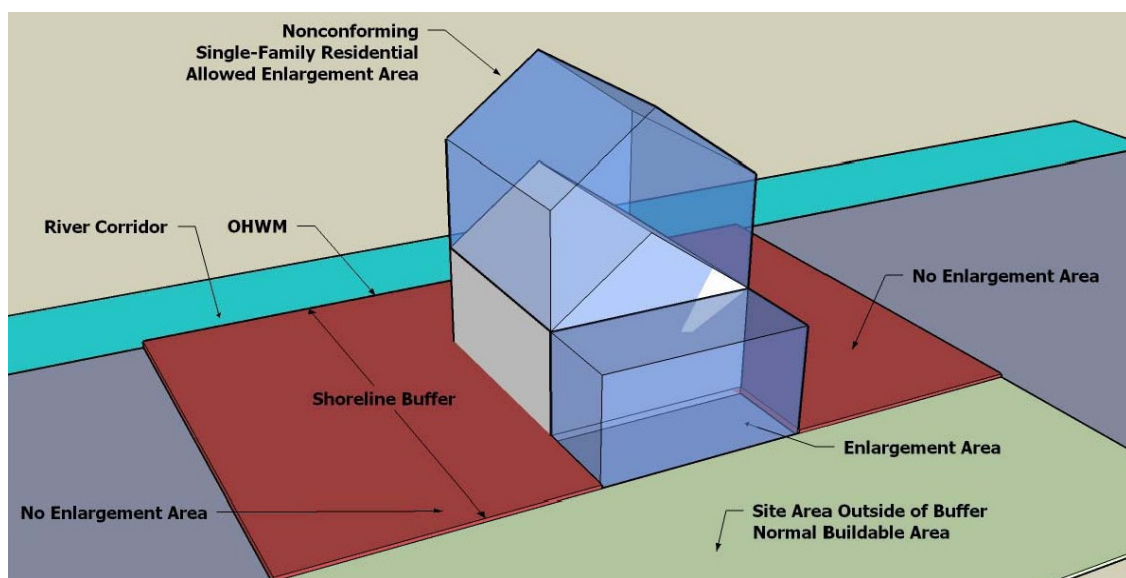
*Note: Differences between the two options are highlighted in gray.*

- A. In accordance with the requirements of this section, structures that were legally established prior to adoption of this Program or amendments thereto, and are used for a conforming use but which are nonconforming with regard to setbacks, buffers, yards, area, bulk, height or density may be maintained and repaired, and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.
- B. A nonconforming structure may be relocated only if it conforms with this Program and the Act.
- C. If a nonconforming structure is damaged by fire or other natural events to an extent not exceeding fifty (50) percent of the replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is submitted for the applicable permits necessary to restore the structure within six months of the date the damage occurred, all permits are obtained, and the restoration is completed prior to permit expiration. Nonconforming single-family residences, manufacture homes and mobile homes may be reconstructed in conformance with this subsection and Section 8.1(E) below, regardless of the extent of damage.
- D. Residential structures and uses located in a residential zone district and in existence at the time of adoption of this Program shall not be deemed nonconforming in terms of height, use or location provisions of this Program. Such buildings may be rebuilt after a fire or other natural disaster to their original dimensions, location and height, but may not be enlarged except as provided in the Section 8.1(E)(3)(a) below.
- E. Residential structures and uses located in a zone district other than a residential zone district and in existence at the time of adoption of this Program shall be deemed nonconforming in terms of height, use, or

location provisions of this Program. Such structures shall comply with the following requirements:

1. Existing nonconforming residential buildings may be replaced within the existing footprint.
2. For the replacement of manufactured homes and mobile homes, a greater building footprint than existed prior to replacement may be allowed in order to accommodate the conversion of single-wide manufactured homes to double-wide manufactured homes, upon approval of a shoreline conditional use permit.
3. Existing nonconforming single family residences may be enlarged or expanded in conformance with the applicable bulk and dimensional standards upon approval of a shoreline conditional use permit and by conformance with the following requirements:
  - a. An expansion or enlargement to the main structure or the addition of a normal appurtenance as defined in WAC 173-27-040(2)(g) to the main structure shall only be accomplished by:
    - i. Addition of space above the building footprint of the main structure; and
    - ii. Addition of space onto or behind that side of the main structure which is farthest away from the ordinary high-water mark.

If the requirements in i–ii above cannot be accomplished without causing significant harm to shoreline vegetation or other shoreline ecological functions, the Administrator may require additional site analysis to determine if an alternative location for the expansion or enlargement of the structure is feasible.



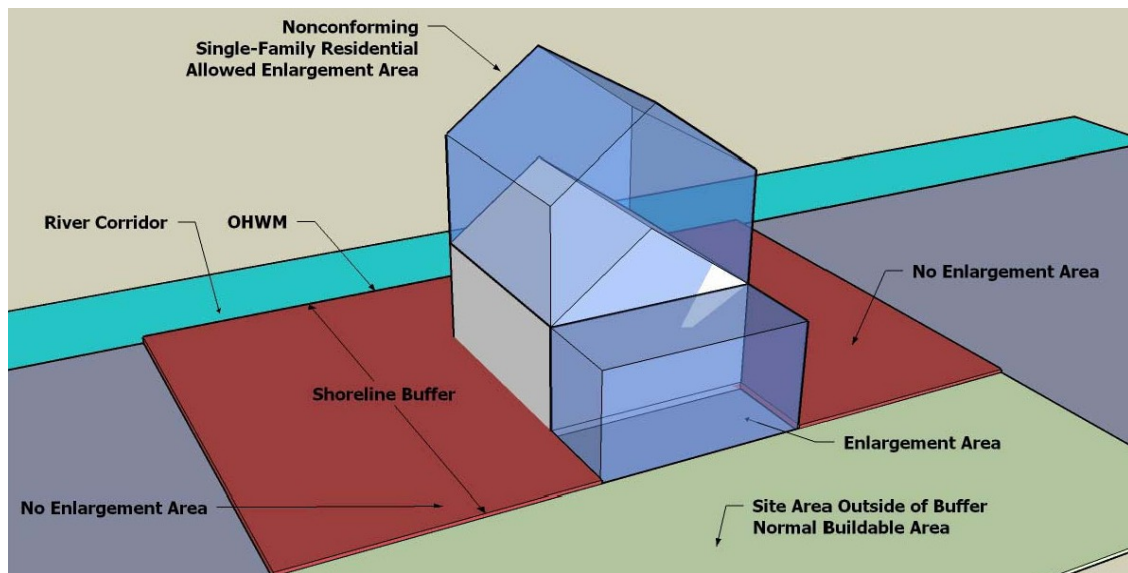
- F. A structure which is being or has been used for a nonconforming use shall not be used for a different nonconforming use, except as provided below, and only upon the approval of a shoreline conditional use permit:
1. No reasonable alternative conforming use is practical;
  2. Conditions may be attached to the permit that are deemed necessary to assure compliance with this Program and the Act, and to assure that the use will not become a nuisance or hazard.
- G. If a nonconforming use is discontinued for twelve consecutive months, the nonconforming rights shall expire, and any subsequent use shall conform with this Program.

### 8.1 Nonconforming Uses and Structures – General – **OPTION 2**

- A. In accordance with the requirements of this section, structures that were legally established prior to adoption of this Progra25 or amendments thereto, and are used for a conforming use but which are nonconforming with regard to setbacks, buffers, yards, area, bulk, height or density may be maintained and repaired, and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.
- B. A nonconforming structure may be relocated only if it conforms with this Program and the Act.
- C. If a nonconforming structure is damaged by fire or other natural events to an extent not exceeding fifty (50) percent of the replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is submitted for the applicable permits necessary to restore the structure within six months of the date the damage occurred, all permits are obtained, and the restoration is completed prior to permit expiration.
- D. In the event that a nonconforming structure is damaged by fire or other natural events to an extent exceeding fifty (50) percent of the replacement cost of the original structure, the property owner may request an administrative modification to restore the portion of the legally established structure or building in the same location. Administrative modifications shall be reviewed by the Shoreline Administrator and may be approved if all of the following criteria are met:
1. That the application of the development standards of this Program precludes reasonable use of the property;
  2. That the applicant demonstrates that the project will result in no net loss to shoreline ecological functions and processes;

3. That the administrative modification is used only for purposes of restoration of the damaged structure and not for expansion that would otherwise be prohibited; and
  4. That the public interest will suffer no detrimental effect.
- E. Existing nonconforming single family residences may be enlarged or expanded in conformance with the applicable bulk and dimensional standards upon approval of a shoreline conditional use permit and by conformance with the following requirements:
1. An expansion or enlargement to the main structure or the addition of a normal appurtenance as defined in WAC 173-27-040(2)(g) to the main structure shall only be accomplished by:
    2. Addition of space above the building footprint of the main structure; and
    3. Addition of space onto or behind that side of the main structure which is farthest away from the ordinary high-water mark.

If the requirements in 1–2 above cannot be accomplished without causing significant harm to shoreline vegetation or other shoreline ecological functions, the Administrator may require additional site analysis to determine if an alternative location for the expansion or enlargement of the structure is feasible.



- F. A structure which is being or has been used for a nonconforming use shall not be used for a different nonconforming use, except as provided below, and only upon the approval of a shoreline conditional use permit:
1. No reasonable alternative conforming use is practical;

2. Conditions may be attached to the permit that are deemed necessary to assure compliance with this Program and the Act, and to assure that the use will not become a nuisance or hazard.

G. If a nonconforming use is discontinued for twelve consecutive months, the nonconforming rights shall expire, and any subsequent use shall conform with this Program.

## **8.2 Nonconforming Uses and Structures – Reach CAP-1 and East Side of Reaches DES-6 and DES-7**

A. A regulated structure, use or activity that legally existed or was approved prior to the adoption of this Program but which is not in conformity with the provisions of this Program may be continued subject to the following:

1. No such non-conforming structure, use or activity may be enlarged, increased, extended, or moved in any way that increases the amount of impervious surface to occupy a greater amount of land than occupied such use prior to the adoption of this Program except as provided in 3 below.
2. Structures, uses and activities may be improved and/or reconstructed if:
  - a. It can be demonstrated by a qualified professional using Best Available Science that no net loss of ecological function of the riparian area or buffer will occur, and
  - b. The project complies with Section 5.1, Environmental Impact Mitigation).
3. Structures, uses and activities (including impervious surface) may be expanded, altered and/or relocated if it can be demonstrated by a qualified professional using Best Available Science that impacts to the critical area can be reduced over current levels.
4. A nonconforming use or structure may be changed to another nonconforming use or structure subject to the standards in (i) and (ii) below:
  - i. The development is 25 feet or more from the ordinary high water mark of the shoreline; and
  - ii. No net loss of ecological function of the riparian area or buffer occurs.
5. Structures, uses or activities that are or become nuisances shall not be allowed to continue as nonconforming activities.

## Chapter 9 Definitions

The terms used throughout this Program shall be defined and interpreted as indicated below. When consistent with the context, words used in the present shall include the future, the singular shall include the plural, and the plural shall include the singular.

1. **Act or SMA.** The Shoreline Management Act of 1971 (RCW 90.58, as amended).
2. **Accessory Building, Structure or Use.** The use of the land or a subordinate building or a portion of a principal building, such use being secondary or incidental to a permitted use or structure, whether such permitted use is on the same lot as the proposed accessory building or use, or on a contiguous lot or lots under the same ownership; provided, that the accessory structure or use may be established in conjunction with or after the establishment of the permitted structure or use.
3. **Administrator.** The person appointed by the City to administer this Program within the city limits of Tumwater.
4. **Adoption By Rule.** An official action by the Washington Department of Ecology to make this Program effective through rule consistent with the requirements of the Administrative Procedure Act, RCW 34.05, thereby incorporating this Program and as amended into the state master program.
5. **Agricultural Activities.** Agricultural uses and practices including, but not limited to: Producing, breeding or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing and replacing agricultural equipment; maintaining, repairing and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.
6. **Agricultural Equipment and Agricultural Facilities.** Include, but are not limited to:
  - a. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance and use of equipment

- and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches and drains;
- b. Corridors and facilities for transporting personnel, livestock and equipment to, from and within agricultural lands;
  - c. Farm residences and associated equipment, lands and facilities; and
  - d. Roadside stands and on-farm markets for marketing fruit or vegetables.
7. **Agricultural Commodities.** Any plants or parts thereof, and animals produced by a farmer with their primary use being for sale, consumption or propagation by humans or animals.
  8. **Agricultural Products.** 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 (20) 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.
  9. **Agriculture.** The use of land for agricultural purposes, including farming, dairying, pasturage agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry and the necessary accessory uses for selling, packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary. The term "Agriculture" shall not include the operation or maintenance of a commercial stockyard or feed lot.
  10. **Agriculture – Low Intensity.** A type of agricultural use which does not involve animal husbandry and/or row crops which are raised yearly. Examples would include the planting and harvest of Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty (20) years of planting.
  11. **Amendment.** A revision, update, addition, deletion and/or re-adoption of this Program.
  12. **Applicable Master Program.** This Program adopted by the Department pursuant to RCW 90.58.090(6) or 90.58.190(4).
  13. **Aquacultural Practices.** Include the hatching, cultivating, planting, feeding, raising, harvesting and processing of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings and growing areas. Methods of aquaculture include but are not limited to fish hatcheries, fish pens, shellfish rafts, racks and longlines, seaweed floats, and the culture of clams and oysters on tidelands and subtidal areas.
  14. **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 shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

15. **Backshore Marina.** Refer to “Marina, Backshore”.
16. **Beach.** The zone along the shoreline where there is continuous movement of sediment both laterally and vertically. This zone extends from the daily low tide mark to where the permanent line of vegetation begins.
17. **Beach Enhancement.** The alteration of terrestrial and tidal shorelines along with submerged shorelines for the purpose of stabilization, recreational enhancement and aquatic habitat creation or restoration using native or similar material.
18. **Bedlands.** Those submerged lands below the line of extreme low tide in marine waters and below the line of navigability of navigable lakes and rivers.
19. **Berm.** One or several linear deposits of sand and gravel generally paralleling the shore at or landward of OHWM; berms are naturally stable because of material size or vegetation.
20. **Billboard.** See “Signs and Billboards.”
21. **Bioengineering.** The practice of using natural vegetative materials (and often structural components) to stabilize shorelines and prevent erosion.
22. **Boardwalk.** A structure made of planks parallel to the waterfront or beach for non-motorized public access. A promenade with construction similar to a dock.
23. **Boathouse.** A structure designed for storage of vessels located over water or in upland areas.
24. **Boat Ramp.** See “Launch ramp.”
25. **Boating Facilities.** Marinas located both landward and waterward of the OHWM (dry storage and wet-moorage types); launch ramps.
26. **Bog.** A depression or other undrained or poorly drained area containing, or covered with, peat (usually more than one layer) on which characteristic kinds of sedges, reeds, rushes, mosses and other similar plants grow. In the early stages of development, the vegetation is herbaceous and the peat is very wet. In middle stages, the dominant vegetation is brush. In mature stages, trees are usually the dominant vegetation, and the peat, at least near the surface, may be comparatively dry.
27. **Breakwater.** Protective structure usually built off-shore to protect harbor areas, moorage, navigation, beaches and bluffs from wave action. A

- breakwater may be fixed (e.g., a rubble mound or rigid wall), open-pile or floating.
28. **Buffer.** An area measured landward perpendicularly from the ordinary high water mark that is intended to reduce the adverse impacts of adjacent land uses on shoreline ecological functions and provide important habitat for wildlife.
  29. **Building.** Any structure designed for or used for the support, shelter or enclosure of persons, animals or personal property, and which is used in a fixed location on land, shorelands or tidelands.
  30. **Bulkhead.** Either public or private wall usually constructed parallel to the shore. Its primary purpose is to contain and prevent the loss of soil caused by erosion or wave action. A bulkhead may also be termed as a “seawall” for more massive public works structures along the open coast.
  31. **Certified Local Government.** A local government that establishes a historic preservation program meeting federal and state standards, and is eligible to apply to the State Historic Preservation Officer (SHPO) and the National Park Service for certification.
  32. **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.
  33. **Channelization.** The straightening, deepening or lining of stream channels, and/or prevention of natural meander progression of stream ways, 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.
  34. **Clearing.** The destruction or removal of vegetative ground cover and/or trees including, but not limited to, root material removal and/or topsoil removal. This includes such activities as clear cutting or selective harvest of trees, pulling out of stumps, hauling of shrubs, slash piles, etc.
  35. **Cluster Development.** A residential development which reserves substantial portions of land as open space or recreational areas for the joint use of the occupants of the development. This land may be provided by allowing dwelling units to be placed on lots smaller than the legal minimum size for regular subdivisions, as long as the density does not exceed prescribed standards.
  36. **Commercial Development.** Those uses involved in wholesale, retail, service and business trade. Examples include hotels, motels, grocery markets, shopping centers, restaurants, shops, offices and private or public indoor recreation facilities.

37. **Commercial, low-intensity water-oriented.** This shall include small scale overnight housing, including a bed and breakfast, a resort with five (5) or less cabins, a campground, and other facilities of a similar scale and development intensity.
38. **Community Development Department.** The department of the City of Tumwater authorized to administer the provisions of the Act, WACs and this Program.
39. **Conditional Use.** A use, development or substantial development which is classified as a conditional use or is not classified within the applicable master program.
40. **Covered Moorage.** A roofed structure for the wet or dry storage of one or more boats. Boathouses are a type of covered moorage.
41. **Critical Areas.** Those areas with especially fragile biophysical characteristics and/or with significant environmental resources as identified in a scientifically documented inventory. *RCW 36.70A.030* defines “critical areas” as: wetlands; areas with a critical recharging effect on aquifers used for potable water; fish and wildlife habitat conservation areas; frequently flooded areas; and geologically hazardous areas.
42. **Critical Freshwater Habitats.** Designated areas of streams, rivers, wetlands and lakes, their associated channel migration zones and floodplains.
43. **Density.** The permissible number of dwelling units that may be developed on a specific amount of land area measured in number of dwelling units per acre.
44. **Department.** Washington State Department of Ecology.
45. **Development.** A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; pile driving; 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 at any water level and/or on lands subject to the Act.
46. **Development Regulations.** The controls placed on development or land uses by the City, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of this Program other than goals and policies approved or adopted under *RCW 90.58*, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.
47. **Dike.** An embankment to prevent flooding by a stream or other water body, often referred to as a levee.
48. **Dock.** Refer to “Pier.”

49. **Document of Record.** The most current shoreline master program officially approved or adopted by rule by the department for the City, including any changes resulting from appeals filed pursuant to RCW 90.58.190.
50. **Dredging.** The removal or displacement of earth or sediments such as gravel, sand, mud or silt and/or other materials or debris from any stream, river, lake or marine water body and associated shorelines and wetlands.
51. **Drift Cell, Drift Sector, or Littoral Cell.** A particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift, and accretion shore forms created by such drift.
52. **Drilling.** The process of cutting a hole into the earth for the purpose of obtaining petroleum products.
53. **Dwelling.** A building or portion thereof, designed or used for residential occupancy.  
  
The term dwelling shall not be construed to mean a motel, rooming house, hospital or other accommodation used for more or less transient occupancy.
54. **Ecological Functions or Shoreline 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.
55. **Ecosystem-Wide Processes.** 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.
56. **Education.** Any development undertaken for the support of public or private research or education.
57. **Emergency.** An unanticipated and imminent threat to public health, safety or the environment which requires immediate action with a time too short to allow full compliance with this Program. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation, the new structure shall be removed and any permits which would have been required by this Program or the SMA, absent an emergency, must be obtained.
58. **Environment.** See "Shoreline Environment Designations".
59. **Exempt.** Developments set forth in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515 which are not required to obtain a substantial development permit but which must otherwise comply with applicable provisions of the Act and the Program.

60. **Extreme High Tide.** The highest tide level that the water will reach in any one year.
61. **Extreme Low Tide.** The lowest level on the land reached by a receding tide.
62. **Fair market value.** The open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
63. **Feasible.** 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;
  - c. The action does not physically preclude achieving the project's primary intended legal use;
  - d. In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant; and
  - e. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.
64. **Feeder Bluff.** A reach of shoreline which contains both an eroding beach and a feeding upland as identified on the *Coastal Drift maps of the Coastal Zone Atlas of Washington, Volume 8*, or similar source from the Washington Department of Ecology.
65. **Fill.** The addition of soil, sand, rock, gravel, sediment, earth retaining structure or other material to an area waterward of the OHWM, or on shorelands in a manner that raises the elevation or creates dry land.
66. **Floodplain.** Synonymous with one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the SMA.

67. **FloodPlain Management.** The City's long-term program to reduce flood damages to life and property, and to minimize public expenses due to floods, through a comprehensive system of planning, development regulations, building standards, structural projects, and monitoring and warning systems.
68. **Floodway.** Floodway means the area of a river valley that conveys flood waters with reasonable regularity, although not necessarily annually. At a minimum, the floodway is that which has been established in Federal Emergency Management Act flood insurance rate maps or Federal Emergency Management Act floodway maps. Other data and information, including topography, changes in soil or vegetation, and other indicators of past flooding, may be used to define and map a floodway that meets the objectives of the Shoreline Management Act, Chapter 90.58 RCW. The floodway shall not include those lands that can reasonably be expected to be protected from one hundred-year 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.
69. **Foreshore Marina.** Refer to "Marina, Foreshore".
70. **Forest Practices.** The raising and harvesting of trees as a crop as defined by WAC 222-16, as amended. All forest practices Class IV conversions shall be subject to the City's land use regulations.
71. **Gabion.** Work composed of masses of rock, rubble, or masonry tightly enclosed usually by wire mesh so as to form massive blocks. A gabion is used to form walls on beaches to retard wave erosion or as foundations for breakwaters or jetties.
72. **Geologically Hazardous Areas.** Areas susceptible to severe erosion or slide activity, such as unstable bluffs, including areas with high potential for earthquake activity. These areas may be identified in critical areas inventories or the Coastal Zone Atlas. In general, they are not suitable for placing structures or locating intense activities or uses due to the inherent threat to public health and safety.
73. **Geotechnical Report or Geotechnical Analysis.** A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or

- geologists who have professional expertise about the regional and local shoreline geology and processes.
74. **Grading.** The movement or redistribution of the soil, sand, rock, gravel, sediment or other material on a site in a manner that alters the natural contour of the land.
  75. **Groin.** Structure built waterward and perpendicular to the shore for the purpose of building or preserving an accretion beach by trapping littoral sand drift. Generally narrow and of varying lengths, a groin may be built in a series along the shore.
  76. **Guidelines or SMA Guidelines.** Those standards adopted to implement the policy of RCW 90.58 for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs.
  77. **Guidelines or SMP Guidelines.** Those standards adopted to implement the SMA policy for regulation of use of the shorelines of the state. WAC 173-26 as amended
  78. **Hazard Tree.** Any tree that is susceptible to immediate fall due to its condition (damage, disease or dead) or other factors, which because of its location is at risk of damaging permanent physical improvement to property causing personal injury.
  79. **Hazardous Waste.** Includes all dangerous and extremely hazardous waste as defined by RCW 70.105.010.
  80. **Hearings Board.** The State Shorelines Hearings Board established by the Act in RCW 90.58.170.
  81. **Height.** Measured from average grade level to the highest point of a structure; provided, that television antennas, chimneys and similar appurtenances shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such shorelines. Provided further, that temporary construction equipment is excluded in this calculation.
  82. **Historic Place.** A building, structure, object or site on the local, State or National Register of Historic Places.
  83. **Houseboat.** A vessel principally used as an over-water residence. Houseboats are licensed and designed for use as a mobile structure with detachable utilities or facilities, anchoring and the presence of adequate self-propulsion and steering equipment to operate as a vessel. A registered water-going vessel where the owner lives aboard shall not be construed as a "houseboat."
  84. **Impervious Surface.** Those surfaces that do not allow the downward passage of water.

85. **Industrial Developments.** Facilities for processing, manufacturing and storage of finished or semi-finished goods.
86. **Jetties.** Structures generally built singly or in pairs and perpendicular to the shore at harbor entrances or river mouths to prevent the shoaling or accretion of littoral sand drift. Jetties also protect channels and inlets from storm waves and cross-currents.
87. **Junk.** Old iron, steel, brass, cooper, tin, lead or other base metals; old cordage, ropes, rags, fibers or fabrics; old rubber; old bottles or other glass, bones; wastepaper, plastic and other waste or discarded material which might be prepared to be used again in some form; any or all of the foregoing; and motor vehicles, no longer used as such, to be used for scrap metal or stripping of parts; but "junk" shall not include materials or objects accumulated by a person as by-products, waste or scraps from the operation of their own business or materials or objects held and used by a manufacturer as an integral part of their own manufacturing process.
88. **Landfilling.** Refer to "Fill."
89. **Launch Ramp.** An inclined slab, set of pads, planks or graded slope used for launching boats with trailers. Parking and turn-around areas are usually accessory to such a site.
90. **Legislative Body.** The City Council of the City of Tumwater.
91. **Levee.** A natural or artificial embankment on the bank of a stream for the purpose of keeping flood waters from inundating adjacent land. Some levees have revetments on their sides.
92. **Local Government.** City of Tumwater which contains within its boundaries shorelines of the state subject to RCW 90.58.
93. **Lot.** A fractional portion of subdivided land having fixed boundaries.
94. **Lot Area.** The area contained within the boundaries of a lot excluding any area waterward of the ordinary high water mark.
95. **Lot Front.** The portion of a lot adjacent to either the public street affording principal access to the property or the waterfront, if the property abuts a water body.
96. **Lot Length.** The maximum lineal dimension of a lot.
97. **Lot Width.** For lots of a generally rectangular character, the average lineal dimension taken at right angles to the lot length. For other lots, the diameter of the largest circle which can be placed wholly within the boundaries of the lot.
98. **Low Intensity Agriculture.** See "Agriculture, Low Intensity."
99. **Low Intensity Recreation.** See "Recreation, Low Intensity."

100. **Low-intensity water-oriented commercial.** See “Commercial, low-intensity water-oriented.”
101. **Marina.** A facility with water-dependent components that consists of boat launch facilities and piers, buoys or floats to provide moorage for five (5) or more boats.
102. **Marina, Backshore.** Marina located landward of the OHWM. There are two types of backshore marinas, one with wet-moorage that is dredged out of the land to artificially create a basin; and the other is a dry moorage with upland storage that uses a hoist, marine travel lift or ramp for water access.
103. **Marina, Foreshore.** Marina located in the intertidal or offshore zone waterward of the ordinary high water mark which may require breakwaters of open type construction (floating breakwater and/or open pile work) and/or solid type construction (bulkhead and landfill), depending on the location.
104. **Marine.** Pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries and associated inlets.
105. **Marsh.** A low, flat area on which the vegetation consists mainly of herbaceous plants such as cattails, bulrushes, tules, sedges, skunk cabbage, and other aquatic or semi-aquatic plants. Shallow water usually stands on a marsh, at least during a considerable part of the year. The surface is commonly soft mud or muck.
106. **Maximum Density.** The largest number of dwelling uses per acre allowed by the SMP or other City regulations.
107. **Maximum Impervious Surface.** The largest amount of hard surfaces allowed within a parcel, which could include roofs, pavement, patios, walkways and gravel parking areas.
108. **May.** Denotes an action that is acceptable, provided it conforms to the provisions of this Program.
109. **Mixed Use Development.** A single structure with two (2) or more different land uses, or a group of physically integrated and easily accessible structures with two (2) or more different land uses. Combinations of land uses might include residential, office, retail, public or entertainment. The uses need not be mixed within the same structure, but can include separate uses within different buildings.
110. **Mooring Buoy.** Floating object anchored to the bottom of a water body to provide tie-up capabilities for vessels.
111. **Multi-Use Path.** Refer to “Shared Use Path.”
112. **Must.** Denotes a mandate; the action is required.

113. **Native Vegetation.** Refer to “Vegetation, native.”
114. **Natural or existing topography.** The topography of the lot, parcel or tract of real property immediately prior to any site preparation or grading, including excavation or filling.
115. **Nonconforming Building or Structure.** A building, structure or portion thereof which was lawfully erected, altered or maintained, but because of the application of this Program no longer conforms to the requirements of this Program.
116. **Nonconforming Lot.** A parcel of land legally established prior to the effective date of this Program, and which does not conform with the lot size or area requirements of the TMC.
117. **Nonconforming Use.** A use or activity that was lawfully established prior to the effective date of this Program but no longer conforms to the requirements of this Program.
118. **Non-water-Oriented Uses.** Those uses that are not water-dependent, water-related, or for water-enjoyment.
119. **Normal Maintenance.** This includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition.
120. **Normal Repair.** To restore a development to a state comparable to its original condition within a reasonable period after decay or partial destruction, except where repair involves total replacement which is not common practice or causes substantial adverse effects to the shoreline resource or environment.
121. **On-Premise Sign.** Refer to “Sign, On Premise.”
122. **Off-Premise Sign.** Refer to “Sign, Off Premise.”
123. **Open Space.** Land and natural wetlands which retain their natural or semi-natural character because they have not been developed with structures, paving or other development and, for the purposes of this Program, are normally required of residential and/or recreation developments.
124. **Ordinary High Water Mark (OHWM).** The mark on all lakes, streams and tidal water which will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City or the Department.
125. **Over Water.** Location of a structure or development above the surface of the water, including placement of buildings on piling or floats.

126. **Parcel.** A tract or plot of land of any size which may or may not be subdivided or improved.
127. **Parking.** Any space or area specifically allotted for the purpose of temporary, daily or overnight off-street storage of motor vehicles to support a shoreline use authorized by this Program.
128. **Party of record.** Includes all persons, agencies or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing conducted on the application; or notified the City of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail.
129. **Permit.** Any substantial development, variance, conditional use permit, or revision authorized under chapter RCW 90.58.
130. **Person.** An individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated.
131. **Pier and Dock.** Structure generally built from the shore extending out over the water to provide moorage for commercial or private recreation. "Piers" are those structures are built on fixed platforms above the water, whereas "docks" are those structures which float upon the water. When a pier or dock is to serve five (5) or more boats, it is considered a marina.
132. **Planned Unit Development.** A development which permits departures from the conventional siting and setback requirements of other sections of this Program in the interest of achieving superior site development, creating open space, and encouraging imaginative design by permitting design flexibility.
133. **Ports.** Centers for waterborne traffic, and which have become gravitational points for industrial/manufacturing firms.
134. **Priority habitat, local.** A seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative density or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or high vulnerability to alteration, such as cliffs, talus and wetlands.

**Priority habitat, state** or "state priority habitat" means a seasonal range or habitat element, as identified by the Washington State Department of Wildlife, with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long-term. These might include areas of high relative diversity or species richness, breeding habitat, winter range and movement corridors. These might also include habitats that are of limited availability or

- high vulnerability to alteration.
135. **Priority species, local** those species that may not be endangered or threatened, but are of local concern due to their population status or their sensitivity to habitat manipulation and have been identified as such by Washington State Department of Wildlife.
  136. **Priority species, state.** those species that are so identified by the Washington State Department of Wildlife due to their population status and their sensitivity to habitat manipulation. Priority species include those which are listed by Department of Wildlife as endangered, threatened and sensitive species.
  137. **Property Lines.** The exterior boundaries of a lot or parcel.
  138. **Provisions.** Policies, regulations, standards, guideline criteria and/or environment designations.
  139. **Public Access.** A trail, path, road or launching ramp by which the general public can reach the public waters.
  140. **Public Interest.** The interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety or general welfare resulting from a use or development.
  141. **Public Street.** Any street, way, road, alley or highway in public ownership.
  142. **Recreation Facilities.** Facilities for refreshment of body and mind through play, amusement or relaxation. This includes passive uses such as hiking, canoeing, photography and fishing. It also includes intensive uses such as boat ramps, motor vehicles, playgrounds and parks whether they are for public or private usage.
  143. **Recreation, High Intensity.** Involves uses and activities that provide for increased public enjoyment of the shorelines and adjacent areas. Examples of such uses may include parks, playgrounds, athletic fields, campgrounds, golf courses and boat ramps. High intensity uses may require earth modification and construction of a variety of structures.
  144. **Recreation, Low Intensity.** Involves activities such as hiking, canoeing, viewing, nature study, photography and fishing. Low intensity uses do not require extensive development of facilities.
  145. **Recreational Development.** Provides opportunities for the refreshment of body and mind through forms of play, sports, relaxation, amusement or contemplation. It includes facilities for passive recreational activities such as hiking, photography, viewing and fishing. It also includes facilities for active or more intensive uses such as parks, campgrounds, golf courses and their support buildings including clubhouses, and other outdoor recreation areas.

146. **Recreational Floats.** Those platform structures anchored in fresh or marine waters for water recreational purposes such as swimming, diving or water skiing to include jump ramps. They may serve as temporary moorage facilities but for the purposes of this Program are not intended to be used as boat storage.
147. **Residence, Duplex.** A building designed exclusively for occupancy by two families independent of each other having two separate kitchen facilities where both dwelling units are located on the same lot and are completely separated from each other by an unpierced wall extending from ground to roof or an unpierced ceiling and floor extending from exterior wall to exterior wall, except for common stairwell or garage exterior to both dwelling units.
148. **Residence, Multi-family.** A building, designed and used for occupancy by three or more families all living independent of each other and having separate kitchen facilities for each family where all dwelling units are located on the same lot.
149. **Residence, Single-Family.** A detached building designed for occupancy by one (1) family and containing one (1) dwelling unit.
150. **Townhouses/Rowhouses.** A line or row of dwelling units, attached one to the other, having common walls between individual units, generally two stories in height (and sometimes three). Each unit occupies the space between common walls from the lowest level to the roof.
151. **Residential Development.** One or more buildings, structures, lots, parcels or portions thereof that are designed for and used or intended to be used to provide a place of abode for human beings. Residential development includes single-family dwellings; duplexes; other detached dwellings; floating homes; multi-family development (apartments), condominiums, townhouses and rowhouses; manufactured home parks; subdivisions; and short subdivisions, together with accessory uses and structures normally applicable to residential uses including but not limited to garages, sheds, tennis courts, swimming pools, parking areas, fences, cabanas, saunas and guest cottages.
152. **Restore, Restoration or Ecological Restoration.** The re-establishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.
153. **Revetment.** A sloped shoreline structure, commonly constructed of riprap, sand-cement bags, paving or building blocks, gabions (rock-filled baskets) or other material, built to protect an existing eroding shoreline or newly placed fill against waves, currents or weather. The slope differentiates it from a bulkhead, which is a vertical structure.

154. **Riprap.** Broken stone placed on shoulders, slopes or other such places to protect them from erosion.
155. **Roads and Railroads.** Those passageways, and associated facilities and activities used by or associated with pedestrians, vehicles and trains.
156. **Scientific Research and Education.** Any development undertaken for the support of public or private science research or education.
157. **Setback.** An area in which development of structures is restricted. Setbacks apply to structures and in general are intended to: assure that development is located a safe distance from bluffs and other natural features, including required vegetative buffers; improve shoreline aesthetics; protect shoreline views; and keep enough space between developments and natural shoreline processes (e.g. wave action and erosion) to avoid the need for bulkheading or other shoreline stabilization measures.
158. **Shall.** Denotes a mandate; the action must be done.
159. **Shared Use Path/Trail.** A facility physically separated from motorized vehicular traffic to accommodate pedestrians, bicyclists and other non-motorized vehicles. Such trails may be used for commuting and recreational purposes and may connect neighborhoods and other destinations.
160. **Shorelands or Shoreland Areas.** Those lands extending landward for two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred (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 Program; the same to be designated as to location by the Department.
161. **Shoreline Areas and Shoreline Jurisdiction.** All shorelines of the state and shorelands as defined in RCW 90.58.030.
162. **Shoreline Environment Designations.** The categories of shorelines of the state established by this Program to differentiate between areas whose features imply differing objectives regarding their use and future development.
163. **Shoreline Jurisdiction.** All "shorelands" as defined in RCW 90.58.030. Refer to "Shorelands or Shoreland Areas."
164. **Shoreline Management Act.** The Shoreline Management Act of 1971(RCW 90.58, as amended).
165. **Shoreline Master Program or Master Program.** The comprehensive use plan element 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 city approved under chapter 90.58 RCW shall be considered an element of the city's comprehensive land use plan. All other portions of the shoreline master program for a county or city adopted under RCW 90.58, including use regulations, shall be considered a part of the city's development regulations.
166. **Shoreline Modifications.** Those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead or other shoreline structure. They can include other actions such as clearing, grading or application of chemicals.
167. **Shoreline Permit.** Refer to "Permit."
168. **Shoreline Protection.** Action taken to reduce adverse impacts caused by current, flood or wave action. This action includes all structural and non-structural means to reduce these impacts due to flooding, erosion and accretion. Specific structural and non-structural means included in this use activity are bulkheads, dikes, levees, riprap, sea walls, shoreline berms and breakwaters.
169. **Shorelines.** All of the water areas of the state, including reservoirs and their associated shorelands, 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 twenty (20) cubic feet per second or less, and the wetlands associated with such upstream segments; and
  - c. Shorelines on lakes less than twenty (20) acres in size, and wetlands associated with such small lakes.
170. **Shorelines of Statewide Significance.** Those shorelines described in RCW 90.58.030.
171. **Shorelines of the State.** The total of all shorelines and shorelines of statewide significance within the state.
172. **Should.** Denotes that the particular action is required unless there is a demonstrated compelling reason, based on policy of the Act and this Program, against taking the action.
173. **Sign.** A device of any material or medium, including structural component parts, used or intended to be used to attract attention to the subject matter for advertising, identification or informative purposes.
174. **Sign, Off-premise.** Any sign used to advertise goods or services not generally available on the premises on which the sign is located.

175. **Sign, On-premise.** Any sign identifying the premises on which located or the occupant(s) thereof, or relating to goods or services manufactured, produced or available on the premise.
176. **Sign, Wayfinding.** A type of street sign which provides directions to local attractions and sites.
177. **Significant Vegetation Removal.** The removal or alteration of trees, shrubs and/or ground cover by clearing, grading, cutting, burning, chemical means or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.
178. **Single-Family Residence.** See Residence, Single-Family.
179. **Solid Waste.** All solid, semi-solid, and liquid wastes including garbage, rubbish, ash, plastics, industrial wastes, wood wastes and sort yard wastes associated with commercial logging activities, swill, demolition and construction wastes, abandoned vehicles and parts of vehicles, household appliances and other discarded commodities.
180. **Solid Waste Disposal.** The discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste.
181. **Stairs.** A series of steps or flights of steps for moving from one level to another.
182. **Stair Tower.** A structure twelve (12) feet or taller in height, typically consisting of one (1) or more flights of stairs, usually with landings to move from one level to another.
183. **Stairway.** One or more flights of stairs, usually with landings to move from one level to another.
184. **State Master Program.** The cumulative total of all master programs adopted by the Department.
185. **Streambank.** The area running along the course of a stream and rising from the ordinary high water mark (OHWM) up to the first significant break in slope. The first significant break in slope is a bench at least fifteen (15) feet wide. The streambank ends at the top of the bank where that break in slope occurs. Note: This definition is not intended to include the concept of a buffer for streams. It is only a definition of a physical feature associated with streams.
186. **Streamway.** That corridor of a single or multiple channel or channels, within which the usual seasonal or stormwater runoff peaks are contained. The flora, fauna, soil and topography is dependent on or influenced by the height and velocity of the fluctuating currents.

187. **Street.** See Road.
188. **Street, Public.** A street in public ownership.
189. **Structure.** A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above or below the surface of the ground or water, except for vessels.
190. **Submerged Lands.** Those areas below the ordinary high-water mark of marine waters, lakes and rivers.
191. **Substantially Degrade.** Means to cause significant ecological impact.
192. **Substantial Development.** Any development of which the total cost or fair market value exceeds five thousand seven hundred eighteen dollars (\$5,718), or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five (5) years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one (1) month before the new dollar threshold is to take effect.
193. **Surface Water Body.** Any water area which is within the shorelines of the state.
194. **Swamp.** Is similar to a marsh except that reeds and shrubs comprise the characteristic vegetation. Marshes and swamps merge into each other, and both tend to merge into bogs.
195. **Transmit.** To send from one person or place to another by means of mail, e-mail or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for hand-delivered items, is the date of receipt at the destination.
196. **Transportation Facilities.** Those structures and developments that aid in land and water surface movement of people, goods and services. They include roads and highways, bridges and causeways, bikeways, trails, railroad facilities, ferry terminals, float plane terminals, heliports and other related facil
197. **Utilities.** Primary utilities are services and facilities that produce, store, collect, treat, carry, discharge or transmit electric power, water, stormwater, gas, sewage, reclaimed water, communications (including cellular towers),

- oil, waste or other public services. Accessory utility facilities are those associated with delivery of such public services to support individual uses and developments, such as distribution or service lines.
198. **Variance.** Is a means to grant relief from the specific bulk, dimensional or performance standards set forth in this Program and not a means to vary a use of a shoreline.
199. **Vegetation, Native.** Native plants commonly found in Thurston County. Generally comprised of three vegetative levels including an overstory of trees, an understory of shrubs, and a floor of herbs.
200. **Vegetation Management, Active.** Involves aquatic weed control as well as the restoration of altered or threatened shorelines using a technology called soil bioengineering. Soil bioengineering re-establishes native plant communities as a dynamic system that stabilizes the land from the effects of erosion.
201. **Vegetation Management, Passive.** Deals with protection and enhancement of existing diverse native plant communities along all shorelines including rivers, wetlands, lakes and steep bluffs.
202. **Vessel.** This includes ships, boats, barges or any other floating craft that is designed and used for navigation, and does not interfere with the normal public use of the water.
203. **Water-dependent Use.** 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-dependent uses include, but are not limited to:
- a. Aquaculture;
  - b. Boat launch facilities;
  - c. Ferry terminals;
  - d. Hydroelectric power plants;
  - e. Marinas;
  - f. Marine construction, dismantling and repair;
  - g. Marine and limnological research and education;
  - h. Private and public docks for moorage;
  - i. Piers facilitating public access to shorelines of the State;
  - j. Terminal and transfer facilities for marine commerce and industry;
  - k. Water intakes and outfalls;
  - l. Log booming; and

m. Tug and barge facilities.

204. **Water-enjoyment Use.** A recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public, and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

Water-enjoyment uses include, but are not limited to:

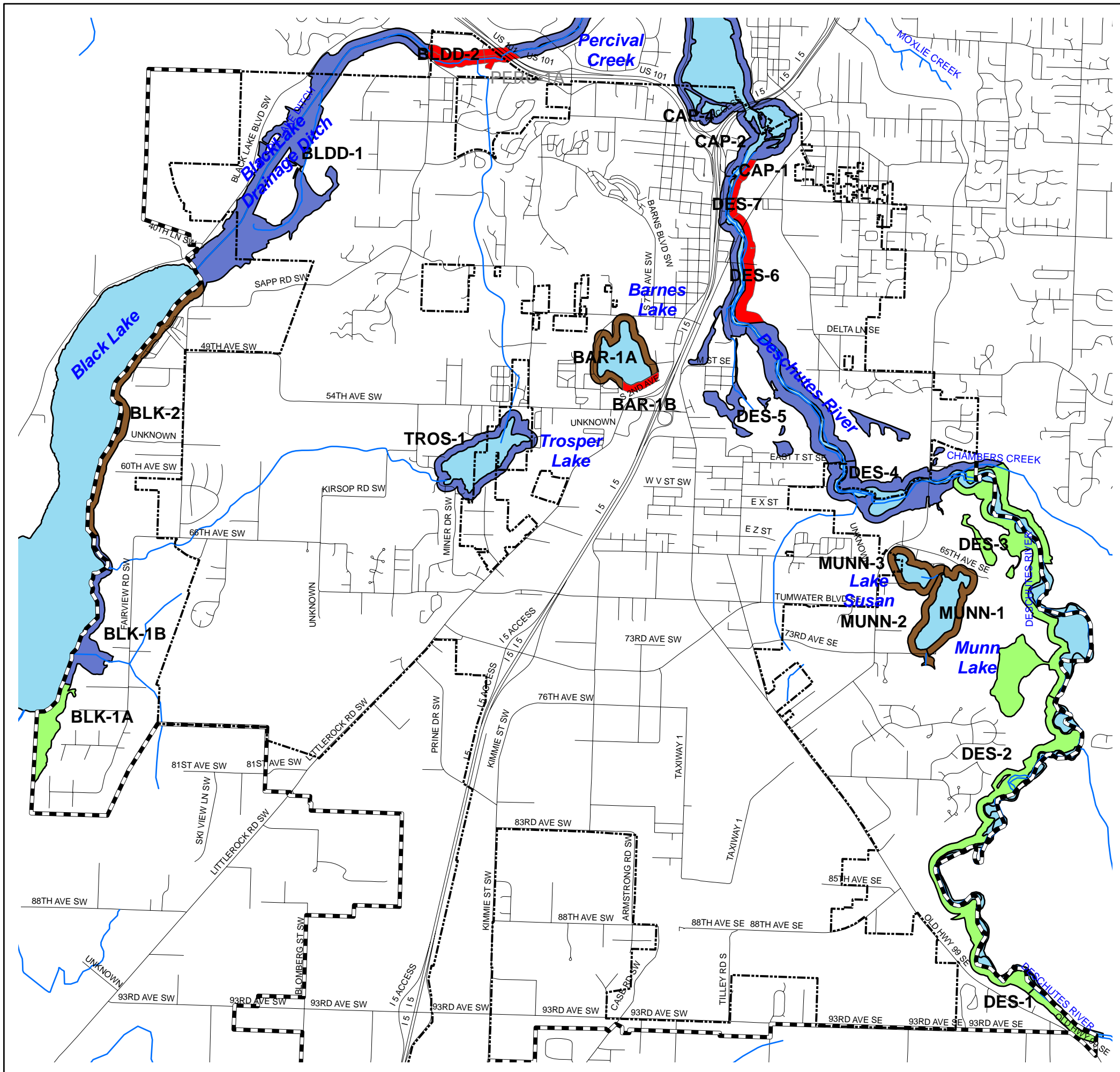
- a. Aquarium, with direct water intake;
  - b. Restaurants;
  - c. Public golf courses and clubhouses;
  - d. Museums;
  - e. Shared use paths/trails;
  - f. Boardwalks; and
  - g. Viewing towers.
205. **Water-oriented Use.** A use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.
206. **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 Program, the term "water quantity" refers only to development and uses regulated under this Program and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this Program, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.
207. **Water-related Use.** 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.

Water-related uses include, but are not limited to:

- i. Warehousing or storage facilities;
  - ii. Support services for fish hatcheries;
  - iii. Seafood processing plants;
  - iv. Wood products manufacturing;
  - v. Log storage;
  - vi. Watercraft sales; and
  - vii. Boating supplies.
208. **Weir.** A device placed in a stream or river to raise or divert the water.
209. **Wetlands.** Areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.

# Appendix A Shoreline Master Program Tumwater

Proposed Shoreline  
Environment Designations  
September 2011



**Legend**

- Tumwater City Limits
- Urban Growth Boundary

**PROPOSED SHORELINE DESIGNATIONS**

- AQUATIC
- NATURAL
- URBAN CONSERVANCY
- SHORELINE RESIDENTIAL
- URBAN INTENSITY



Reaches (DES-1, CAP 4, etc):  
Each individual reach is assigned a Shoreline Environment Designation. More detail on individual reaches can be found in the Shoreline Inventory.

Tumwater Community Development Department  
September 1, 2011  
SHORELINE ENVIRONMENT DESIGNATIONS MAP2A 2011.mxd

DISCLAIMER: The City of Tumwater does not warrant, guarantee, or accept any liability for the accuracy, precision, or completeness of any information shown hereon or for any inferences made therefrom.

