

## **CHAPTER 4 GENERAL SHORELINE USE AND DEVELOPMENT REGULATIONS**

All uses and development activities shall be subject to all of the following general regulations in addition to the applicable use regulations in Chapter 5.

### **4.1 Prohibited Uses**

The following modifications and uses are prohibited in all shoreline designations. See Chapter 7 for definitions of the following modifications and uses:

1. Uses not otherwise allowed in the underlying zoning district
2. Parking as a primary use
3. Creation of new dry land from wetlands or submerged lands
4. Development on new dry land created from wetlands or submerged lands
5. Residential development in, over, or floating on the water.
6. Excessive vegetation removal
7. Flashing, rotating, rooftop, and free-standing pole signs
8. Placement of signs on trees, natural features, or utility poles
9. Commercial clear cutting
10. Discharge of solid wastes, liquid wastes, untreated effluents, other potentially harmful materials
11. Application of herbicides, pesticides, fungicides, or fertilizers within 25' of or directly into any waterbody or wetland
12. Solid or hazardous waste landfills
13. Mining in areas other than mineral resource areas designated under 36.70A and in compliance with this SMP and all necessary permits.
14. Speculative fill
15. Healthcare facilities, retirement homes and communities in the 100-year floodplain
16. ATVs and ORVs on beaches, bars, spits, and in streambeds.

## **4.2 Non-Conforming Uses and Development (Reserved)**

### **4.3 Shoreline Use and Development**

1. Land shall not be cleared, graded, filled, or otherwise altered prior to issuance of all necessary permits and approvals for a proposed shoreline use or development.
2. Shoreline uses and developments shall not cause impacts that require remedial action or loss of shoreline functions on other properties.
3. The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.
4. Shoreline uses and developments that are water-dependent shall be given first priority.
5. Single family residential uses shall be allowed on all shorelines not subject to a preference for commercial or industrial water-dependent uses and shall be located, designed, and used in accordance with applicable policies and regulations of this Program.
6. Shoreline uses and developments shall be located and designed in a manner such that shoreline stabilization is not necessary at the time of development and will not be necessary in the future for the subject property or other shoreline properties.
7. Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed and implemented in accordance with applicable policies and regulations of this Program and consistent with other (jurisdiction) programs.
8. Navigable waters shall be kept free of obstructions.
6. Hazardous materials shall be disposed of and other steps be taken to protect the ecological integrity of the shoreline area in accordance with the other policies and regulations of this Master Program as amended and all other applicable federal, state, and local statutes, codes, and ordinances.
7. Shoreline uses or activities shall not pose a significant threat to the public health, safety, or welfare on or off the development proposal site.

### **4.4 Site Planning**

1. No use or development shall effectively exclude other appropriate uses from navigable waters. Vehicle and pedestrian circulation systems shall be designed to minimize clearing, grading and alteration of topography and natural features. Roadway and driveway alignments shall follow the natural contours of the site and minimize width to the maximum extent feasible without jeopardizing public safety. Elevated walkways shall be utilized to cross

sensitive areas such as wetlands. Stormwater infiltration systems shall be employed to mimic the natural infiltration and ground water interflow processes where appropriate.

2. Impervious surfacing for parking lot/space areas, trails, and pathways shall be minimized through the use of alternative surfaces where feasible.
3. Utilities shall be located within roadway and driveway corridors and rights of way wherever feasible.
4. Structures shall be designed to conform to natural contours and minimize disturbance to soils and native vegetation.
5. Fencing, walls, hedges and similar features shall be designed in a manner that does not preclude or significantly interfere with wildlife movement.
6. Non-water-dependent accessory uses shall be sited away from the water and landward of the primary use.
7. Interior and exterior lighting shall be designed and operated to: a) avoid illuminating nearby properties or public areas; b) prevent glare on adjacent properties, public areas or roadways; c) prevent hazards; and d) avoid impacts to fish and wildlife. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on height and light levels of fixtures, light shields, setbacks, buffer areas and screening.

#### **4.6 Archeological, Cultural and Historic Resources**

1. If any item of possible archaeological interest is discovered on site, all work shall immediately stop and the (jurisdiction), Washington State Department of Archaeology and Historic Preservation, and affected Native American Tribes shall be notified of such finding. If the discovery included skeletal material of any kind, the Clark County Medical Examiner shall also be notified. The shoreline permit is temporarily suspended. All applicable state and federal permits shall be secured prior to commencement of the activities they regulate and as a condition or resumption of development activities. Development activities may resume only upon receipt of (jurisdiction) approval.
2. When a shoreline use or development is in an area known to contain archaeological artifacts and data, the applicant shall provide for a site inspection and evaluation by a professional archaeologist prior to issuance or as a condition of any shoreline permit or approval as determined by (jurisdiction). Work may not begin until the inspection and evaluation have been completed and the jurisdiction has issued its permit or approval.
3. Significant archaeological and historic resources shall be permanently preserved for scientific study, education, and for public observation when feasible. Clear interpretation of historical and archaeological resources shall be provided when appropriate.

4. Identified historical or archaeological resources shall be considered in park, open space, public access, and site planning. Access to such areas shall be designed and managed for maximum protection of the resource and surrounding environment.

#### **4.7 Critical Areas Protection**

1. Shoreline uses and developments and their associated structures and equipment shall be located, designed, installed, constructed, conducted, managed, operated, and maintained using the best available technology and best management practices to avoid and where unavoidable minimize and mitigate impacts to critical areas such that no net loss of critical area and shoreline functions is achieved.
2. Critical areas within shoreline jurisdiction shall be regulated in the same manner as critical areas outside of shoreline jurisdiction.
3. Mitigation Sequencing. A shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to avoid and, and where unavoidable minimize and mitigate impacts such that no net loss of critical area and shoreline function is achieved. Mitigation shall occur in the following order of priority:
  - a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
  - b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
  - c. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
  - d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
  - e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments through mitigation actions. This requires both monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.

**CRITICAL AREAS CODES EITHER INCORPORATED OR REFERENCED HERE.**

#### **4.8 Public Access**

1. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, 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. Provisions for adequate public access shall be incorporated into all shoreline development proposals (including land division), unless the applicant demonstrates one or more of the following:
  - a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
  - b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
  - c. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long term cost of the proposed development;
  - d. Significant environmental impacts that cannot be mitigated will result from the public access; or
  - e. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur, provided that the applicant has first demonstrated and the (jurisdiction) has determined in its findings that all reasonable alternatives have been evaluated and found infeasible, including but not limited to:
    - i. Regulating access by such means as maintaining a gate and/or limiting hours of use;
    - ii. Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazings, hedges, landscaping, etc.); and
    - iii. Provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.
4. Provisions for public access shall be required to be designed into shoreline modification projects (such as but not limited to bulkheads, revetments, beaches, jetties, dikes, and docks).
5. The minimum width of public access easements for trails shall be twenty feet (25) when a trail is not located within a public right-of-way, unless the administrator determines that undue hardship would result or that it is impractical or environmentally unsound. In such cases, easement width may be reduced only by the minimum extent necessary to meet public access standards.
6. Public access sites shall be connected directly to the nearest public street and shall include provisions for handicapped and physically impaired persons in accordance with applicable laws.

7. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, as a minimum. Said recording with the County Auditor's Office shall occur at the time of permit approval. The standard state approved logo or other locally approved signs that indicate the public's right of access and hours of access shall be constructed, installed and maintained by the applicant in conspicuous locations at public access sites. Signs may control or restrict public access as a condition of permit approval.
8. Required public access shall be fully developed and available for public use at the time of occupancy of the use or activity.
9. Future actions by the applicant successors in interest or other parties shall not diminish the usefulness or value of the public access provided.
10. Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office.

#### **4.9 Vegetation Conservation**

1. Removal of native vegetation shall be avoided. Where allowed or unavoidable, vegetation removal shall be minimized and mitigated, and shall result in no net loss of shoreline functions. Lost functions may be replaced by enhancing other functions provided that no net loss in overall functions is demonstrated and habitat connectivity is maintained. Mitigation shall be provided consistent with an approved enhancement plan.
2. Functionally significant habitat, defined as habitat that cannot be replaced or restored within 20 years, shall be preserved.
3. Excessive removal of vegetation for any purpose is prohibited except: (1) in an emergency, vegetation may be removed to the extent necessary to abate an immediate danger to life or property; or (2) when recommended or ordered in writing by the City/County Fire Marshal or Department of Natural Resources to abate a substantial fire hazard; or (3) when the vegetation is comprised of "noxious weeds" as defined by this Master Program. Excessive removal of vegetation shall be construed to mean:
  - a. Removal of more than 40% of the canopy of any tree or group of trees (calculated based on the area of the crown, or upper portion(s) comprised of branches and leaves); or
  - b. Removal of more than 40% of the trees (calculated based on the number of stems) on a single parcel; or
  - c. Removal of more than 500 square feet of brush or groundcover per parcel (for parcels of less than 10 acres) or per ten acres (for parcels of at least 10 acres).

4. Native plant materials which are equivalent to those which would typically occur with respect to size, structure, and diversity at maturation shall be used in restoration, rehabilitation, or enhancement projects. In addition, natural features such as snags, stumps, logs or uprooted trees, which support fish and other aquatic systems, and which do not intrude on the navigational channel or threaten agricultural land and existing structures and facilities, shall be left undisturbed
5. Aquatic weed control shall only occur when native plant communities and associated habitats are threatened or where an existing water-dependent use is restricted by the presence of weeds. Aquatic weed control shall occur in compliance with all other applicable laws and standards.
6. Unless otherwise stated, the vegetation conservation regulations of this Program do not apply to commercial forest practices as defined by this Program when such activities are covered under the Washington State Forest Practices Act (RCW 76.09), except where: (1) such activities are associated with a conversion to other uses or other forest practice activities over which local governments have authority; or to (2) flood control levees required to be kept free vegetation that damages their structural integrity. For the purposes of this Program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this Program, and shall be limited to the minimum necessary to accommodate an approved use.

#### **4.10 Views and Aesthetics**

1. The following standards shall apply to developments and uses within the jurisdiction of this Program:
  - a. Where commercial, industrial, mixed use, multifamily and/or multi-lot developments are proposed, primary structures shall provide for reasonable view corridors between buildings.
  - b. Buildings shall incorporate architectural features that reduce scale, including but not limited to setbacks, pitched roofs, offsets, angled facets, and recesses.
  - c. Building surfaces on or adjacent to the water shall employ materials that minimize reflected light and are compatible in terms of color and texture with the surrounding area.
  - d. Development on or over the water shall be constructed as far landward as possible to avoid interference with views from surrounding properties to the shoreline and adjoining waters.
  - e. Mechanical equipment shall be incorporated into building architectural features, such as pitched roofs, to the maximum extent possible. Where mechanical equipment

- cannot be incorporated into architectural features, a visual screen shall be provided consistent with building exterior materials that obstructs views of such equipment.
2. Vegetation removal for physical or visual access to the shoreline shall be limited to removal of exotic, invasive, or hazardous vegetation. Visual access shall be maintained, enhanced, and preserved on shoreline street-ends, public utilities, rights-of-way above and below the ordinary high water mark, and identified “view corridors.”
  3. To preserve views of the water, development in the Aquatic Designation shall be constructed so that from the OHWM waterward, no more than fifty percent (50%) of the lot or the developable water surface area is covered by buildings, pathways, docks, vessels, slips, or other structures.
  4. As part of any Master Plan or proposal for structures over thirty-five (35) feet in height, an analysis of views from residences in areas adjoining the shoreline including view corridors, view profiles, and vertical profiles from various locations shall be submitted. The views and/or view corridors to be protected are perpendicular and at angles to the water and include those views from the residential areas adjoining the shoreline and those from within the site to the water.

#### **4.11 Water Quality and Quantity**

1. The location, design, construction, and management of all shoreline uses and activities shall protect the quality and quantity of surface and ground water adjacent to the site and shall adhere to the guidelines, policies, standards, and regulations of applicable water quality management programs and related regulatory agencies.
2. All shoreline development shall comply with the applicable requirements of the \_\_\_\_ (INSERT JURISDICTION’S STORMWATER MANUAL OR CODE PROVISION).
3. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all shoreline development.
4. Pervious materials and low impact development techniques shall be used to manage stormwater runoff where soils and geologic conditions are suitable and where such practices could reduce stormwater runoff.
5. Potentially harmful materials (*note: include definition*) shall not be allowed to enter any body of water or wetland, or to be discharged onto the land except in accordance with the terms of a critical areas approval. Herbicides, fungicides, fertilizers, and pesticides shall not be applied within 25 feet of a waterbody, except in accordance with federal law.
6. All materials that may come in contact with water shall be constructed of materials that will not adversely affect water quality or aquatic plants or animals, such as untreated wood, concrete, approved plastic composites or steel. 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. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited in or above shoreline water bodies.

7. Connections that could allow conveyance of any solid, liquid or gas material not composed entirely of surface and storm water directly to water resources is prohibited, except (1) those conveying discharges pursuant to an approved NPDES or state waste discharge permit; or (2) those conveying effluent from permitted or authorized on-site sewage disposal systems to subsurface soils. Prohibited connections include floor drains inside an industrial, commercial, institutional, or residential use or development, which stores or uses hazardous materials, unless approved by the city/county for connection to sanitary sewer.
8. Where permitted, new on-site sewage systems shall be located and designed to meet all applicable water quality, utility, and health standards.
9. Equipment for the management (including but not limited to transportation, storage, distribution, handling or application) of potentially harmful materials (*note: include definition*) including but not limited to oil, chemicals, or hazardous materials(*note: include definition*) shall be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected according to all applicable federal, state, and local statutes, codes, and ordinances