

**Chapter 16.12**

**SHORELINE MASTER PROGRAM\***

**Sections:**

**Part I. Goals**

- 16.12.010 Purpose.
- 16.12.020 Scope of Shoreline Management Act.

**Part II. Definitions**

- 16.12.030 Definitions.

**Part III. General Regulations**

- 16.12.040 General regulations.
- 16.12.050 Archaeological and historic resources.
- 16.12.060 Clearing and grading.
- 16.12.070 Environmental impacts.
- 16.12.080 Environmentally sensitive areas.
- 16.12.090 Native vegetation zone.
- 16.12.100 Parking.
- 16.12.110 Public access – Visual and physical.
- 16.12.120 Utilities.
- 16.12.130 Water quality.

**Part IV. Environment Designations**

- 16.12.140 Environment designations.
- 16.12.150 Master program summary matrices.

**Part V. Specific Shoreline Use Regulations**

- 16.12.160 Agriculture.
- 16.12.170 Aquaculture.
- 16.12.180 Boating facilities.
- 16.12.190 Regulations – Boat launches.
- 16.12.200 Commercial development.
- 16.12.210 Flood hazard and storm water management.
- 16.12.220 Forest practices.
- 16.12.230 Industry.

- 16.12.240 Mining.
- 16.12.250 Recreational development.
- 16.12.260 Residential development.
- 16.12.270 Transportation facilities.
- 16.12.280 Utilities (primary and accessory).

**Part VI. Shoreline Modification Regulations**

- 16.12.290 General shoreline modification provisions.
- 16.12.300 Beach enhancement.
- 16.12.310 Shoreline armoring (revetments and bulkheads).
- 16.12.320 Dredging and dredge material disposal.
- 16.12.330 Landfill.
- 16.12.340 Piers, docks, recreational floats, and mooring buoys.

**Part VII. Administration**

- 16.12.350 General.
- 16.12.360 Permit or exemption required before undertaking development or activity.
- 16.12.370 Appeals.
- 16.12.380 Shoreline variance and shoreline conditional use permits.
- 16.12.390 Nonconforming development.
- 16.12.400 Amendments to master program.
- 16.12.410 Severability.
- 16.12.420 Inspections.

\*Prior legislation: Ords. 81-12, 81-19, 81-24, 88-16, 89-11, 92-43, and 95-02.

**Part I. Goals**

**16.12.010 Purpose.**  
 The shoreline master program is intended to implement the Shoreline Management Act by planning for and guiding the orderly development of the shoreline, protecting shoreline resources and helping to assure public access to the shoreline. The SMP helps both property

owners and city and state staff in the permitting process. It also educates the community in the use and protection of its shorelines. (Ord. 96-38, 1996)

### 16.12.020 Scope of Shoreline Management Act.

A. The Shoreline Management Act covers all shorelines of the state, including shorelines and "shorelines of state-wide significance." Figure 1-1 illustrates shoreline jurisdiction on coastal shorelines.

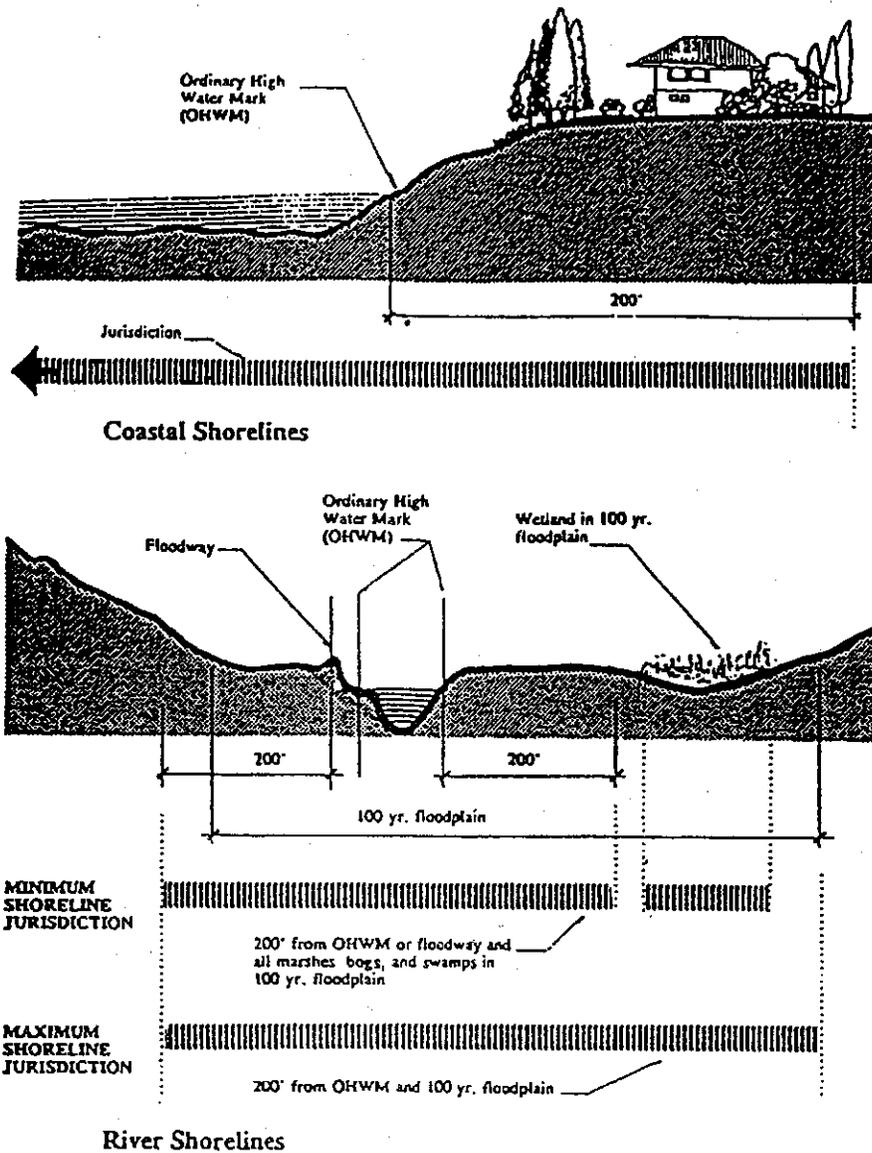


Figure 1-1 Shoreline Jurisdiction

B. Provisions of the Act apply to the following geographical shoreline areas:

1. All marine waters of the state, together with the lands underlying them;
2. Streams and rivers with a mean annual flow of 20 cubic feet per second (cfs) or more;
3. Lakes and reservoirs larger than 20 acres in area;
4. Wetlands (a specific Shoreline Management Act term which includes related upland, shoreland, and wetland areas) associated with all of the above; and
5. Shorelines of state-wide significance as defined in RCW 90.58.030 or its successor. This includes those areas of Puget Sound lying seaward from the line of extreme low tide. (Ord. 96-38, 1996)

## Part II. Definitions

### 16.12.030 Definitions.

A. For the purposes of this chapter, the following definitions shall apply:

1. "Accessory building or structure" means a subordinate building or structure that is incidental to the principal building or structure on the same lot. Accessory dwelling units are not considered accessory buildings or structures.

2. "Accessory dwelling unit" means separate living quarters contained within, or detached from, a single-family dwelling on a single lot, containing 800 square feet of floor area or less, excluding any garage area or accessory buildings, and sharing a single driveway with the primary dwelling; provided no recreational vehicle shall be an accessory dwelling unit.

3. "Accessory use" means a use that is customarily incidental and related to the principal use.

4. "Accretion" means the growth of a beach by the addition of material transported by wind and/or water. Included are such shoreforms as barrier beaches, points, spits, hooks, and tombolos.

5. "Act" means the Shoreline Management Act, Chapter 90.58 RCW or its

successor. (WAC 173-14-030(1) or its successor.)

6. "Adjacent lands" means lands adjacent to the shorelines of the state (outside of shoreline jurisdiction). The Shoreline Management Act directs local governments to develop land use controls (i.e., zoning, etc.) for such lands consistent with the policies of the Shoreline Management Act, related rules, and the local master program. (See RCW 90.58.340 or its successor.)

7. "Administrator" means director of the department of planning and community development, or designee, charged with responsibility for administering the shoreline master program.

8. Agriculture. See BIMC Title 18.

9. "Anadromous fish" means species, such as salmon, which are born in fresh water, spend a large part of their lives in the sea, and return to fresh water rivers and streams to procreate.

10. "Applicant" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit, however designated. (RCW 90.58.030(1)(d) or its successor.)

11. "Appurtenance" means a structure or development which is necessarily connected to the use and enjoyment of a single-family residence. "Normal appurtenance" means a garage, boat house, deck, driveway, utilities, fences, and grading which does not exceed 250 cubic yards, except to construct a conventional drainfield (WAC 173-14-040(1)(g) or its successor). Appurtenances must be landward of the ordinary high water mark (OHWM) and the perimeter of marshes, bogs, and swamps.

12. "Aquaculture" means the cultivation of fish, shellfish, and/or other aquatic animals or plants, including the harvesting and incidental preparation of these products for human use. Activities include the hatching, cultivating, planting, feeding, raising and harvesting of aquatic plants and animals, and the maintenance and construction of necessary equipment, buildings, and growing areas. Cultivation methods include, but are not limited

to, fish pens, shellfish rafts, racks and long lines, seaweed floats and nets, and the culture of clams and oysters on tidelands and subtidal areas.

13. "Archaeological" means having to do with the scientific study of material remains of past human life and activities.

14. "Average grade level" means 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; provided, that in case of structures to be built over water, average grade level shall be the elevation of ordinary high water. Calculation of the average grade level shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure (WAC 173-14-030(3) or its successor). Note: This definition of "average grade level" differs from the definition in the city of Bainbridge Island zoning code (BIMC Title 18). Structures within shoreline jurisdiction shall comply with the definition contained herein.

15. "Backshore" means the accretion or erosion zone, located landward of the line of ordinary high tide, which is normally wetted only by storm tides. A backshore may take the form of a more or less narrow storm berm (ridge of wave-heaped sand and/or gravel) under a bluff, or it may constitute a broader complex of berms, marshes, meadows, or dunes landward of the line of ordinary high water. It is part of the littoral drift process along its seaward boundary.

16. Backshore Marina. See "Marina."

17. "Beach" means the zone of unconsolidated material that is moved by waves, wind, and tidal currents, extending landward to the coastline.

18. "Beach enhancement/restoration" means the process of restoring a beach to a state more closely resembling a natural beach using beach feeding, vegetation, drift sills, and other non-intrusive means, as applicable.

19. "Beach feeding" means the process of replenishing a beach by delivery of materials dredged or excavated elsewhere.

20. "Beach scarp" means a steep slope produced by wave erosion.

21. "Benthic organisms" means organisms that live in or on the bottom of a body of water.

22. "Berm" means a linear mound, or series of mounds, of sand and/or gravel generally paralleling the water at, or landward of, the line of ordinary high tide. Also, a linear mound used to screen an adjacent activity, such as a parking lot, from transmitting excess noise and glare.

23. "Best available technology" means the most effective method, technique, or product available which is generally accepted in the field, and which is demonstrated to be reliable, effective, and (preferably) low maintenance.

24. Best Management Practices (BMP). See BIMC Title 18.

25. "BIMC" means Bainbridge Island Municipal Code.

26. "Biofiltration system" means a storm water or other drainage treatment system that utilizes as a primary feature the ability of plant life to screen out and metabolize sediment and pollutants. Typically, biofiltration systems are designed to include grassy swales, retention ponds, and other vegetative features.

27. "Biota" means the animals and plants that live in a particular location or region.

28. BMP. See "Best management practices."

29. "Boat house" means an upland building used primarily for boat storage. (See BIMC 16.12.260, Residential development).

30. "Boat launch or ramp" means graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

31. "Boating facilities" includes marinas, boat launch facilities, dry storage facilities, marine travel lifts, and marine railways. (See Part VI, Shoreline Modification Regulations, for mooring buoys. For boat houses, see BIMC 16.12.260, Residential development.)

32. "Bog" means a wet, spongy, poorly drained area which is usually rich in very specialized plants, contains a high percentage of organic remnants and residues, and

frequently is associated with a spring, seepage area, or other subsurface water source. A bog sometimes represents the final stage of the natural process of eutrophication by which lakes and other bodies of water are very slowly transformed into land areas.

33. "Breakwater" means offshore structure, usually aligned parallel to shore, sometimes shore-connected, that provides protection from waves.

34. "Buffer" means a parcel or area of land that is designed and designated to permanently remain vegetated in an undisturbed and natural condition to protect an adjacent aquatic or wetland area from upland impacts and to provide habitat for wildlife. The "native vegetation zone" is a buffer protecting the ecology and resources of Puget Sound. A buffer may be used to protect any sensitive area.

35. "Building" means any structure having a roof, designated for shelter of persons, animals or property.

36. "Bulkhead" means a solid or open pile wall erected generally parallel to and near the ordinary high water mark for the purpose of protecting adjacent uplands from waves or current action. Bulkheads may be built of posts and timbers, concrete, large rocks (riprap), or other materials. The normal purpose of a bulkhead is to protect land from erosion, not to create land. It is essentially a vertical structure (differentiated from a revetment, which slopes) that absorbs some of the wave energy.

37. "Channel" means an open conduit for water either naturally or artificially created, but not including artificially created irrigation, return flow, or stockwatering channels. (WAC 173-14-030(8)(b) or its successor.)

38. "City" means the city of Bainbridge Island.

39. "Clean Water Act" means the primary federal law providing water pollution prevention and control. This was previously known as the Federal Water Pollution Control Act. (See 33 USC 1251 et seq.)

40. "Clearing" means an activity associated with property modification or maintenance. Clearing means the destruction or removal of vegetative ground cover and/or trees including, but not limited to, root material removal and/or topsoil material.

41. "Coastline" means the line where terrestrial processes give way to marine processes, tidal currents, wind waves, etc.

42. "Community or joint use dock" means a structure or structures which consists of a system of piers, buoys, or floats that is intended for the common use of the residents of adjoining parcels or subdivision, short subdivision or community located on adjacent uplands. A community dock is not a commercial endeavor and is not for the purpose of serving the public. If a community or joint use dock accommodates six or more vessels, it is no longer a community or joint use dock and shall be considered a marina.

43. "Community structure" means a building, dock, or other structure which is intended for the common use of the residents of a particular subdivision or community. It is not intended to serve as a public facility.

44. "Conditional use" means a use or the expansion of a use permitted on shorelines which, because of certain characteristics, requires a special degree of control to make it consistent with the intent and provisions of the Act and these regulations, and compatible with other uses permitted on shorelines.

45. "Conditional use permit" means local governments are authorized under the Shoreline Management Act to include provisions for authorizing land uses and developments that may be permitted by conditional use permits (CUP). The purpose of the conditional use permit is to allow greater flexibility in varying the application of the use regulations of the master program.

46. "Construction limit line" means in Eagle Harbor, defined on U. S. Army, Corps of Engineers Drawing, File No. E-8-5-6, dated December 22, 1939, approved by the Secretary of War, July 2, 1940. Used in the master program for local regulatory purposes.

47. "Council" means the legislative body of the city of Bainbridge Island.

48. "Covered moorage" means boat moorage, with or without walls, that has a roof to protect a vessel or vessels.

49. "Day" means means a calendar day beginning at midnight and ending on the following midnight. When counting the number of days for notices required by the master

program, the day a notice is mailed, posted, or published is not counted, but the day of any hearing is counted. The day of the hearing shall be counted as an entire day, even though the hearing takes place before midnight and an entire 24-hour period has not passed. When counting the number of days or years for other time limits established by this title, the day a decision is made is not counted in computing the time limit.

50. "Degrade" means to scale down in desirability or salability, to impair in respect to some physical property, or to reduce in structure or function.

51. "Department" means the city's department of planning and community development.

52. "Development" means 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 of the state, subject to Chapter 90.58 RCW or its successor, at any state of water level. (RCW 90.58.030(3)(d) or its successor.)

53. "Director" means the director of the department.

54. "Dock" means a floating platform which abuts the shoreline, extending waterward from ordinary high water, or from the bottom of a ramp extending from a pier, generally used as a landing or moorage place for commercial and/or pleasure craft.

55. "Dredge spoil" means the material removed by dredging. Same as dredge material.

56. "Dredged material disposal" means depositing of dredged materials on land or into water bodies. The purpose may be to create additional lands, to dispose of the by-products of dredging, or to enhance or remedy an environmental condition.

57. "Dredging" means 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 wet-

lands. Dredging is normally done for specific purposes or uses such as constructing and maintaining navigation channels, turning basins, harbors and marinas; installing submarine pipelines or cable crossing; or repairing and maintaining dikes or drainage systems. Dredging can be accomplished with mechanical or hydraulic machines. Most dredging is done to maintain channel depths or berths for navigational purposes; other dredging is for shellfish harvesting or cleanup of polluted sediments.

58. "Drift sector" means a particular reach of marine shore in which littoral drift may occur without significant interruption, and which contains any and all natural sources of such drift as well as any shoreform(s) accreted by such drift. Each normal drift sector contains these shore process elements: feeder bluff or estuary, driftway, littoral drift, and accretion shoreform.

59. "Drift sills" means small groins which hold sediments in place without blocking longshore drift.

60. "Driftway" means that portion of the shore process corridor, primarily that lower backshore and the upper intertidal area, through which sand and gravel are transported by the littoral drift process. It is the critical link between the feeder bluff and the accretion shoreform.

61. "Dune" means a hill or ridge of sand piled up by the wind and/or wave action.

62. "Ecology (Washington State Department of Ecology)." Use of "Ecology" or "Washington State Department of Ecology" is preferred over "DOE" to avoid confusing the Washington State Department of Ecology with the federal Department of Energy.

63. "Emergency" means an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with the master program. Emergency construction is construed narrowly as that which is necessary to protect property from the elements (or its successor RCW 90.58.030(3)(e)(iii); WAC 173-14-040(1)(d) or its successor).

64. "Enhancement" means alteration of an existing wetland or habitat to improve or increase its characteristics and processes without degrading other existing functions. Enhancements are to be distinguished from wetland/habitat creation or restoration projects.

65. "Envelope" means the enclosing shell of a building's volume.

66. "Environmentally sensitive areas" means those areas with especially fragile biophysical characteristics and/or with significant environmental resources as identified by the city or by a scientifically documented inventory accomplished as part of the SEPA/NEPA process or other recognized assessment. Environmentally sensitive areas include, but are not limited to, aquifer recharge areas, wildlife habitat areas, fish breeding, rearing or feeding areas, frequently flooded areas, geologically hazardous areas (e.g., steep, unstable slopes), wetlands (i.e., marshes, bogs, and swamps), streams, tidal lagoons, mud flats, salt marshes, and marine vegetation areas.

67. "Erosion" means the wearing away of land by the action of natural forces.

68. "Estuarine zone, estuary" means the zero-gradient sector of a stream where it flows into a standing body of water, together with associated wetlands. Tidal flows reverse flow in this zone twice daily, determining its upstream limit. It is characterized by low bank channels branching off the main streamway to form a broad, near-level delta. The bank, bed, and delta materials are typically silt and clay. Banks are stable with vegetation ranging from marsh to forest, and the water is usually brackish due to daily mixing and layering of fresh and salt water. Estuarine shores are rich in aquatic and other bird and animal life, and in their natural condition are the most productive of all shoreline habitats in terms of the marine food chain.

69. "Estuary" means the zone in which fresh water and saltwater mingle and affect the total land and water habitat.

70. "Exemption" means certain developments are exempt from the definition of substantial developments and, therefore, are exempt from the substantial development per-

mit process of the Shoreline Management Act. An activity that is exempt from the substantial development provisions of the Shoreline Management Act must still be carried out in compliance with policies and standards of the Act and the local master program. Conditional use and/or variance permits may also still be required even though the activity does not need a substantial development permit. (RCW 90.58.030(3)(e) or its successor; WAC 173-14-030(6); 173-14-040 or its successor.)

71. "Extreme low tide" means the lowest line on the land reached by a receding tide. (RCW 90.58.030(2)(a) or its successor.) For the purposes of the shoreline master program, it is the contour four and one-half feet below mean lower low water (datum plane 0.0). (WAC 332-30-106(18) or its successor.)

72. "Fair market value" means the expected price at which the development can be sold to a willing buyer. For developments which involve nonstructural operations such as dredging, drilling, dumping, or filling, the fair market value is the expected cost of hiring a contractor to perform the operation, or where no such value can be calculated, the total of labor, equipment use, transportation, and other costs incurred for the duration of the permitted project. (WAC 173-14-030(7) or its successor.)

73. "Feeder bluff, erosional bluff" means any bluff (or cliff) experiencing periodic erosion from waves, sliding, or slumping, whose eroded earth, sand, or gravel material is naturally transported (littoral drift) via a driftway to an accretion shoreform. These natural sources of beach material are limited and vital for the long-term stability of driftways and accretion shoreforms.

74. "Floating home" means a nonvessel structure designed and operated substantially as a permanently based overwater residence. Floating homes lack adequate self-propulsion and steering equipment to operate as a vessel. They are typically served by permanent utilities and semi-permanent anchorage/moorage facilities.

75. "Flood hazard management" means a program or major project carried out on a single parcel or coordinated on a series of

parcels for the primary purpose of preventing or mitigating damage due to flooding. Flood hazard management projects or programs may employ physical and/or regulatory controls.

76. "Floodplain" is synonymous with 100-year floodplain, this is that land area susceptible to being inundated by stream-derived waters with a one percent chance of being equaled or exceeded in any given year. The limits of this area are based on flood regulation ordinance maps or a reasonable method that meets the objectives of the Shoreline Management Act. (WAC 173-22-030(2) or its successor.)

77. "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse, and upon which flood waters are carried during periods of flooding that occur with reasonable regularity, though not necessarily annually. The floodway is identified, under normal conditions, by changes in surface soil conditions, or changes in types or quality of vegetative ground cover conditions. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state. The limits of the floodway are based on flood regulation ordinance maps or by a reasonable method which meets the objectives of the Shoreline Management Act. (RCW 90.58.030(2)(g) or its successor; WAC 173-22-030(3) or its successor.)

78. "Foreshore" means, in general terms, the beach between mean higher high water and mean lower low water.

79. Foreshore Marina. See "Marina."

80. "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used in away which is incompatible with timber growing. (WAC 222-16-010 or its successor.)

81. "Forest practice" means any activity conducted on, or directly related to, forest land and relating to growing, harvesting, or processing timber. This includes: (1) site preparation and regeneration; (2) protection from insects, fire, and disease; (3) silvicultural prac-

tices such as thinning, fertilization, and release from competing vegetation; and (4) harvesting. Forest practices do not include log storage. (See "Industrial use.") These activities include, but are not limited to, road and trail construction, final and intermediate harvesting, precommercial thinning, reforestation, fertilization, prevention and suppression of disease and insects, salvage of trees, and brush control. (See WAC 222-16-010(21) or its successor.)

82. "Gabions" means structures composed of masses of rocks, rubble, or masonry held tightly together, usually by wire mesh, to form blocks or walls. Sometimes used on heavy erosion areas to retard wave action, or as foundations for breakwaters or jetties.

83. "Grading," an activity associated with property modification or maintenance, means the physical manipulation of the earth's surface and/or surface drainage pattern without significantly adding or removing on-site materials.

84. "Grassy swale" means a vegetated drainage channel that is designed to remove various pollutants from storm water runoff through biofiltration.

85. "Groin," also referred to as a spur dike or rock weir, is a barrier-type structure extending from the backshore or streambank into a water body, generally perpendicular to the shore, for the purpose of protecting a shoreline and adjacent upland by influencing the movement of water and/or deposition of materials.

86. "Habitat" means the place or type of site where a plant or animal naturally or normally lives and grows.

87. "Height" means the distance measured from the average grade level to the highest point of a structure. Television antennas, chimneys, and similar structures or appurtenances shall not be used in calculating height except where they obstruct the view of residences adjoining such shorelines. Temporary construction equipment is excluded in this calculation. (WAC 173-14-030(9) or its successor.) For all over-water structures, height shall be measured from ordinary high water mark.

88. "Hook" means a spit or narrow cape of sand or gravel which turns landward at its outer end.

89. "Houseboat" means a particular type of vessel licensed and designed for use as a mobile structure with adequate self-propulsion and steering equipment to be operated as a vessel but also characterized by detachable utilities or facilities for residential use. When principally used as an over-water residence, it is a "live-aboard vessel."

90. "HPA" means hydraulic project approval. The permit issued by the Washington State Department of Fish and Wildlife pursuant to the State Hydraulic Code, RCW 75.20.100 through 75.20.140 or its successor.

91. "Hydric soils" means, generally, soils which are, or have had a history of being, wet long enough to periodically produce anaerobic conditions, thereby influencing the growth of plants. (WAC 173-22-030(5) or its successor.)

92. "Hydrophytes" means those plants capable of growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. (WAC 173-22-030(5) or its successor.)

93. "In-kind" means to replace wetlands, biota or other organisms with substitute flora or fauna whose characteristics closely match those destroyed, displaced, or degraded by an activity.

94. "Industrial use" means uses intended primarily to provide for ship and boat building, haul out and repair and related uses serving boating needs.

95. "Intertidal" means the substratum from the extreme low water of spring tides to the upper limit of spray or influence of ocean-driven salts. It includes all land that is sometimes submerged, but sometimes exposed to air. (Source: M.N. Dethier, A Marine and Estuarine Habitat Classification System for Washington State 10 (Washington State Department of Natural Resources, Washington Natural Heritage Program, 1990)).

96. "Jetty" means a structure projecting out into the sea at the mouth of a river for the purpose of protecting a navigation channel or harbor, or to influence water currents.

97. Lagoon. See "Tidal lagoon."

98. "Landfill" means the placement of soil, sand, rock, gravel, existing sediment or other material (excluding solid waste) to create new land, tideland or bottom land area along the shoreline below the OHWM, or on wetland or upland areas in order to raise the elevation.

99. "Levee" means a large dike or embankment, often having an access road along the top, which is designed as part of a system to protect land from floods.

100. "Limited utility extension" means the extension of natural gas, electricity, telephone, water, or sewer service where all of the following are met: (a) the extension is categorically exempt under the Washington State Environmental Policy Act (SEPA) (see WAC 197-11-800(24) or its successor) for the utility improvements which are categorically exempt under SEPA; (b) the extension will serve existing uses that are in compliance with the Shoreline Management Act; and (c) the project does not involve the construction of more than 2,500 linear feet of utility lines or pipes within shoreline jurisdiction.

101. "Littoral" means living on, or occurring on, the shore.

102. "Littoral drift" means the movement of mud, sand, or gravel material parallel to the shoreline in the nearshore zone by waves and currents.

103. "Live-aboard vessel" means a vessel licensed and designed for use as a mobile structure with adequate self-propulsion and steering equipment to be operated as a vessel, but which is principally used as an over-water residence. "Principal use as an over-water residence" means essentially full-time occupancy within the city's jurisdiction for a total of more than 60 days, whether or not consecutive, in any calendar year.

104. "Marina" means a commercial or public facility with the primary purpose of providing moorage for six or more vessels, which consists of a system of piers, buoys, or floats. Foreshore marinas are located in the intertidal or offshore zone (the aquatic environment). Backshore marinas are located landward of OHWM. There are two common types of backshore marinas, one with wet moorage that

is dredged out of the land to artificially create a basin, and the other, dry moorage, which has upland storage with a hoist, marine travel lift, or ramp for water access. Open water marinas, including open water moorage and anchorage areas, are generally located in the center of a water body to provide moorage in addition to any marinas and docks along the edge of the water body.

105. "Marine railway" means a set of rails running from the upland area into the water upon which a cart or dolly can carry a boat to be launched.

106. "Marine travel lift" means a mechanical device that can hoist vessels off trailers and transport them into the water. Often associated with dry land moorage.

107. "Marsh" means soft, wet area periodically or continuously flooded to a shallow depth, usually characterized by a particular subclass (monocotyledons) of grasses, cattails, and other low plants.

108. "Marshes, bogs, and swamps" means lands transitional between terrestrial and aquatic systems where saturation with water is the dominant factor determining plant and animal communities and soil development. Such lands must have one or more of the following attributes: (a) at least periodically, the land predominately supports hydrophytes; and/or (b) the substrate is predominately undrained hydric soil. (WAC 173-22-030(5) or its successor.) See "Hydric soils;" "Hydrophytes."

109. "Mean higher high tide (MHHT)" means the plane of the arithmetic mean of the higher of two daily high tides calculated from the most recent 19-year tidal cycle.

110. "Mean low water (MLW)" means the plane of the arithmetic mean of all low tides calculated from the most recent 19-year tidal cycle.

111. "Mean lower low water (MLLW)" means the plane of the arithmetic mean of the lower of two daily low tides calculated from the most recent 19-year tidal cycle (datum plane 0.0).

112. "Midden" means an ancient refuse heap. Often a source of archaeological material.

113. "Mining" means removal and primary processing of naturally occurring materials from the earth for economic use. "Processing" includes screening, crushing, stockpiling – all of which utilize materials removed from the site where the processing activity is located. Processing does not include the manufacture of molded or cast concrete, or asphalt products, asphalt mixing operations, or concrete batching operations.

114. "Mooring buoy" means a floating object anchored to the bottom of a water body that provides tie-up capabilities for vessels.

115. "Muds" means sediments in which the size of the particles is smaller than one-sixteenths mm. In order for sediments in a tidal inlet to be classified as critical habitat, they need to contain at least 30 percent by weight of mud (i.e., 30 percent of the sediments, by weight, have to pass through a one-sixteenths mm mesh sieve).

116. "Multifamily dwelling or residence" means a building containing two or more dwelling units including, but not limited to, duplexes, apartments, and condominiums.

117. "Native vegetation zone" means a required vegetation buffer measured horizontally upland from and perpendicular to the ordinary high water mark (OHWM).

118. "Natural riparian habitat corridor" means the streamside environment maintained in its natural state, primarily for fisheries and wildlife habitat, and water quality improvements, and, secondarily, for flood control works, while allowing controlled access to avoid damage to the resource.

119. "Nonconforming development" means a shoreline use or structure which was lawfully constructed or established prior to the effective date of the applicable Shoreline Management Act/SMP provision, and which no longer conforms to the applicable shoreline provisions. (WAC 173-14-055(1) or its successor.)

120. "Nonwater-oriented uses" serve to describe those uses which have little or no relationship to the shoreline and are not con-

sidered priority uses under the Shoreline Management Act. Nonwater-oriented use examples include professional offices, automobile sales or, repair shops, mini-storage facilities, multifamily residential development, department stores, and gas stations.

121. Normal Appurtenance. See "Appurtenance."

122. "Normal maintenance" means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. (WAC 173-14-040(1)(b) or its successor.) See "Normal repair."

123. Normal Protective Bulkhead. See "Bulkhead."

124. "Normal repair" means 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. (WAC 173-14-040(1)(b) or its successor.) See "Normal maintenance."

125. "Oil/water separator" means specialized catch basins that are designed to trap oil and other materials lighter than water in the basin while allowing the water to escape through the drainage system.

126. Open Space. See BIMC Title 18.

127. "Open water moorage and anchorage area" means a designated area of state-owned aquatic lands leased for the moorage and anchorage of vessels that does not abut uplands and does not include a built connection to the uplands. Open water moorage and anchorage areas are leased only by municipalities in accordance with Chapter 332-30 WAC and subject to the restrictions therein.

128. "Ordinary high water mark (OHWM)" means that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation as that condition existed 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

Washington State Department of Ecology; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining saltwater shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water. (See RCW 90.58.030(2)(b) or its successor and WAC 173-22-030(6) or its successor.)

129. "Parking" means the temporary storage of automobiles or other motorized vehicles.

130. "Periodic" means occurring at regular intervals.

131. "Person(s)" includes organizations and corporations.

132. "Pier" means a fixed platform above the water which abuts the shoreline, extending waterward from ordinary high water, and which is generally used as a landing or moorage place for industrial, commercial, and/or pleasure craft.

133. "Point" means a low profile shoreline promontory of more or less triangular shape, the top of which extends seaward.

134. "Principal building, adjacent" means a principal building located on a lot abutting the applicant's lot.

135. "RCW" means Revised Code of Washington.

136. "Recreation" means refreshment of body and mind through forms of play, sports, relaxation, amusement or contemplation.

137. "Recreational development, active" means activities that generally require the use of constructed facilities such as playgrounds, athletic fields, boat ramps, and marinas.

138. "Recreational development, passive" means activities that require a minimum of facilities such as swimming, picnicking, hiking, canoeing and fishing.

139. "Recreational floats" means anchored off-shore platforms used for water-dependent recreational activities such as swimming and diving.

140. "Replacement area" means an area of replacement native vegetation which compensates for the disturbance of a portion of

the required native vegetation zone. (See BIMC 16.12.090.C.9 and C.10 for requirements that must be met to allow for such disturbance.)

141. "Residential development" means construction or alteration of one or more buildings, structures, or portions thereof which are designed for and used to provide a place of abode for human beings. This includes single-family residences and multifamily dwellings, accessory uses, and structures normally associated with residential uses and structures. Residential development includes land divisions, including short plats, of residentially zoned land. It also includes all modifications to land and vegetation associated with construction, preparation, or maintenance of residential structures or accessory structures.

142. "Restoration" means to revitalize or re-establish the characteristics and natural processes of a degraded shoreline resource.

143. "Revetment" means a sloping structure built to protect a scarp, embankment, or shore against erosion by waves or currents. Usually built of riprap, with a heavy armor layer, one or more filter layers of smaller rock or filter cloth, and "toe" protection. A revetment slopes shoreward and has a rough or jagged facing. Its sloping face absorbs wave energy and differentiates it from a bulkhead, which is a vertical structure.

144. "Riparian" means of, on, or pertaining to the banks of a river.

145. "Riparian management zone" means a specified area alongside a shoreline where specific measures are set out in the forest practice regulations to protect water quality and fish and wildlife habitat. (Chapter 222-30 WAC or its successor.)

146. "Riprap" means a layer, facing, or protective mound of stones placed to prevent erosion, scouring, or sloughing of a structure or embankment.

147. Rock Weir. See "Groin."

148. "Runoff" means water that is not absorbed into the soil, but rather flows along the ground surface following the topography.

149. "Salmon and steelhead habitats" means gravel bottom streams, creeks, and riv-

ers used for spawning; streams, creeks, rivers, side channels, ponds, lakes, and wetlands used for rearing, feeding, cover and refuge from predators and high water; streams, creeks, rivers, estuaries, and shallow areas of saltwater bodies used as migration corridors; and saltwater bodies used for rearing, feeding, and refuge from predators and currents.

150. "Salt tolerant vegetation" means vegetation which is tolerant of interstitial soil salinities greater than or equal to 0.5 parts per thousand. (Chapter 173-22 WAC or its successor.)

151. "Scarification" means loosening the top soil and/or disrupting the forest floor in preparation for regeneration.

152. "Seawall" means structure separating land and water areas primarily to prevent erosion and other damage by wave action. Generally more massive and capable of resisting greater wave forces than a bulkhead or revetment.

153. "Seaward" means to or toward the sea.

154. "Sediment" means the material deposited by water or wind.

155. "Setback" means the required distance measured horizontally from the ordinary high water mark to any allowed development.

156. "Shoreland areas" means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark, floodways and contiguous floodplain areas landward 200 feet from such floodways, and all wetlands, including river deltas associated with streams, rivers and tidal waters which are subject to the provisions of this chapter, the same to be designated as to location by the Department of Ecology.

157. Shorelands. See "Shoreland areas."

158. "Shoreline armoring" means structural protection from wave erosion including revetments, bulkheads, seawalls, gabions, and so forth.

159. "Shoreline environment designations" means the categories of shorelines established by local shoreline master programs

in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas. (WAC 173-16-040(4) or its successor.)

160. "Shoreline jurisdiction (associated wetlands (jurisdictional))" means the proper term describing all of the geographic areas covered by the Shoreline Management Act, related rules, and the applicable master program. Those lands extending landward for 200 feet in all directions, as measured on a horizontal plane from the ordinary high water mark, floodways and contiguous floodplain areas landward 200 feet from such floodways, and all marshes, bogs, swamps, and deltas associated with the streams, lakes, and tidal waters subject to the Shoreline Management Act. (See RCW 90.58.030(2)(f) or its successor, WAC 173-16-030(17) or its successor, WAC 173-22-030(10) or its successor.) Also, such areas within a specified local government's authority. See definitions of "Shorelines," "Shorelands," "Shorelines of the state," "Shorelines of state-wide significance," and "Wetlands, jurisdictional."

161. "Shoreline Management Act" means the Shoreline Management Act of 1971, Chapter 90.58 RCW, as amended.

162. "Shoreline permit" means a substantial development, conditional use, revision, variance, or any combination thereof. (WAC 173-14-030(13) or its successor.)

163. "Shoreline stabilization and flood protection" means actions taken to reduce adverse impacts caused by current, flood, wake, or wave action. These actions include all structural and nonstructural means to reduce impacts due to flooding, erosion, and accretion. Examples of specific structural and nonstructural shoreline modification activities include revetments, riprap, bulkheads, and bank stabilization.

164. "Shoreline substantial development permit" means a mechanism through which the city determines whether a proposed development or activity complies with the state of Washington Shoreline Management Act (Chapter 90.58 RCW or its successor) and the master program.

165. "Shorelines" means all of the water areas of the state, including reservoirs and their associated wetlands, together with the lands underlying them, except those areas excluded under RCW 90.58.030(2)(d) or its successor and shorelines of state-wide significance.

166. "Shorelines hearings board (SHB)" means a six-member, quasi-judicial body, created by the shoreline master program, which hears appeals by any aggrieved party on the issuance of a shoreline permit and appeals by local government on Washington State Department of Ecology approval of master programs, rules, regulations, guidelines, or designations under the Shoreline Management Act. (RCW 90.58.170 or its successor; RCW 90.58.180 or its successor; WAC 173-14-170 or its successor; WAC 173-14-174 or its successor.)

167. "Shorelines of state-wide significance" means a select category of shorelines of the state, defined in RCW 90.58.030(2)(e) or its successor, where special preservation policies apply and where greater planning authority is granted by the Shoreline Management Act. (RCW 90.58.020 or its successor.) Within the city's jurisdiction all those areas lying seaward from the line of extreme low tide are shorelines of state-wide significance. (RCW 96.58.030(1)(e)(iii) or its successor.)

168. "Shorelines of the state" means shorelines and shorelines of state-wide significance.

169. "Sign" means any letter, figure, design, symbol, trademark or other device which is intended to attract attention to any activity, service, place, political office, subject, firm, corporation or merchandise, except traffic signs or signals, public or court notices, signs not visible from the public right-of-way or adjacent properties, signs on moving vehicles, newspapers, leaflets or other printed materials intended for individual use or individual distribution to members of the public, government flags, flags and bunting exhibited to commemorate national patriotic holidays and temporary banners announcing charitable or civic events.

170. "Single-family residence (SFR)" means a detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership which are a normal appurtenance. (WAC 173-14-040(1)(g) or its successor.)

171. "Soil bioengineering" means an applied science that combines structure, biological, and ecological concepts to construct living structures that stabilize the soil to control erosion, sedimentation, and flooding using live plant materials as a main structural component.

172. "Solid waste" means solid and semi-solid wastes, including garbage, rubbish, ashes, industrial wastes, wood wastes, and sortyard wastes associated with commercial logging activities, swill, demolition and construction wastes, abandoned vehicles and parts of vehicles, household appliances, and other discarded commodities. Solid waste does not include wastewater, dredge material, agricultural, or other commercial logging wastes not specifically listed above. See "Landfill" and "Dredged material disposal".

173. "Solid waste disposal" means discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste, including hazardous waste, on land or in the water.

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

175. Spur Dock. See "Groin."

176. "SSDP" means shoreline substantial development permit.

177. "Structure" means 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. (WAC 173-14-030(15) or its successor.)

178. "Subdivision" means the division or redivision of land, including short subdivi-

sions, for the purpose of sale, lease, or conveyance.

179. "Substantial development" means any development of which the total cost or fair market value exceeds \$2,500 (or another amount established in RCW 90.58.030(3)(e) or its successor), or any development which materially interferes with the normal public use of the water or shorelines of the state, except as specifically exempted pursuant to RCW 90.58.030(3)(e) or its successor and WAC 173-14-040 or its successor. See definitions for "Development" and "Exemption."

180. "Substantial progress" means substantial progress toward completion of a permitted activity includes all of the following, where applicable: the making of contracts, signing of notice to proceed, completion of grading and excavation and the laying of major utilities or, where no construction is involved, commencement of the activity. (WAC 173-14-060 or its successor.)

181. "Subtidal" means the area of the marine environment below extreme low tide.

182. "Sustainable development" means development which maintains a balance between the health of the natural environment and the needs of the human community which lives within it.

183. "Swamp" means a depressed area flooded most of the year to a depth greater than that of a marsh and characterized by areas of open water amid soft, wetland masses vegetated with trees and shrubs. Extensive grass vegetation is not characteristic.

184. "Terrestrial" means of or relating to land as distinct from air or water.

185. "Tidal flats" means marshy or muddy areas of the seabed which are covered and uncovered by the rise and fall of tidal water.

186. "Tidal inlet" means a saltwater bay, subject to the daily influence of the tides, whose mouth is narrower than its length. The inlet is considered to be all lands and waters seaward of the ordinary high water mark, arid extending to its mouth. Within tidal inlets, specific areas that constitute critical habitat are

designated for special protection under the master program.

187. "Tidal lagoon" means a body of saline water (salinity greater than 0.5 parts per thousand) with a constricted or subsurface outlet that is subject to the periodic, but not necessarily daily, exchange of water with Puget Sound or a tidal inlet. The exchange may occur seasonally, during storms, or during the highest spring tides. The connection between the sea and the lagoon does not necessarily have to be on the surface; the connection can be subsurface through permeable gravel or sand berms.

188. "Tidal water" includes marine and estuarine waters bounded by the ordinary high water mark. Where a stream enters the tidal water, the tidal water is bounded by the extension of the elevation of the marine ordinary high water mark within the stream. (WAC 173-22-030(9) or its successor.)

189. "Tidelands" means land on the shore of marine water bodies between the line of ordinary high tide and the line of extreme low tide.

190. "Toxic material" means any material-damaging marine life including, but not limited to, paints, varnishes, anti-fouling agents, bleaches, petroleum, and contaminated bilge wastewater.

191. "Transient moorage" means moorage for a stay of less than two weeks.

192. "Transportation facilities" means 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 facilities.

193. "Upland" means generally described as the area above and landward of the OHWM.

194. "Utilities, accessory" means small scale distribution systems directly serving a permitted shoreline use. They include power, telephone, cable, water, sewer, septic, and storm water lines.

195. "Utilities, primary" means facilities that produce, transmit, carry, store,

distribute, or process electric power, gas, water, sewage, or information. Primary utilities include solid waste handling and disposal facilities, wastewater treatment facilities, utility lines, electrical power generating or transfer facilities, radio, cellular telephone and microwave tower, and gas distribution and storage facilities.

196. "Variance" means a means to grant relief from the specific bulk, dimensional, or performance standards specified in the applicable master program. Variance permits must be specifically approved, approved with conditions, or denied by the Washington State Department of Ecology. (See WAC 173-14-150 or its successor.)

197. "Vessel" means a ship, boat, barge, or any other floating craft which is designed and used for navigation and does not interfere with normal public use of the water. (WAC 173-14-030(18) or its successor.)

198. "View corridor" means an area free of buildings and other view-blocking structures which provides visual access to water and/or the shoreline.

199. "WAC" means Washington Administrative Code.

200. "Water-bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which cause soil movement and erosion.

201. "Water-dependent use" means a use or a portion of a use which requires direct contact with the water and cannot exist at a nonwater location due to the intrinsic nature of its operations. Examples of water-dependent uses may include ship cargo terminal loading areas, ferry and passenger terminals, barge loading facilities, ship building and dry docking, marinas, aquaculture, float plane facilities, and sewer outfalls.

202. "Water-enjoyment use" means a recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use, or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which

through the location, design, and operation ensure 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 foster shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to, parks, piers, and other improvements facilitating public access to shorelines of the state. General water-enjoyment uses may include, but are not limited to, restaurants, museums, aquariums, educational/scientific reserves, resorts, and mixed use commercial; provided, that such uses conform to the above water-enjoyment specifications and the provisions of the master program.

203. "Water-oriented use" refers to any combination of water-dependent, water-related and/or water-enjoyment uses and serves as an all-encompassing definition for priority uses under the Shoreline Management Act.

204. "Water-related" means a use or a portion of a use which is not intrinsically dependent on a waterfront location, but whose economic viability is dependent upon a waterfront location because:

a. Of a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

b. The use provides a necessary service supportive of the water-dependent commercial activities and the proximity of the use to its customers makes its services less expensive and/or more convenient. Examples include: (i) manufacturers of ship parts large enough that transportation becomes a significant factor in the product(s) cost; (ii) professional services serving primarily water-dependent activities; and (iii) storage of water-transported foods.

Examples of water-related uses may include warehousing of goods transported by water, seafood processing plants, hydroelectric generating plants, gravel storage when transported by barge, oil refineries where transport is by tanker, and log storage.

205. "Wave direction" means the direction from which waves approach an observer.

206. "WDFW" means Washington State Department of Fish and Wildlife.

207. Washington State Department of Ecology. See "Ecology."

208. "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands that were created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

209. "Wetlands, jurisdictional." See "Shoreland areas."

210. "Zoning" means to designate by ordinance, including maps, areas of land reserved and regulated for specific land uses. (Ord. 2007-16 §§ 7, 8, 2007; Ord. 2003-30 § 1, 2003; Ord. 96-38, 1996)

### Part III. General Regulations

#### 16.12.040 General regulations.

The following general regulations apply to all environments. These provisions are to be used in conjunction with the more specific shoreline use (referred to as "uses") and shoreline modification activity (referred to as "activities") regulations.

A. All new shoreline uses and shoreline modification activities, including those that do not require a shoreline substantial development permit, must conform to all applicable goal provisions, general provisions, environment designation provisions (including the shoreline environment maps), specific shore-

line use provisions and shoreline modification activity provisions.

B. Shoreline modification activities must be in support of an allowable shoreline use which conforms to the provisions of the master program. Except as otherwise noted, all shoreline modification activities not associated with a legally existing or approved shoreline use are prohibited.

C. Shoreline uses, modification activities, and conditions listed as "prohibited" shall not be eligible for consideration as a shoreline variance or shoreline conditional use permit.

D. The policies listed in the master program\* shall provide broad guidance and direction and shall be used by the director in interpreting the "regulations."

This page left intentionally blank.

E. Where provisions of this master program conflict, the more restrictive provisions shall apply unless specifically stated otherwise. (Ord. 96-38, 1996)

\*Code reviser's note: The policies of the shoreline master program are contained in Ordinance 96-38 and may be found on file in the city clerk's office.

#### **16.12.050 Archaeological and historic resources.**

A. Applicability. Where archaeological or historical resources are either recorded at the State Historic Preservation Office and/or with the city of Bainbridge Island, or where they have been uncovered, the following regulations apply.

##### **B. Regulations.**

1. All shoreline permits shall contain provisions which require developers to immediately stop work and notify the city if any phenomena of possible archaeological interest are uncovered during excavation. In such cases, the developer shall be required to provide for a site inspection and evaluation by a professional archaeologist to ensure that all possible valuable archaeological data is properly salvaged. The developer shall receive permission from the State Office of Archaeology and Historic Preservation prior to further disturbance of the site. (RCW 27.53.070 or its successor.)

2. Permits issued in areas known to contain archaeological artifacts and data shall include a requirement that the developer provide for a site inspection and evaluation by an archaeologist. The permit shall require approval by the city before work can begin on a project following inspection. Significant archaeological data or artifacts shall be recovered before work begins.

3. Significant archaeological and historic resources shall be permanently preserved for scientific study, education, and public observation. When the city determines that a site has significant archaeological, natural scientific or historical value, a substantial development permit which would pose a threat to the resources of the site shall not be issued. The city may require that development be

postponed in such areas to allow investigation of public acquisition potential, retrieval and preservation of significant artifacts, and/or development of a mitigation plan.

4. In the event that unforeseen factors constituting an emergency, as defined in RCW 90.58.030 or its successor, necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from any shoreline permit requirements. The city shall notify the Washington State Department of Ecology, the State Attorney General's Office, and the State Historic Preservation Office of such a waiver in a timely manner.

5. Archaeological sites, including middens, located both in and outside the shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian Graves and Records) or its successor and Chapter 27.53 RCW (Archaeological Sites and Records) or its successor and shall comply with Chapter 25-48 WAC or its successor as well as the provisions of the master program.

6. Archaeological excavations may be permitted subject to the provisions of this program.

7. Identified historical or archaeological resources shall be considered for site planning in park, open space, public access, and site planning with access to such areas designed and managed so as to give maximum protection to the resource and surrounding environment.

8. Interpretive signs of historical and archaeological features shall be provided when appropriate.

9. Areas of known or suspected archaeological middens shall not be disturbed and shall be fenced and identified during construction projects on the site. (Ord. 96-38, 1996)

#### **16.12.060 Clearing and grading.**

A. Purpose. The purpose of the clearing and grading section is to ensure that shoreline uses and activities are designed and conducted in a manner to minimize damage to the ecology and environment of the shoreline area.

B. Applicability. All shoreline uses and activities must conform to the clearing and

grading provisions herein, including development which does not require a shoreline permit. (See also BIMC 16.12.130, Water quality, for related provisions.)

#### C. Regulations.

1. Clearing and grading shall be permitted landward of the native vegetation zone when associated with a permitted shoreline use; provided, that upon completion of construction, remaining cleared areas shall be replanted within the first applicable planting season. Replanted areas shall be fully re-established within three years of completion of construction and shall be properly maintained.

2. Except as provided for in this program, existing native vegetation between the OHWM and the top of any bank 10 feet or higher that is waterward of the development shall be retained.

3. All vegetation that is within the native vegetation zone or other buffer and which is likely to be disturbed by the clearing and grading activity shall be protected by a temporary fence or other marking determined by the city to adequately protect the vegetation. This also includes root zones of trees which must remain. The temporary fencing/markings shall be installed and approved by the city before any clearing and grading begins, and maintained until construction is completed.

4. Land alteration (clearing, grading, filling) shall be limited to the minimum necessary for development. Surface drainage systems or substantial earth modifications involving greater than 500 cubic yards of material shall be designed by a licensed engineer to prevent maintenance problems or adverse impacts to shoreline features. (Ord. 96-38, 1996)

### 16.12.070 Environmental impacts.

A. Purpose. Minimizing the impacts shoreline uses and activities have on the environment is a key purpose of the Shoreline Management Act. This section addresses those issues.

B. Applicability. All shoreline uses and activities, including development which does

not require a shoreline permit, must conform to these environmental impact provisions.

#### C. Regulations.

1. The location, design, construction, and management of all shoreline uses and activities shall protect the quality and quantity of surface and groundwater adjacent to the site and shall adhere to the guidelines, policies, standards, and regulations of applicable water quality management programs and regulatory agencies.

2. Solid waste, liquid waste, and untreated effluent (i.e., discharge from a source containing pollutants) shall not be allowed to enter any water bodies or to be discharged onto land. If there is evidence of discharge, the activity shall be suspended until the deficiency has been satisfactorily corrected.

3. The release of oil, chemicals, or other hazardous materials onto or into the water is prohibited. Equipment for the transportation, storage, handling, or application of such materials shall be maintained in a safe and leak-proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.

4. All shoreline uses and activities shall utilize effective measures to minimize any increase in surface water runoff and to control, treat, and release surface water runoff so that receiving water quality and shore properties and features are not adversely affected. Such measures may include, but are not limited to, dikes, catch basins, or settling ponds, installation and required maintenance of oil/water separators, grassy swales, interceptor drains and landscaped buffers.

5. All shoreline uses and activities shall utilize effective erosion control methods during project construction and operation.

6. All shoreline uses and activities shall be located, designed, constructed, and managed to minimize adverse impacts to fish and wildlife resources including spawning, nesting, rearing and habitat areas, and migratory routes.

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

managed to minimize interference with beneficial natural shoreline processes such as water circulation, sand and gravel movement, erosion, and accretion.

8. The location, design, construction, and management of shoreline uses and activities shall minimize adverse impacts to surrounding land and water uses.

9. The location, design, construction and management of shoreline uses and activities shall avoid hazards to public health and safety.

10. All shoreline uses and activities shall be located and designed to minimize the need for shoreline stabilization measures and flood protection. (See Part VI, Shoreline Modification Regulations.)

11. Herbicides and pesticides shall not be allowed to directly enter water bodies or wetlands unless approved for such use by the appropriate agencies (Washington State Department of Agriculture or Washington State Department of Ecology, U.S. Department of Agriculture, Environmental Protection Agency).

12. See BIMC 16.12.080, Environmentally sensitive areas, for additional provisions which may apply. (Ord. 96-38, 1996)

### **16.12.080 Environmentally sensitive areas.**

A. Applicability. Environmentally sensitive areas are primarily regulated through Chapter 16.20 BIMC, Critical Areas. The provisions in the master program supplement those regulations and apply to all uses and activities, including those which do not require a shoreline substantial development permit.

#### **B. Regulations.**

1. When a development site includes some or all of one or more environmentally sensitive areas, or part of a native vegetation zone(s) for such area(s), the sensitive features and their native vegetation zones shall be left undisturbed and maintained as open space, except as permitted by other provisions of the shoreline master program. All development shall be set back far enough to avoid damage to such features and their native vegetation zones.

2. Native vegetation zones shall be equal to those buffers established in Chapter 16.20 BIMC, Critical Areas, as amended, except that native vegetation zones from Puget Sound shall be those established in the master program. (See BIMC 16.12.090, Native vegetation zone, and Part IV, Table 4-2.)

3. Subsection B.2 of this section notwithstanding, native vegetation zones from those portions of Puget Sound which exhibit unique, rare and/or fragile resources (including, but not limited to, tidal lagoons, mud flats, and salt marshes) may be increased under Chapter 16.20 BIMC.

4. When sensitive areas and/or sensitive area native vegetation zones are disturbed, revegetation with native or other approved vegetation shall be required. (See BIMC 16.12.060, Clearing and grading, for regulations protecting sensitive areas during construction.)

5. Fish and wildlife habitat enhancement or restoration shall be allowed when approved by appropriate resource agencies.

6. If development results in impacts to a sensitive area, in-kind and on-site replacement of resource functions shall be provided unless it is found that in-kind and on-site replacement is not feasible or practical due to the physical characteristics of the site, and/or that a greater benefit can be demonstrated by an alternative location. In such cases, substitute resources of equal or greater ecological value shall be provided.

7. The functions of replacement areas shall be equal to or greater than those being altered. The replacement ratio will be determined on a case-by-case basis and shall be proposed in a mitigation plan developed by appropriate experts, approved by the director and paid for by the applicant. All mitigation plans shall also be approved by resource agencies.

8. Where sensitive area replacement activities are proposed, an applicant shall permanently protect the replacement area through legal instruments such as sensitive area tracts, conservation easements, or a comparable use restriction. (Ord. 96-38, 1996)

**16.12.090 Native vegetation zone.**

A. Definition and Purpose. The native vegetation zone is a required vegetation buffer encompassing all uplands from the OHWM to the dimension specified for that particular shoreline environment. Its purpose is to protect and enhance the Island's natural character, water quality, native plant communities, and wildlife habitat along the shoreline.

B. Applicability. The native vegetation zone provisions apply to all shoreline development, uses, and activities, including those which do not require a shoreline permit, and to existing development. Standards for the native vegetation zone are based on the use category and the environment designations and are provided in Part IV, Environment Designations, Table 4-2. In some cases, the standards are further refined by regulations in Part V, Specific Use Regulations. (See specifically BIMC 16.12.260, Residential development.)

C. Regulations.

1. A vegetation buffer, called a native vegetation zone, shall be maintained immediately landward of the OHWM. The dimensions of the zone shall be those established for the particular use and environment. (See Part IV, Environment Designations, specifically Table 4-2.)

2. Existing native vegetation within this zone shall remain unless specifically allowed to be altered or removed under the provisions of this section or Part V, Specific Shoreline Regulations.

3. New plantings in this zone shall be native plant species, or other approved species, similar in diversity, type, density, wildlife habitat value, water quality characteristics and slope stabilizing qualities to the original vegetation.

4. Removal of nonnative plants and plants on the state noxious weed list shall be allowed within the native vegetation zone.

5. Within the native vegetation zone, normal nondestructive pruning and limbing of native vegetation for maintenance and view shall be allowed provided it does not threaten the health of the vegetation. Individual tree cutting to remove a hazard may be allowed by

the director, subject to a report by an arborist or other approved expert.

6. No clearing, grading, or construction may be undertaken within the native vegetation zone unless specifically provided for in this section or in Part VI, Specific Shoreline Use Regulations.

7. A path to the shoreline not more than four feet in width, constructed by hand and designed to minimize environmental impacts, shall be allowed. The path may be wider when required for handicapped access.

8. Accessory utility lines determined by the director to be necessary or required to reduce an impact (for example, a storm water tightline to the water to protect a slope or a sewer line to a marina) may be allowed. (See BIMC 16.20.080, Geologically hazardous areas, for additional regulations which may apply.)

9. To allow flexibility when required because of site limitations, the depth of the native vegetation zone (measured from OHWM) may be altered by averaging the depth, provided that:

a. The total area of the native vegetation zone shall not be less than otherwise required.

b. All portions of the native vegetation zone shall be contiguous.

c. The depth of the zone shall not be reduced more than 25 percent and shall be a minimum of 25 feet (measured from OHWM) at any point.

d. At least 75 percent of the resulting zone shall be located within the area that would otherwise be required.

e. Any area altered shall be compensated for by a substitute area. Any area used as a substitute for an altered area must contain vegetation of comparable or better quality than the area being deleted.

10. Native vegetation zones and related restrictions required by the city for a preliminary plat shall be written on the face of the final plat, and for all other land shall be included in a separate covenant, easement or other similar document. The separate document shall be recorded with the county auditor

within one month of the imposition of the requirement. (Ord. 96-38, 1996)

### 16.12.100 Parking.

A. Applicability. The following provisions apply only to parking that is accessory to a permitted shoreline use. Parking as a primary use is prohibited within the shoreline jurisdiction. Additional parking regulations in BIMC Title 18, Zoning, may apply.

#### B. Regulations.

1. Parking shall be prohibited over water except at the publicly-owned ferry terminal in the urban environment.

2. Parking in the shoreline jurisdiction shall directly serve a shoreline use and is a conditional use in the natural designation.

3. Parking facilities shall be designed and landscaped to minimize adverse impacts to adjacent shorelines and properties. Landscaping shall consist of native vegetation or species contained in an approved plant list or landscape plan and shall be designed and installed to provide effective and appropriate screening within three years of planting. Plantings shall be maintained for the life of the parking facility.

4. Parking facilities serving individual buildings on the shoreline shall be located landward from the principal building being served, except when the parking facility is within or beneath the structure and screened, or in cases when an alternate orientation would have less adverse impact on the shoreline.

5. Parking facilities shall provide safe and convenient pedestrian circulation within the parking area and to the shoreline.

6. Parking areas shall include facilities to control quantity and quality of surface water runoff to natural water bodies, using best management practices to retain natural flow rates. A maintenance program to assure proper functioning of such facilities over time shall be required.

7. See Part V, Specific Shoreline Use Regulations, for restrictions related to specific uses. (Ord. 96-38, 1996)

### 16.12.110 Public access – Visual and physical.

A. Purpose. The provisions in this section recognize that there are two types of “public access” to the shorelines of Bainbridge Island. One type is visual public access; that is, the public’s ability to see the island’s shorelines. The second type is physical public access; that is, the public’s ability to reach and touch the water’s edge. Possible ways to provide for such visual and/or physical public access include picnic areas, pathways and trails, floats and docks, promenades, viewing towers, bridges, boat launches, street ends, ingress points, and parking.

B. With respect to private property, the following provisions are not intended to require property owners to increase the public’s visual or physical access to Bainbridge Island’s shorelines. With respect to future development on private property, the fundamental principle underlying this section’s provisions is that such development should not result in a net loss of the public’s currently existing visual and physical access to the Bainbridge shoreline.

C. With respect to public property, the following provisions are intended to promote an increase in the public’s visual and physical access to the Bainbridge shoreline, in a balanced manner, through mechanisms such as the further improvement of existing public property and potential future acquisition of additional public property.

D. “Scenic vista” protection is still another aspect of public access and an important shoreline management objective. Consideration must be given to protecting the shoreline’s visual quality and to maintaining view corridors to and from waterways and their adjacent shoreland features.

#### E. Regulations.

1. When new development increases demand for public access or reduces existing access by blocking or discouraging its use, provisions for visual and/or physical public access that mitigates those impacts shall be incorporated into any shoreline development that meets one or more of the following tests:

- a. Is in the urban environment.

b. Includes nonresidential uses.

c. Provides five or more dwelling units or building lots.

2. The requirements in subsection E.1 of this section will not apply if 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, or an alternative public access amenity on or off the development site is unreasonably disproportionate to the total long term cost of the proposed development.

d. Unacceptable environmental harm which cannot be adequately mitigated will result from the public access.

3. In order to meet any of the conditions of subsections E.1 through E.4 of this section, the applicant must first demonstrate, and the city determine in its findings, that all reasonable alternatives have been exhausted, including, but not limited to:

a. Regulating access by such means as maintaining a gate and/or limiting hours of use.

b. Designing separation of uses and activities (e.g., fences, terracing, hedges, other landscaping).

c. Provision(s) for access on a site geographically separate from the proposal such as a street end.

4. Development, uses, and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's existing physical and visual access to the water and shorelines.

5. The public's visual and physical access provided by shoreline street ends, public utilities, and rights-of-way shall not be diminished. (RCW 35.79.035 or its successor and RCW 36.87.130 or its successor.)

6. Submerged public rights-of-way shall be preserved for public access.

7. The permitting process shall include consideration of the balance between

visual access and retention of native vegetation.

8. Development on the water shall be constructed of nonreflective materials that are compatible in color and texture with the surrounding area.

9. Public access sites shall be connected directly to the nearest public street.

10. Required public access shall be fully developed and available for public use at the time of occupancy of the use or activity in accordance with permit conditions.

11. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of the plat or short plat as a condition running with the authorized land use. Recording with the county auditor's office shall occur at the time of permit approval. (RCW 58.17.110 or its successor.)

12. The standard state-approved logo or other approved sign(s) that indicate the public's right of access and hours of access shall be constructed, installed, and maintained by the city in conspicuous locations at public access sites. In accordance with subsection E.2.a of this section, signs may control or restrict public access as a condition of permit approval.

13. Future actions by the applicant, successors in interest, or other parties shall not diminish the usefulness or value of the public access provided.

14. When properties are subdivided, owners of newly created lots which do not have frontage on the water shall be provided common access to the water; provided, that it will not cause unacceptable environmental harm which cannot be adequately mitigated. (Ord. 96-38, 1996)

#### **16.12.120 Utilities.**

A. Applicability. Accessory utilities are associated with all types of shoreline development. These provisions apply to all development; including that which does not require a shoreline permit. (Refer to Part V, Specific Shoreline Use Regulations, for primary use utility provisions.)

B. Regulations.

1. In shoreline areas, utility lines, including pipelines and cable, shall be placed underground unless demonstrated not to be feasible. Further, such lines shall utilize existing rights-of-way, corridors and/or bridge crossings whenever possible. Proposals for new corridors in shoreline areas involving water crossings must fully substantiate the infeasibility of existing routes.

2. Utility development shall, through coordination with government agencies, provide for compatible multiple use of sites and rights-of-way. Such uses include shoreline access points, trails, and other forms of recreation and transportation systems, provided such uses will not unduly interfere with utility operations or endanger public health and safety.

3. Septic fields shall be located on the landward side of development, where possible.

4. Sites disturbed for utility installation shall be stabilized during and following construction to avoid adverse impacts from erosion. Sites shall be replanted with native vegetation immediately following construction. (Ord. 96-38, 1996)

#### **16.12.130 Water quality.**

A. Purpose. Maintaining high water quality standards and restoring degraded systems is mandated in the Shoreline Management Act. (RCW 90.58.020 or its successor.) Water quality is affected in numerous ways by human activity. The increase in nonporous surfaces that accompanies development increases surface water runoff, which causes scouring and erosion of streambanks. Erosion increases suspended solid levels and carries heavy metals, household wastes, and excess nutrients into the water. Increased nutrient enrichment depresses dissolved oxygen levels. This degradation of water quality adversely impacts wildlife habitat and public health. The purpose of these provisions is to minimize water quality impacts of shoreline uses and activities.

B. Applicability. These provisions apply to all shoreline development, including that which does not require a shoreline substantial development permit.

C. Regulations.

1. All shoreline development shall minimize any increase in surface runoff through control, treatment, and release of surface water runoff so that the receiving water quality and shore properties and features are not adversely affected. Control measures include, but are not limited to, dikes, catch basins or settling ponds, oil interceptor drains, grassy swales, planted buffers, and fugitive dust controls.

2. Where feasible, septic fields shall be located on the landward side of any new residence or business.

3. New residences or businesses on the shoreline within 200 feet of an existing sewer line and/or within an established sewer service area shall be connected to the sewer system.

4. All shoreline development shall comply with the applicable requirements of the Storm Water Management Manual for the Puget Sound Basin (Washington State Department of Ecology publication No. 91-75) as amended by the city's engineering design and development standards manual. (Ord. 96-38, 1996)

#### **Part IV. Environment Designations**

##### **16.12.140 Environment designations.**

A. General. The master program establishes seven shoreline environments based on a combination of existing conditions and intended types of use. When applied to geographic areas of the island, these environments form an overlay for applying shoreline considerations to the city's land use regulations. Uses which are consistent with a particular environment are encouraged, while uses which are in conflict are prohibited. A conditional use process is available when further review is needed to determine whether the use is compatible with the particular environment at the proposed site. Table 4-1 provides a summary of uses in relation to the various environments. Existing uses and activities which are incompatible with their shoreline environment designations are subject to provisions for nonconforming shoreline uses and structures (see Part VII). The seven shoreline environ-

ments include five upland environments – urban, semi-rural, rural, conservancy and natural – and two water environments – aquatic and aquatic conservancy.

#### B. Shoreline Environment Map.

1. The official Bainbridge Island shoreline environment map shall be in the custody of the department of planning and community development and shall be available for public inspection during normal business hours.

2. The purpose of the map is to depict those areas of Bainbridge Island within the jurisdiction of the master program and the various shoreline environment designations.

C. Environment Boundaries. Where the shoreline jurisdiction or environment designation is uncertain, the official shoreline environment map shall be used to determine boundary location. If the conflict cannot be resolved using the shoreline environment map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, alleys, or other roadways shall be construed to follow such center lines.

2. Boundaries indicated as approximately following lot, fractional section, or other subdivision lines shall be construed as following such subdivision lines.

3. Boundaries indicated as parallel to or extensions of features identified in subsections C.1 and C.2 of this section shall be so construed.

4. When not specifically indicated on the shoreline environment map, distances shall be determined by the scale of the map.

Where existing physical or cultural features are at variance with those shown on the shoreline environment map and cannot be determined with certainty by applying subsections C.1 through C.4 of this section, the department shall determine the location or existence of such feature utilizing any appropriate criteria contained in the master program.

D. Urban Environment. The urban environment is an area of high intensity land use including residential, commercial, and industrial development.

1. Purpose. The purpose of this environment is to ensure optimum utilization of shorelines within urbanized areas. Development in urban areas should be managed to enhance and maintain shorelines for a variety of urban uses, with priority given to water-dependent, water-related, and water-enjoyment uses.

2. Designation Criteria. Areas to be designated urban should meet one or more of the following criteria:

a. Shorelines used or designated for high intensity commercial, industrial, or recreational use, or for multifamily residential development.

b. Shorelines of lower intensity use, where surrounding land use is urban and urban services are available.

c. Shorelines used for water-oriented and port activities.

Shorelines to be designated urban should not have biophysical limitations to development such as floodplains, steep slopes, slide hazard areas, marshes, bogs, swamps, and/or other sensitive areas.

E. Semi-Rural Environment. The semi-rural environment accommodates low to medium density residential development, low to medium intensity recreational development, passive recreation, and open space consistent with the Bainbridge Island comprehensive plan. It includes shoreline areas that presently support medium to low density residential development and is intended to be compatible with agricultural uses on adjacent nonshoreline properties.

1. Purpose. The semi-rural environment is intended to serve as a transitional area between the more intensive urban environment and the lower-intensity uses of the rural environment. This environment is also intended to protect natural resources such as vegetation on steep banks, indigenous trees and natural beaches, banks, bluffs, and marshes while still allowing for development.

2. Designation Criteria. Areas to be designated semi-rural should meet one or more of the following criteria:

a. Areas presently developed or platted for residential uses.

b. Areas zoned for residential development.

c. Areas which could support and serve the needs of planned unit residential developments (PUDs).

d. Areas which could serve as transition zones between urban and rural shoreline areas.

e. Areas having the physical ability to support low to medium density residential uses and associated recreational and public service facilities.

f. Areas which can provide, and have the capabilities to support, the necessary public services, utilities, and access to accommodate low to medium density development. Sewage disposal and water supply facilities may be provided on an individual or community basis.

F. Rural Environment. The rural environment is an area in which natural features predominate and where human activity, results in only a light modification of the natural environment. It often abuts agricultural uses. Residential development in the rural environment is low intensity.

1. Purpose. The rural environment is intended to serve as the shoreline component in areas where the comprehensive plan seeks to protect agricultural uses and low density residential uses from urban expansion. Its purpose is to limit development along undeveloped shorelines, serve as a native vegetation zone between different environments, maintain open space and opportunities for passive recreational use, and provide opportunities for low density rural living.

2. Designation Criteria. Areas to be designated rural should meet one or more of the following criteria:

a. Areas dominated by low density residential or low intensity recreational uses.

b. Areas where natural characteristics generally support low density development.

c. Areas where residential development is or should be low density because of biological or physical limitations, utility or access limitations, and/or potential incompatibility with other uses.

d. Undeveloped areas not planned for significant development and inappropriate for natural or conservancy designation.

e. Areas which buffer low intensity shoreline development from higher intensity shoreline development.

G. Conservancy Environment. The conservancy environment is an area where the existing natural character is maintained and protected from consumptive uses which would cause permanent adverse environmental impacts. It may include areas with severe biophysical limitations to development and/or areas with the potential for meeting current and future community recreational needs.

1. Purpose. The intent of the conservancy environment is to protect, conserve, and manage existing natural resources and valuable historic and cultural resources in order to achieve sustained resource utilization and provide public recreational opportunities. The conservancy environment is also intended to protect environmentally sensitive areas which are not suitable for intensive use, such as steep slopes, flood-prone areas, eroding bluffs, wetlands, and areas which cannot provide adequate sewage disposal.

2. Designation Criteria. Areas to be designated conservancy should meet one or more of the following criteria.

a. Areas containing natural resources which lend themselves to management on a sustained yield basis, such as commercial forest land.

b. Areas subject to severe biophysical limitations such as:

i. Steep slopes and landslide hazard areas.

ii. Areas subject to severe erosion and feeder bluffs.

iii. Unstable banks or bluffs.

iv. Flood-prone areas.

v. Areas with soils that have poor drainage.

vi. Geohydraulic shoreforms (e.g., accretion beaches, point bars, spits).

c. Areas which play an important part in maintaining the regional ecological balance such as:

i. Areas rich in quality and quantity of life forms.

ii. Areas important to the maintenance of natural water quality and flow.

iii. Areas important to maintaining the food chain process (i.e., estuaries, wetlands, riparian corridors).

d. Areas free from extensive development.

e. Areas where intensive development or use would interfere with natural processes and result in significant damage to other resources.

f. Areas of high scenic or recreational value.

g. Areas with extensive or unique historic or cultural resources.

H. Natural Environment. The natural environment applies to areas possessing unique natural or cultural features which the city would like to preserve for public benefit. All uses within the natural environment are subordinate to the protection of natural systems.

1. Purpose. The natural environment is intended to preserve areas existing in a natural state, relatively free of human influence, and those areas possessing natural resources sensitive to human activity, or unique historical, cultural, or educational features. The natural environment requires severe restrictions on the intensity and type of permitted uses to maintain the integrity of the shoreline environment.

2. Designation Criteria. Areas to be designated natural should meet one or more of the following criteria:

a. Wildlife Habitats.

i. A shoreline area that provides food, water, or cover and protection for any rare, endangered, or diminishing species, or for significant populations of flora or fauna during critical stages of their life cycle.

ii. A seasonal haven for concentrations of native animals, fish, or fowl such as a migration route, breeding site, larval rearing ground, or spawning site.

b. Areas of Scientific and Educational Value.

i. Areas considered to best represent basic ecosystems and geologic types that are of particular scientific and educational interest.

ii. Shoreline areas which best represent undisturbed natural areas.

iii. Shoreline areas with established histories of scientific research.

c. Areas of Scenic and Recreational Value.

i. Those shoreline areas having an outstanding or unique scenic feature in their natural state.

ii. Shoreline areas having a high value for wilderness experience.

iii. Areas which in their natural state have a high value for low intensity recreational use.

d. Other Criteria.

i. Areas where human influence and development are minimal.

ii. Areas which have been degraded, but which are capable of easily being restored to a natural or near natural condition, or are capable of natural regeneration if left undisturbed.

iii. Other unique natural features relatively intolerant of human use or development such as saltwater marshes, Class I beaches (see RCW 79.90.030 or its successor), Class I tidelands, spits, and virgin timber stands.

I. Aquatic Environment. The aquatic environment consists of all marine water areas seaward of the ordinary high water mark (OHWM) which have not been designated aquatic conservancy. This includes estuarine channels, sloughs, and associated marshes, bogs, and swamps.

1. Purpose. The purpose of the aquatic environment designation is to protect the unique characteristics of the aquatic environment by managing uses and activities and by assuring compatibility between upland and aquatic uses. The aquatic environment may allow either multiple water-dependent uses or specific dominant water-dependent uses. It is intended to promote the wise use of the natural features and resources of aquatic areas which

are substantially different in character from those of the adjoining uplands and backshores.

2. Designation Criteria. Aquatic areas include:

a. All marine areas seaward of the ordinary high water mark (OHWM) which have not been designated aquatic conservancy.

b. All swamps, marshes, and bogs adjoining the above which are not designated natural.

J. Aquatic Conservancy Environment. The aquatic conservancy environment includes marine areas seaward of the ordinary high water mark (OHWM), normally designated aquatic, that contain unique ecological and cultural features which the city would like to preserve for the public benefit. All uses in the aquatic conservancy environment are subordinate to the protection of natural systems.

1. Purpose. The aquatic conservancy environment is intended to preserve those portions of the marine waters of the city whose existing natural state is relatively free of human influence, or whose resources, biological diversity, or other features are particularly sensitive to human activity, or whose unique, historical, archaeological, cultural, or educational features merit special protection.

A number of separate criteria are required to define the diverse character of aquatic conservancy regimes. Tidal lagoons and sensitive portions of tidal inlets will require protection in terms of water salinity and quality, sediment quality and quantity, vegetative native vegetation zones on adjacent shorelines, and remaining areas of native salt-tolerant vegetation. Other regimes, such as aquatic vegetation, have similar requirements. The aquatic conservancy environment requires severe restrictions on the intensity and type of permitted uses to maintain the integrity of the shoreline environment.

2. Designation Criteria. Aquatic conservancy has four regimes. An area is designated aquatic conservancy if it fits any regime description, whether or not it is mapped as such. All four regimes shall be considered environmentally sensitive.

a. Regime 1 – Tidal Lagoons. Bodies of saline water (salinity greater than [ $>$ ]

0.5 parts per thousand) with a constricted or subsurface outlet that is subject to periodic, but not necessarily daily, exchange of water with Puget Sound or a tidal inlet. The connection between the sea and the lagoon may be subsurface through permeable gravel or sand berms. The upland boundary of the lagoon shall be the ordinary high water mark (OHWM). There are two tidal lagoons currently identified on the Island, “Tolo Lagoon” located in Sections 17 and 18, Township 25 N, Range 2 E, and “Battle Point Lagoon” located in Section 18, Township 25 N, Range 2 E.

b. Regime 2 – Salt Marshes and Mud Flats in Tidal Inlets. Saltwater bays and related intertidal areas subject to the daily influence of tides where they support salt-tolerant vegetation and/or exposed mud flats. Tidal inlet areas should be designated aquatic conservancy if they meet either Criterion I or II of this subsection. Only those areas of aquatic conservancy designated shorelines which meet one of those criteria for the environment will be subject to its policies and regulations; the map is a guide but the designation criteria prevail.

The aquatic conservancy environment shall extend from the OHWM to six feet below mean lower low water (MLLW). If the inlet is less than 600 feet wide, or less than six feet deep at mean lower low water (MLLW), the resource should be considered to be a single system encompassing both sides and the channel. In these cases, boundaries should be drawn from the OHWM to a line perpendicular to the average direction of the tidal flow where the criteria are no longer met.

i. Criterion I: The area between the OHWM and MLLW that provides a habitat for at least one-quarter acre of salt-tolerant vegetation. Vegetated patches may be smaller than one-quarter acre, but the total vegetated area must be at least one-quarter acre.

ii. Criterion II: At least one-quarter acre of exposed flats is exhibited between ordinary high water (OHWM) and mean lower low water (MLLW) whose sediments are at least 30 percent muds.

## 16.12.150

Parts of tidal inlets that do not fit either criterion, and do not fit other regimes of aquatic conservancy environment, shall be designated aquatic.

c. Regime 3 – Marine Vegetation. Areas seaward of the mean lower low water (MLLW) that support a significant community (at least 4,000 square feet) of kelp, eel grass and/or other vegetation in sufficient quantities to provide special value as habitat for marine life.

d. Regime 4 – Other Areas. Areas, as designated through the SMMP amendment process (BIMC 16.12.400), whose existing natural state is relatively free of human influence, or whose resources, biological diversity, or other features are particularly sensitive to human activity, or whose unique, historical, archeological, cultural, or educational features merit special protection. Designation under this regime shall be based on a report documenting the presence, function, and distribution of the resources in the area to be designated.

3. The city shall map the limits of the designations with assistance from the Washington State Departments of Ecology, Natural Resources, Fish and Wildlife, and other cooperating agencies. Any area in which actions have been taken under an approved permit to create, restore, or enhance characteristics of any of these regimes shall automatically be designated aquatic conservancy. Where there is a conflict between the map and criteria, the criteria will prevail provided a report is prepared by a qualified professional verifying that the map is in error. The report will be the responsibility of the party requesting the map change. (Ord. 2005-02 § 1, 2005; Ord. 96-38, 1996)

### 16.12.150 Master program summary matrices.

Proposed shoreline development must comply with the master program's general provisions (Part III), environment designation provisions (Part IV), specific shoreline use provisions (Part V), and shoreline modification activity provisions (Part VI). The following matrices (Tables 4-1 and 4-2) summarize

the shoreline use categories, requirements and development standards in each environment (urban, semi-rural, rural, conservancy, natural, aquatic, and aquatic conservancy).

In general, uses are either permitted with a shoreline substantial development permit (SSDP), allowed with a conditional use permit, or are prohibited. Some uses are exempt from the shoreline permit process.

The permitted uses in each environment represent the uses which are most compatible with that environment based on the goals and objectives of the master program and the requirements of the Washington State Shoreline Management Act.

The following shoreline use and activity matrix (Table 4-1) and use-related development standards matrix (Table 4-2) summarize the information contained in the specific shoreline use regulations (Part V) and the shoreline modification regulations (Part VI). (Ord. 96-38, 1996)

**Table 4-1 Shoreline Use and Modification Activity Matrix**

Key for Table 4-1 and Table 4-2:

- P = Permitted (an SSDP may be required)
- CUP = Permitted subject to a shoreline conditional use permit (an SSDP may also be required)
- X = Prohibited unless otherwise noted
- # = Same as adjacent upland environment
- NA = Not applicable

SHORELINE USE	UPLAND ENVIRONMENTS					WATER ENVIRONMENTS	
	Natural	Conservancy	Rural	Semi-Rural	Urban	Aquatic	Aquatic Conservancy
Agriculture	X	X	X	X	X	NA	NA
Aquaculture	X	CUP	CUP	CUP	CUP	CUP	X
Boating Facilities	X	X <sup>1</sup>	CUP <sup>2</sup>	CUP <sup>2</sup>	P	# <sup>3</sup>	X
Commercial Development							
Water-dependent	X	X	X	CUP	P	#	X
Water-related and enjoyment	X	X	X	CUP	P	X	X
Nonwater-oriented	X	X	X	X	CUP	X	X
Flood Hazard Management	X	CUP	CUP	CUP	CUP	CUP	X
Forest Practices	X	CUP	CUP	CUP	CUP	NA	NA
Industry <sup>4</sup>							
Water-dependent	X	X	X	X	P	#	X
Water-related	X	X	X	X	CUP	#	X
Nonwater-oriented	X	X	X	X	X	X	X
Mining	X	X	X	X	X	X	X
Parking (accessory) <sup>5</sup>	C	P	P	P	P	X	X
Parking (primary) <sup>5</sup>	X	X	X	X	X	X	X
Recreational Development							
Water-oriented	CUP <sup>6</sup>	P	P	P	P	P	X
Golf courses	X	CUP	CUP	CUP	CUP	X	X
Nonwater-oriented	X	X	X	CUP	CUP	X	X
Residential							
Single-family	X	CUP	P	P	P	X	X
Multiple-family	X	X	X	P	P	X	X

SHORELINE USE	UPLAND ENVIRONMENTS					WATER ENVIRONMENTS	
	Natural	Conservancy	Rural	Semi-Rural	Urban	Aquatic	Aquatic Conservancy
Land division	CUP	CUP	P	P	P	#	#
Solid Waste Disposal	X	X	X	X	X	X	X
Transportation							
Trails	P	P	P	P	P	NA	NA
Publicly-owned ferry terminal facilities and services	X	X	X	X	CUP <sup>6</sup>	#	X
Float plane facilities and services	X	X	X	X	CUP	#	X
Roads							
Railroads, heliports, new bridge to Bainbridge Island, highways, arterials, secondary roads	X	X	X	X	X	X	X
Utilities (primary)	X	X	CUP <sup>7</sup>	CUP <sup>7</sup>	CUP <sup>7</sup>	#	X
Breakwaters, Dikes, Levees, Jetties, Groins, Gabions, and Seawalls	X	X	X	X	X	X	X
Beach Enhancement	CUP <sup>8</sup>	CUP <sup>8</sup>	CUP <sup>8</sup>	CUP <sup>8</sup>	CUP <sup>8</sup>	CUP <sup>8</sup>	CUP <sup>8</sup>
Revetments	X	X	P <sup>9</sup>	P <sup>9</sup>	P <sup>9</sup>	X <sup>10</sup>	X
Bulkheads	X	X	P <sup>9</sup>	P <sup>9</sup>	P <sup>9</sup>	X <sup>10</sup>	X
Dredging <sup>11</sup>	X	X	X	X	X	CUP <sup>12</sup>	X
Landfill	CUP <sup>13</sup>	CUP <sup>13</sup>	CUP	CUP	CUP	CUP <sup>13</sup>	X
Piers and Docks	X	CUP	P	P	P	#	X
Recreational Floats and Mooring Buoys	X	X	P	P	P	#	X

<sup>1</sup>Permitted in public parks. Recreational mooring buoys are permitted.

<sup>2</sup>Community and joint use docks providing moorage for six or more vessels are permitted with an SSDP but must comply with the provisions in BIMC 16.12.180, Boating facilities, as well as the provisions in BIMC 16.12.340, Piers, docks, recreational floats, and mooring buoys.

<sup>3</sup>One open water moorage and anchorage area located in Eagle Harbor is permitted in the aquatic environment adjacent to all upland environments.

<sup>4</sup>Heliports and float plane facilities are transportation uses.

<sup>5</sup>See BIMC 16.12.100, Parking; BIMC 16.12.200.B.7, Commercial development; and BIMC 16.12.180.D.7, Boating facilities.

<sup>6</sup>New over-water facilities are permitted as a conditional use only in the ferry terminal district. Normal repair and maintenance of existing facilities do not require a conditional use permit, but may require an SSDP.

<sup>7</sup>Permitted as a conditional use if no feasible alternative exists.

<sup>8</sup>For restoration, enhancement or maintenance of natural resources or to enhance public access to the shoreline.

<sup>9</sup>If there are no revetments or bulkheads within 100 feet on either side of the property, new revetments and bulkheads shall be conditional uses.

<sup>10</sup>Bulkheads and revetments may be permitted in the aquatic environment where permitted in the adjacent upland environment but must be located at or near the ordinary high water mark.

<sup>11</sup>These regulations do not apply to aquaculture activities.

<sup>12</sup>For restoration, enhancement, or maintenance of natural resources for navigational channels or public uses only.

<sup>13</sup>For restoration, enhancement, or maintenance for water-dependent or public uses only.

(Ord. 2007-16 § 9, 2007; Ord. 96-38, 1996)

**Table 4-2 Use-Related Development Standards Matrix**

Key (See Key in Table 4-1)

DEVELOPMENT STANDARDS	UPLAND ENVIRONMENTS				
	Natural	Conservancy	Rural	Semi-Rural	Urban
Aquaculture					
Setback					
Water-dependent	N/A	0'	0'	0'	0'
Water-related	N/A	25'	25'	25'	25'
Nonwater-oriented	N/A	100'	100'	100'	100'
Height Limits <sup>13</sup>					
Upland	N/A	30'	30'	30'	30'
Boating Facilities					
Setbacks					
Accessory structures	N/A	50'	N/A	50'	25'
Water-dependent	N/A	0'	N/A	0'	0'
Dry moorage	N/A	N/A	100'	100'	100'
Height Limits					
Dry moorage	N/A	N/A	N/A	30'	30'
Buildings <sup>14</sup>	N/A	N/A	20'	20'	20'
Commercial					
Native vegetation zone (from OHWM)					
Water-dependent	N/A	N/A	N/A	0'	0'
Water-enjoyment	N/A	N/A	N/A	50'	25'
Nonwater-oriented	N/A	N/A	N/A	50'	50'
Height Limits					
Buildings	N/A	N/A	N/A	30'	30'

DEVELOPMENT STANDARDS	UPLAND ENVIRONMENTS				
	Natural	Conservancy	Rural	Semi-Rural	Urban
Forest Practices					
Native vegetation zone	N/A	N/A	100'	100'	100'
Industrial Development					
Native vegetation zone (from OHWM)					
Water-dependent	N/A	N/A	N/A	N/A	0'
Water-related	N/A	N/A	N/A	N/A	25'
Height Limits <sup>13</sup>					
Water-dependent and Water-related	N/A	N/A	N/A	N/A	30'
Recreational Development <sup>15</sup>					
Native vegetation zone					
Nonwater-oriented, general	N/A	200'	200'	200'	100'
Campsites, picnic areas, and related	N/A	50'	50'	50'	25'
Access roads, restrooms, and accessory structures	N/A	75'	75'	75'	50'
Parking	N/A	100'	100'	100'	50'
Golf course, playfields, intensive use areas	N/A	100'	100'	100'	100'
Height Limits	N/A	20'	20'	20'	30'
Residential Development (Dwellings)					
Native vegetation zone	N/A	100'	50'	50'	25'
Height Limits	N/A	30'	30'	30'	30'
Signs					
Height limits <sup>16</sup>	N/A	15'	15'	15'	15'
Transportation					
Native vegetation zone					
Trails	0'	0'	0'	0'	0'
Water-dependent	N/A	0'	0'	0'	0'

DEVELOPMENT STANDARDS	UPLAND ENVIRONMENTS				
	Natural	Conservancy	Rural	Semi-Rural	Urban
Utilities (primary)					
Native vegetation zone					
Distribution lines	N/A	N/A	N/A	50'	25'
Buildings	N/A	N/A	N/A	50'	25'
Height Limits					
Buildings, storage tanks, accessory uses	N/A	N/A	50'	20'	20'
Distribution poles	N/A	N/A	50'	30'	30'

<sup>13</sup>See BIMC 16.12.170.B.17.

<sup>14</sup>May vary for public benefit.

<sup>15</sup>Passive (nonintensive) recreational or educational uses only. Boat speed limited to five nautical miles per hour.

<sup>16</sup>These height limits apply only to signs for marinas (from OHWM). Signs on all other structures are governed by Chapter 15.08 BIMC. (Ord. 96-38, 1996)

**Part V. Specific Shoreline Use Regulations**

**16.12.160 Agriculture.**

A. Applicability. These provisions apply to activities which are primarily commercial. Gardening activities primarily for on-site consumption and maintenance of household pets shall be considered residential uses.

B. Regulations. Agriculture shall be prohibited in the shoreline jurisdiction. (Ord. 96-38, 1996)

**16.12.170 Aquaculture.**

A. Applicability. Aquaculture, like all other uses, is subject to the provisions in Part IV, Environment Designations, including the standards in Table 4-2. Part III, General Regulations, also applies.

**B. Regulations – General.**

1. Aquaculture may be allowed as a conditional use in the conservancy, rural, semi-rural, urban and aquatic environments. Aquaculture shall be prohibited in the natural and aquatic conservancy environments.

2. Applicants shall include in their applications all information needed to conduct thorough evaluations of their aquaculture pro-

posals, including but not limited to the following:

- a. Species to be reared.
- b. Aquaculture method(s).
- c. Anticipated use of any feed, pesticides, herbicides, antibiotics, or other substances and their predicted impacts.
- d. Manpower/employment necessary for the project.
- e. Harvest and processing location, method, and timing.
- f. Location and plans for any shoreside activities, including loading, unloading, and product processing.
- g. Methods of traffic control and waste disposal.
- h. Environmental assessment, including best available background information on water quality, turbidity, tidal variations, prevailing storm wind conditions, current flows, flushing rates, aquatic and benthic organisms, and probable impacts on water quality, biota, currents, littoral drift, and any existing shoreline or water uses. Further baseline studies may be required, depending upon the adequacy of available information, existing conditions, the nature of the proposal,

and probable adverse environmental impacts. Baseline monitoring should be at the applicant's expense unless otherwise provided for.

i. Method of disposal of dead fish to control noxious odors.

j. Methods of predator control, if any.

k. Use of lights and noise-generating equipment and their potential impacts on surrounding uses.

l. Other pertinent information deemed necessary by the city such as noise levels and visual impact.

3. Permit applications shall identify all pesticides, herbicides, antibiotics, vaccines, growth stimulants, anti-fouling agents, or other chemicals that the applicant anticipates using. Such materials shall not be used until approval is obtained from all appropriate state and federal agencies, including, but not limited to, the U.S. Food and Drug Administration, the Washington State Departments of Ecology, Fish and Wildlife and Agriculture, as required, and proof thereof is submitted to the city. When feasible, the cleaning of nets and other apparatus shall be accomplished by air drying, spray washing, or hand washing, rather than chemical treatment and application.

4. Permit applications shall identify any noise generation associated with the project and also the amount of marine and truck or other vehicle traffic that will occur during the regular operation of the facility.

5. The location of floating and submerged aquaculture structures shall not unduly restrict navigation to or along the shoreline, or interfere with general navigation lanes and traffic. Floating structures shall remain shoreward of principal navigation channels. Other restrictions on the scale of aquaculture activities to protect navigational access may be necessary based on the size and shape of the affected water body.

6. No aquatic organism shall be introduced into Bainbridge Island salt or fresh waters without prior written approval of the Washington Department of Fish and Wildlife for the specific organism proposed for introduction. The required approval shall be submitted in writing to the director prior to the

introduction or the granting of the permit, whichever comes first. Unless otherwise provided in the shoreline permit issued by the city, the repeated transfer (or placement) of an approved organism in the same location shall require approval by the city only at the time the permit is issued. For purposes of this section, introduction shall mean the placing of any aquatic organism in any area within the waters of the city, regardless of whether it is a native or resident organism, and regardless of where it is being transferred from.

7. Aquacultural structures and activities that are not water-dependent, e.g., warehouses for storage of products, parking lots, shall be located landward of the OHWM, upland of water-dependent portions of the project, and shall minimize detrimental impacts to the shoreline.

8. Aquacultural structures and equipment shall be of sound construction and shall be so maintained. Abandoned or unsafe structures and equipment shall be removed or repaired promptly by the owner.

9. Legally established aquacultural enterprises, including authorized experimental projects, shall be protected from incompatible uses which may seek to locate nearby. Demonstration of a high probability that such an adjacent use would result in damage to, or destruction of, such an aquacultural enterprise shall be grounds for the denial of that use.

10. Operational monitoring may be required if and to the extent that it is necessary to determine, ensure, or confirm compliance with predicted or required performance. Such monitoring requirements shall be established as a condition of the permit and shall be conducted at the applicant's (operator's) expense.

11. No processing of any aquacultural product, except for the sorting or culling of the cultured organisms and the washing or removal of surface materials or organisms, shall occur in or over the water after harvest, unless specifically approved by permit. All other processing and processing facilities shall be located on land and shall be governed by, in addition to these provisions, the policies and regulations of other applicable sections of the

master program, in particular, provisions addressing commercial and industrial uses.

12. Aquacultural wastes shall be disposed of in a manner that will ensure compliance with all applicable governmental waste disposal standards. No garbage, wastes, or debris shall be allowed to accumulate at the site of any aquaculture operation.

13. Required separations between aquacultural uses and facilities and national wildlife refuge lands and/or habitats of special significance for birds or mammals, as identified by the Washington State resource agencies, shall be established based on analysis of the potential impacts on the resources.

14. Hatchery and other aquaculture operations shall be required to maintain a minimum 50-foot wide vegetated buffer zone along the affected streamway; provided, that clearing of vegetation shall be permitted for essential water access points.

15. Onshore support structures shall meet the height and setback standards established in Table 4-2, site development standards matrix, except that reduced setbacks may be permitted where necessary for the operation of hatcheries and rearing ponds.

16. Predator control shall not involve the killing or abusive harassment of birds or mammals. Approved controls include, but are not limited to, double netting for seals, overhead netting for birds, and three-foot high fencing or netting for otters. The use of other nonlethal, nonabusive predator control measures shall be contingent upon receipt of written approval from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service, as required.

17. For aquacultural projects using over-water structures, storage of necessary tools and apparatus seaward of the OHWM shall be limited to containers of not more than three feet in height, as measured from the surface of the raft or dock; provided, that in locations where the visual impact of the proposed aquaculture structures will be minimal, the city, based upon written findings and without requiring a variance, may authorize storage containers of greater height. In such cases, the burden of proof shall be on the applicant.

Materials which are not necessary for the immediate and regular operation of the facility shall not be stored seaward of the ordinary high water mark.

18. Mechanical and/or hydraulic clam harvesting or other activities that involve substantial substrate modification through dredging, trenching, or digging shall be prohibited in existing kelp beds or in beds of native eel grass (*Zostera marina*) containing more than two turions per one-quarter square meter in winter or three turions per one-quarter square meter in summer.

19. Fish net-pens shall meet, as a minimum, state-approved administrative guidelines for the management of net-pen cultures; where any conflict in requirements arises, the more stringent requirement shall prevail.

20. Aquacultural proposals that include net-pens or rafts shall not be located closer than one nautical mile to any other aquacultural facility that includes net-pens or rafts; provided, that a lesser distance may be authorized by the city if the applicant can demonstrate to the city's satisfaction that the environmental and aesthetic concerns expressed in the master program shall be addressed. If a lesser distance is requested, the burden of proof shall be on the applicant to demonstrate that the cumulative impacts of the existing and proposed operations would not be contrary to the policies and regulations of the master program.

21. Except as provided in subsection B.18 of this section, aquacultural developments approved on an experimental basis shall not exceed five acres in area, except anchorage for floating systems, and five years in duration; provided, that the city may issue a new permit to continue an experimental project as many times as is deemed necessary and appropriate.

22. Where necessary to preserve the integrity of any research data collected, aquaculture developments which would be likely to jeopardize an experimental aquaculture development shall not be allowed within the same bay, harbor, or cove with any such aquaculture development, or within one mile of such a development if the water body is larger than one square mile in area, until after the experi-

mental project is granted nonexperimental status or terminated.

23. For floating culture facilities, the city shall reserve the right to require a visual impact analysis consisting of information comparable to that found in the Department of Ecology's Aquacultural Siting Study (1986). Such analysis may be prepared by the applicant without professional assistance; provided, that it is competently prepared.

24. Any shoreline designated a "shoreline of state-wide significance" with aquacultural activities proposed in that area shall be subject to: first, the policies and priorities contained in Section III, subsection H, Shorelines of state-wide significance,\* and second, the regulations contained in this section.

25. Aquaculture activities proposed in an area designated a "shoreline of state-wide significance" shall be subject to setback and height standards as shown in Table 4-2.

26. Aquaculture will be conducted so that there will be no significant adverse disruption of the substrate.

27. Mechanical and/or hydraulic clam harvesting operations, which use a hydraulic harvester or similar floating equipment shall be required to obtain a substantial development permit and a conditional use permit. Such permits shall only be issued if the applicant can show that the proposed operation will not harm fish or shellfish resources.

28. Aquaculture activities are not subject to the regulations found in BIMC 16.12.320, Dredging and dredge material disposal. (Ord. 96-38, 1996)

\*Code reviser's note: This section is not codified in this chapter. It may be found in the shoreline master program, Ordinance 96-38, on file in the city clerk's office.

### **16.12.180 Boating facilities.**

A. Applicability. Boating facilities include marinas (both backshore and foreshore, dry storage and wet moorage, and open water types), boat launch ramps, covered moorage, marine railways, and marine travel lifts. (Refer to Part II for definitions.) Community, yacht club, camp, and resort moorage

facilities must comply with boating facility requirements if they provide moorage for six or more vessels. Both marina and nonmarina boating facilities, including single-family, must comply with BIMC 16.12.340, Piers, docks, recreational floats, and mooring buoys. Other portions of Part VI may also apply.

Accessory uses found in marinas may include fuel docks and storage, boating equipment sales and rental, repair services, boat launches, bait and tackle shops, potable water, waste disposal, administration, parking, and grocery and dry good shops. Uses which are not clearly accessory are also subject to their respective provisions in this section. (Examples might include commercial, industrial, or transportation facilities.) Boating facilities are also subject to Part III, General Regulations, and to Part IV, Environment Designations, including the standards in Table 4-2.

Regulations governing boating activities in the bays and harbors of Bainbridge Island are contained in city harbors and waters code and may also apply. See BIMC 16.12.340 for regulations governing mooring buoys.

#### **B. Regulations – General.**

1. Boating facilities, including marinas, shall be allowed as follows:

a. Boating facilities shall be permitted in the urban environment and allowed as a conditional use in the semi-rural and rural environments.

b. Boating facilities shall be prohibited in the natural, conservancy, and aquatic conservancy environments.

c. Boating facilities shall be permitted in the aquatic environment if permitted in the adjacent upland environment, allowed as a conditional use if so allowed in the adjacent upland environment, and prohibited if prohibited in the adjacent upland environment.

d. Boating facilities shall be permitted in public parks designated conservancy environment and in the adjacent aquatic environment.

e. One open water moorage and anchorage area shall be a permitted use in the aquatic environment adjacent to all upland environments east of Stetson Spit and west of

the Washington State Ferry Maintenance Facility.

2. Boating facility development and/or renovation shall comply with all other applicable state and federal agency policies and regulations including, but not limited to, the Department of Fish and Wildlife, Federal Marine Sanitation standards (Environmental Protection Agency 1972) requiring water quality certification from the U.S. Army Corps of Engineers (Section 10), U.S. Army Corps of Engineers dredging standards (Section 404), and state and federal standards for the storage of fuels and toxic materials.

3. The city shall require the following information in its review of marina proposals:

a. Existing natural shoreline and backshore features and uses and bathymetric contours (one-foot increments);

b. Geohydraulic processes and flushing characteristics, volume, rates, and frequencies;

c. Biological resources and habitats for the backshore, foreshore, and aquatic environments;

d. Area of surface waters appropriated, and leased areas;

e. Site orientation; exposure to wind, waves, flooding or tidal/storm surges; and type and extent of shore defense works or shoreline stabilization and flood protection necessary;

f. Impact upon existing and created demand for shoreline and water uses including physical access, recreation, and views;

g. The regional need for additional facilities;

h. The design of the facilities including sewage disposal, restrooms, solid waste disposal, proposed signage, proposed exterior lighting, a proposed landscaping plan, and proposed use of noise-generating equipment;

i. Management and operations including accommodation of live-aboard vessels, including houseboats, provisions for the prevention and control of fuel spillage, and

restrictions related to disposal of wastes and toxic materials; and

j. Other information that may be requested by the director.

4. Accessory uses at a marina or public launch ramp shall be limited to those which are water-dependent, related to boating, necessary for marina operation, or which provide physical or visual shoreline access to substantial numbers of the general public. Accessory uses shall be consistent in scale and intensity with the marina and/or launch ramp and surrounding uses.

5. Shoreline permits for marinas shall be conditioned to include boater education addressing boater impacts on water quality and other shoreline resources, boater safety and requirements for boater use of sewage pump-outs.

6. New marinas and expansion areas in existing marinas shall not have covered moorage.

7. New floating homes and those that are not determined to be legally nonconforming shall be prohibited in all marinas and elsewhere in the shoreline jurisdiction of Bainbridge Island. Live-aboard vessels, including houseboats, shall be permitted in marinas. No more than 25 percent of the surface area of a marina or 25 percent of its slips, whichever is less, shall be devoted to live-aboard vessels, including houseboats.

#### C. Regulations – Location.

1. When new sites are considered, sufficient evidence must be presented to show that existing marinas are inadequate and cannot be expanded to meet regional demand.

2. Marinas shall be sited to prevent any restrictions in the use of commercial and recreational shellfish beds. The specific distance shall be determined in conjunction with the Washington State Department of Health Services, the Washington State Department of Ecology, and other agencies with expertise. Criteria for determining the specific distance may include:

a. The size and depth of the water body;

- b. Tidal flushing action in the project area;
- c. Size of the marina and projected intensity of use;
- d. Whether fuel will be handled or stored;
- e. Existence of a sewer hook-up; and
- f. Expected or planned changes in adjacent land uses that could result in additional water quality impacts or sanitary treatment requirements.

3. Marinas and public launch ramps shall be allowed only 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 enhancement, and other harbor and channel maintenance activities.

4. Marinas and launch ramps shall be located only in areas where there is adequate water mixing and flushing and shall be designed so as not to retard or negatively influence flushing characteristics.

5. Boating facilities shall not require fixed breakwaters.

6. Marina and boat launch entrances shall not be located closer than 1,000 feet from beaches commonly used for swimming, or from valuable areas for commercial or recreational fishing or shellfish collection.

7. Marinas and launch ramps shall not be located at or along:

- a. Significant littoral drift sectors, including resource material areas such as feeder bluffs and accretion beaches, points, spits and hooks;
- b. Wetlands, marshes, bogs, swamps and lagoons;
- c. Mud flats and salt marshes;
- d. Fish and shellfish spawning and rearing areas; or
- e. Poorly flushed lagoons and backwaters.

(See BIMC 16.12.080, Environmentally sensitive areas.)

8. Backshore marinas involving the creation of a basin for wet moorage shall be prohibited by the master program.

9. Marinas shall not extend seaward farther than the following limits:

a. In Eagle Harbor, the construction limit line, except that open water moorage and anchorage areas shall be allowed seaward of the construction limit line.

b. Elsewhere, the offshore ends of the adjacent marinas where present, and in no instance 200 feet beyond extreme low tide or the -3 fathom contour, whichever is less. (WAC 332-30-122(1)(ii) or its successor and WAC 332-30-142(8)(d) or its successor.)

D. Regulations – Design/Renovation/Expansion.

1. Proposals for marinas shall include public launch facilities unless the applicant can demonstrate that providing such facilities is not feasible.

2. Marina design shall provide thorough flushing of all enclosed water areas and shall not restrict the movement of aquatic life requiring shallow water.

3. The marina design shall minimize interference with geohydraulic processes and disruption of existing shore forms.

4. Boating facilities shall be designed so their structures and operations will be aesthetically compatible with or will enhance existing shoreline features and uses. Boating facilities shall mitigate for adverse development impacts on-site and to adjacent properties.

5. Shoreline embankments of all boating facilities shall be stabilized both above and below the water's edge both during and after construction.

6. Long-term dry moorage (for six or more vessels) and all other storage areas shall be set back at a preferred distance of 100 feet from the OHWM. This shall not apply to hand-launch vessels.

7. Short-term loading areas may be located at ramps or near berthing areas. Long-term parking and paved storage areas shall be separated from the OHWM by a vegetated native vegetation zone of at least 50 feet.

8. Unless native vegetation on the perimeter of parking, dry moorage, and other storage areas is retained, these perimeter areas shall be landscaped with native plants or other

approved materials. The permit application shall identify the size, location, and species of landscaping materials stressing native vegetation.

9. Public access, both visual and physical, shall be an integral part of all marina design and development commensurate with the particular proposal and must include the following:

a. Views from upland lots and public view corridors shall be preserved. Visual access shall not be reduced to less than 35 percent of the width of the lot, except that one-half of such requirement may be satisfied by an abutting street or waterway.

b. Parking, landscaping, and recreational uses shall be permitted in the view corridor provided all other master program provisions are met.

10. All boating facilities and accessory uses must conform to the general provisions (Part III) and environment designation provisions (Part IV), including meeting the setback and height restrictions in Table 4-2.

E. Regulations – Parking and Circulation.

1. To the maximum extent possible, marinas and accessory uses shall share parking facilities, with marina usage given preference.

2.a. Parking facilities shall be provided according to the following schedule:

First 50 moorage slips:	1 vehicle space per 2 slips
Slips 51 to 100:	1 vehicle space per 3 slips
Slips over 100:	1 vehicle space per 4 slips

An additional parking space shall be provided for every 400 square feet of interior floor space devoted to accessory retail sales or services. Where live-aboards are permitted, additional parking shall be provided at a rate of one vehicle per live-aboard vessel or houseboat allowed.

b. Parking facilities for open water moorage and anchorage areas shall be pro-

vided as follows: Live-aboard tenants of open water moorage and anchorage areas shall provide either (i) evidence of access to one legal vehicle parking space per anchorage/moorage space for the duration of the anchorage/moorage period; or (ii) an affidavit stating that no vehicle is owned or used by the tenant. Day-use parking shall be provided according to the following schedule:

First 50 moorage slips:	1 vehicle space per 2 slips
Slips 51 to 100:	1 vehicle space per 3 slips
Slips over 100:	1 vehicle space per 4 slips

In addition, two load/unload parking spaces shall be provided for transient users of open water moorage and anchorage areas.

3. Marinas and launch ramps shall be located where access streets are adequate to handle the traffic load generated by the facility and shall be designed to minimize other circulation and access conflicts. Backing of trailers on public roads shall be prohibited and identified with appropriate signs.

4. Collector roads between marinas and arterial routes shall have all-weather surfacing and be satisfactory to the city in terms of width, safety, alignment, sign distance, grade, and intersection controls.

5. Marinas and boat launches shall be designed so that existing or potential public access along beaches is not unnecessarily blocked nor made dangerous, and so that public use of the surface waters below the OHWM is not unduly impaired.

6. At each public or quasi-public launch ramp, at least 10 car and trailer spaces at least 10 feet by 40 feet shall be provided for each ramp lane.

F. Regulations – Utilities.

1. All marinas shall have accessible boat sewage disposal systems on-site or other pump-out services. Existing marinas shall comply within one year of the effective date of this regulation.

2. The marina shall provide facilities for the adequate collection and dumping of marina originated materials including, but not limited to, sewage, solid waste, and petroleum waste.

3. All marinas shall provide restrooms for boaters' use, including upland or floating facilities supporting open water moorage and anchorage areas. Upland restrooms shall be located within 75 feet of the landward end of the dock or pier and floating restroom facilities shall be located to conveniently serve the tenants. Restrooms shall be identified by signs and be accessible to tenants 24 hours a day. Marinas with fewer than 10 slips shall provide one toilet and hand washing facility. Marinas with 10 to 100 slips shall provide one toilet and hand washing facility for each gender. Marinas exceeding 100 slips shall provide an additional toilet and lavatory for each gender. Existing marinas shall comply within one year of the effective date of this regulation.

4. Distribution systems for plumbing and wiring at a marina site shall be placed at or below ground and dock levels.

5. Public boat launch facilities shall provide and maintain dump stations and restrooms or portable toilets.

G. Regulations – Management and Operations.

1. The discharge of sewage and/or toxic material from boats and/or shore installations shall be prohibited. The responsibility for the adequate and approved collection and disposal of marina originated sewage, solid waste, and petroleum waste is that of the marina operator.

2. No commercial fish or shellfish processing discharge or discarding of unused bait, scrapfish, or viscera shall be permitted.

3. Marinas which dispense fuel shall have adequate facilities and establish posted operational procedures for fuel handling and storage in order to prevent/minimize accidental spillage.

4. Marinas shall have facilities, equipment, and established posted procedures for containment, recovery, and mitigation of spilled petroleum, sewage, and toxic products.

5. Marina operators shall post signs where they are readily visible to all marina users describing regulations:

a. Pertaining to handling and disposal of waste, wastewater, toxic materials, and recycling;

b. Prohibiting the use of marine toilets (i.e., no untreated sewage discharge);

c. Prohibiting the disposal of fish and shellfish cleaning wastes; and

d. Describing best management practices (BMPs) for boat maintenance and repairs on site.

6. Garbage or litter receptacles shall be provided and maintained by the marina operator at several locations convenient to users in sufficient numbers to properly store all solid waste generated on site.

7. Marina docks shall be equipped with adequate lifesaving equipment such as life rings, hooks, and ropes.

8. Swimming shall be prohibited within marina facilities unless the swimming area is adequately separated, protected, and posted.

9. If dredging at marina entrances changes the littoral drift processes and adversely affects adjacent shores, the marina operator shall be required to periodically replenish these shores with the appropriate quantity and quality of aggregate as determined by a geohydraulic study, paid for by the operator and completed to the satisfaction of the director.

10. Temporarily vacant moorage spaces shall be made available for "transient moorage" (less than two-week stay) when at least one of the following apply:

a. The marina is owned, operated, or franchised by a governmental agency for use by the public;

b. The marina provides more than 3,000 lineal feet of moorage; or

c. The marina is part of a mixed-use development which includes restaurants or other water-enjoyment uses.

Additional transient moorage requirements may be established for Eagle Harbor in the Winslow Master Plan.

11. Marina operators shall execute a lease, contract, or deed which establishes permission to use a slip for a stated period of time and which establishes conditions for use of the slip, including the requirement that all boats meet applicable sanitation regulations. (Ord. 2007-16 § 10, 2007; Ord. 96-38, 1996)

**16.12.190 Regulations – Boat launches.**

A. Boat launches may be allowed only on or along low energy drift sectors.

B. Boat launches may be permitted on marine accretion shoreforms, provided any necessary grading is not harmful to affected resources and any accessory facilities are located out of the floodway.

C. Boat launches may be allowed on stable banks where no or a minimum number of current deflectors or other stabilization structures will be necessary.

D. Boat launches shall not be permitted where the upland slope within 25 feet of the OHWM exceeds 25 percent and/or where substantial cutting, grading, filling, or defense works is necessary.

E. Boat launches, minor accessory buildings, and haul out facilities shall be designed to be in character and scale with the surrounding shoreline.

F. Boat launches shall be built from flexible, hinge-segmented pads which can adapt to changes in beach profiles, unless a solid structure is demonstrated to be more appropriate for the intended level of use.

G. Boat launches shall be placed and kept near flush with the foreshore slope to minimize the interruption of geohydraulic processes.

H. Marine railways for boat launching shall be located on existing grade and shall not

This page left intentionally blank.

obstruct access or littoral drift to and along the shoreline.

I. Parking and shuttle areas for launch ramps shall not be located on scarce accretion shoreforms which have high value for general shore recreation. (Ord. 96-38, 1996)

#### **16.12.200 Commercial development.**

A. Applicability. Commercial development is subject to the provisions of Part IV, Environment Designations, including the standards in Table 4-2. Uses associated with commercial development which are identified as separate uses in the master program are also subject to those regulations. Examples are industry, boating facilities, transportation facilities, and utilities. Shoreline modification activities, such as piers, docks, and bulkheads, are subject to provisions in Part VI. Part III, General Regulations, also applies to all commercial uses.

##### **B. Regulations.**

1. Water dependent, water-related, and water-enjoyment commercial development shall be permitted in the urban environment, may be allowed under a conditional use permit in the semi-rural environment, and shall be prohibited in the natural, conservancy, rural and aquatic conservancy environments.

2. Commercial development shall be prohibited in the aquatic environment, except water-dependent commercial development requiring an over-water location which shall be permitted in the aquatic environment when permitted in the upland environment.

3. Nonwater-oriented commercial development may be allowed under a conditional use permit in the urban environment if it complies with all other applicable regulations and the following circumstances are demonstrated:

a. A water-oriented use is not reasonably expected to be located on the proposed site due to topography, surrounding land uses, physical features, or the site's separation from the water.

b. The proposed use will not interfere with adjacent water-oriented uses.

Nonwater-oriented commercial developments shall be prohibited in all other environments.

4. Mixed use developments may include nonwater-oriented commercial uses that are complementary to more dominant water-oriented uses.

5. The city shall require and utilize the following information in its review of commercial development proposals.

a. Nature of the commercial activity (water-dependent, water-related, water-enjoyment, nonwater-oriented, mixed use), including a breakdown of specific components;

b. Need for shoreline location;

c. Special considerations for enhancing the relationship of the activity to the shoreline;

d. Provisions for public visual and physical access to the shoreline including alternative enhancements;

e. Provisions to ensure that the development will not cause adverse impacts to the natural and cultural environment;

f. For mixed use proposals, proposed mix of water-oriented and nonwater-oriented uses and activities, including an analysis of public versus private spaces; and

g. Site design, structure locations, height and bulk considerations.

6. Public access shall be provided in conformity with the requirements of Part III, General Regulations.

7. Commercial parking as a primary use shall be prohibited within 200 feet of the shoreline (OHWM). (Ord. 96-38, 1996)

#### **16.12.210 Flood hazard and storm water management.**

A. Applicability. These provisions apply to primary flood hazard and storm water management projects or programs. They also apply to construction, maintenance, repair, modification and/or expansion of flood hazard management systems. Provisions applicable to individual properties are in Part VI, Shoreline Modification Regulations. Some provisions in Part III, General Regulations, may also apply.

### B. Regulations.

1. Flood hazard management shall be a conditional use in the conservancy, rural, semi-rural, urban and aquatic environments and prohibited in the natural and aquatic conservancy environments.

2. The city shall require the applicant to provide the following information during its review of shoreline flood management projects and programs:

a. Channel hydraulics and flood-way characteristics up and downstream from the project area;

b. Existing shoreline stabilization and flood protection works within the area;

c. Physical, geological and soil characteristics of the area;

d. Biological resources and predicted impact to fish, vegetation and animal habitat associated with shoreline ecological systems;

e. Predicted impact upon area shore and hydraulic processes, adjacent properties, and shoreline and water uses; and

f. Analysis of alternative flood protection measures, both structural and non-structural.

3. Conditions of the hydraulic project approval issued by Washington State Department of Fish and Wildlife may be incorporated into permits issued for flood protection.

4. The city shall require engineered design of flood protection works where such projects may cause interference with normal geohydraulic processes leading to erosion or adverse effects to shoreline resources and uses.

5. Flood protection measures that alter, reroute, or change the shoreline may be approved as a conditional use only if it is demonstrated that other flood protection and planning measures would be insufficient. Alternative measures shall be considered, including bioengineering techniques, development restrictions, shoreline setbacks, and comprehensive planning. (Ord. 96-38, 1996)

### 16.12.220 Forest practices.

A. Applicability. Forest practices are primarily regulated by the Washington Department of Natural Resources under WAC Title

222 or its successor pursuant to the Forest Practices Act (Chapter 76.09 RCW or its successor). This section supplements those regulations. Activities which are not regulated under the Forest Practices Act are subject to clearing and grading provisions in Part III, General Regulations, of the master program. Forest practices are subject to Parts III, IV, and VI of the master program.

### B. Regulations.

1. Forest practices requiring a forest practices permit shall be allowed as a conditional use in the rural, semi-rural, urban and conservancy environments, and shall be prohibited in the natural environment.

2. An undisturbed native vegetation zone of 100 feet from the OHWM (measured horizontally) shall be required. This native vegetation zone shall be fenced prior to beginning any forest practices activities and protected during forest practices (Table 4-2).

3. Commercial timber cutting within the shoreline jurisdiction shall be by selective cutting and shall not exceed 30 percent of the merchantable trees (not including trees in native vegetation zone areas) in any 10-year period. Remaining trees shall be distributed evenly throughout the shoreline area and shall be representative of the species and age distribution in the stand prior to cutting.

4. Timber cutting within the shoreline jurisdiction shall be based on a harvest plan approved by the city or other appropriate means as established by the city and its regulations. The plan shall protect the shoreline jurisdiction and water bodies from degradation caused by upland forest practices, as well as practices within the shoreline jurisdiction, and shall provide for protection of wildlife habitat.

5. The responsible forester shall maintain a log and map indicating species, age, and date for each tree cut within the shoreline jurisdiction.

6. All timber harvesting shall comply with the current rules and regulations adopted under the Forest Practices Act and the timber, fish and wildlife agreement or their successors.

7. Trees shall be directionally felled away from shorelines and other protected areas.

8. Forest practices shall comply with Chapter 16.20 BIMC, Critical Areas, as amended.

9. Wheeled and tracted equipment shall not be allowed within any native vegetation zone or sensitive area.

10. Site preparation by burning and scarification piles shall be prohibited within shoreline jurisdiction.

11. Skid roads, fire trails, abandoned roads, and other erodible soil conditions caused by timber harvest operations shall be water-barred, as needed, on completion of the activity.

12. Replanting or seeding shall be accomplished during the first planting season.

13. When timberland is to be converted to another use, such conversion shall be clearly indicated on the forest practices application. Failure to indicate the intent to convert the timberland to another use on the application will result in subsequent conversion proposals being reviewed as conditional use applications. Such failure to declare intent to convert on the application shall provide adequate grounds for denial of subsequent conversion proposals for a period of six years from the date of the forest practices application approval. (RCW 76-09-060(3)(b)(I) or its successor.) Timber harvest shall not be permitted until local plat approval or other applicable land use authorization has been given, and any required shoreline permits have been issued for the land division(s) or intended use(s). (Ord. 96-38, 1996)

#### 16.12.230 Industry.

A. Applicability. Uses and activities associated with industrial development which are identified as to uses (this section) or as shoreline modification activities (Part VI) are also subject to those regulations. Examples include transportation facilities, utilities, dredging, landfill, piers and docks, and bulkheads. Industrial development is subject to Part III, General Regulations, and Part IV, Environment Designations.

##### B. Regulations – General.

1. Water-dependent industry shall be permitted in the urban environment, and those

portions of the aquatic environment which are waterward of the urban environment and prohibited in all other environments. Water-related industry shall be a conditional use in the urban environment and prohibited in all other environments. Nonwater-oriented industry shall be prohibited in all environments.

2. Proposed industrial developments shall be consistent with any applicable comprehensive waterfront and/or long-range harbor development plans.

3. Except where otherwise provided for in an official plan, industrial development shall be consistent with existing uses of neighboring shoreline areas.

4. Proposed development shall maximize the use of legally established, existing industrial facilities and avoid duplication of pier and dock facilities before expanding into undeveloped areas or building new facilities.

5. Water-related industrial development shall be set back from the OHWM a sufficient distance to avoid disturbance of the native vegetation zone. (See Part III for native vegetation zone and Part IV, Table 4-2 for dimensions.)

6. Accessory development which does not require a shoreline location shall be located upland of the water-dependent portions of the development and set back from the OHWM as established in Part IV, Table 4-2. This category includes, but is not limited to, parking, warehousing, open air storage, waste storage, storm runoff control and treatment facilities; utilities, and land transportation development.

7. The developer must demonstrate adequate mitigation of negative environmental impacts including, but not limited to, air, water, aesthetics, noise pollution, and sensitive areas. Industrial development shall comply with the city's environmentally sensitive areas regulations, Chapter 16.20 BIMC.

8. Water-dependent industry shall be located and designed to minimize the need for initial and/or continual dredging, filling, dredge material disposal, and other harbor and channel maintenance activities.

9. Piers, moorage, slips, floats, and launching facilities may be permitted accessory to industrial development, provided:

a. The facility will serve a water-dependent use.

b. The facility does not constitute a hazard to navigation.

c. All other provisions pertaining to these uses are met.

10. Offshore facilities, floating docks, and artificial islands for deep-water port expansion shall not be permitted except by conditional use permit, provided it can be demonstrated that such development or expansion will not adversely impact the marine environment or diminish the natural productivity of the estuarine or aquatic system.

11. Storage and/or disposal of industrial wastes is prohibited within shoreline jurisdiction.

12. At new or expanded port and/or industrial developments, the best available facilities, practices and procedures shall be employed for the safe handling of fuels and toxic or hazardous materials to prevent them from entering the water, and optimum means shall be employed for prompt and effective clean-up of those spills that do occur.

**C. Regulations – Design.**

1. Those portions of the industrial development which are not water-dependent and do not require direct contact with the water or shoreline shall be set back from the shoreline at a sufficient distance to minimize impacts to water quality, to other shoreline uses and to the shoreline as a scenic view. (See Part IV, Environment Designations, Table 4-2.)

2. Consistent with provisions in BIMC 16.12.110, Public access – Visual and physical, ports and/or water-dependent industry shall provide public access to the shoreline and/or provide opportunities for public viewing of the industrial activity whenever feasible and safe.

3. Display and other exterior lighting shall be designed and operated to minimize glare impacts to nearby properties and local traffic.

4. Log storage in water shall be prohibited.

5. See BIMC 16.12.130, Water quality, for storm water requirements.

**D. Regulations – Ship and Boat Building and Repair Yards.**

1. The shipyard shall employ best management practices (BMPs) concerning the various services and activities they perform and their impacts on the surrounding water quality. Standards for BMPs shall be found in Best Management Practices for Small Boat Yards (The Lake Union Association, November 1990, or most recent edition).

2. Mobile services shall comply with the applicable BMPs described in the most recent edition of Best Management Practices for Small Boat Yards (The Lake Union Association, November 1990, or most recent edition). Any cleaning, surfacing, or resurfacing operation occurring over water that may result in the entry of debris, such as paint chips, shall employ tarpaulins temporarily affixed to the hull above the water line. Prior to removing the tarpaulins, the accumulated contents shall be removed by vacuuming or an equivalent method. (Ord. 96-38, 1996)

**16.12.240 Mining.**

A. Applicability. Mining is the removal and primary processing of naturally occurring materials from the earth for economic use. For purposes of this definition, “processing” includes screening, crushing, stockpiling, all of which utilize materials removed from the site where the processing activity is located. Mining activities also include in-water dredging activities related to mineral extraction. Processing does not include general manufacturing, such as the manufacture of molded or cast concrete or asphalt products, asphalt mixing operations, or concrete batching operations.

**B. Regulations.**

1. Mining, including the excavation of sand, gravel, and other minerals, shall be prohibited within the shoreline jurisdiction.

2. Impacts to shorelands and water bodies due to mining operations upland of the shoreline jurisdiction shall be minimized. (Ord. 96-38, 1996)

**16.12.250 Recreational development.**

A. Applicability. These provisions apply to development, not to casual use of undeveloped open space. They also apply to both publicly and privately owned facilities intended for use by the general public, private clubs, groups, associations, or individuals. Recreational development is subject to Part III, General Regulations, Part IV, Environment Designations, including Table 4-2, Setbacks and Height, and Part VI, Shoreline Modification Regulations.

**B. Regulations – General.**

1. Water-oriented recreational uses shall be permitted in the conservancy, rural, semi-rural, urban, and aquatic environments. Development to accommodate passive (nonintensive) water-dependent and/or water-oriented recreational or educational uses shall be allowed as a conditional use in the natural environment. Recreational development shall be prohibited in the aquatic conservancy environment.

2. The city shall consult applicable state and local health regulations when issuing shoreline permits for recreational facilities. (WAC 173-16-060(21)(k) or its successor.)

3. Valuable shoreline resources and fragile or unique areas such as marshes, bogs, swamps, estuaries, wetlands, and accretion beaches, shall be used only for passive and nondestructive recreational activities.

4. All permanent, substantial, recreational structures and facilities shall be located outside officially mapped floodways, provided the city may grant administrative exceptions for passive minor accessory uses (e.g., picnic tables, tennis courts, etc.).

5. Substantial accessory use facilities, such as restrooms, recreation halls and gymnasiums, commercial services, access roads, and parking areas, shall be set back from the OHWM unless it can be shown that the facilities are essentially water-dependent. These areas may be linked to the shoreline by walkways.

6. For recreation developments that require the use of fertilizers, pesticides, or other toxic chemicals, such as golf courses and playfields, the applicant shall submit plans

demonstrating the methods to be used to prevent these chemicals and the resultant leachate from entering adjacent water bodies and wetlands. Native vegetation zone strips and, if practical, shade trees shall be included in the development. The city shall determine the minimum width necessary for chemical-free, native vegetation zone strips, but in no case shall the native vegetation zone strip be less than 50 feet.

7. The use of time-release fertilizer and herbicide shall be preferred over liquid or concentrate application for lawns within shoreline jurisdiction.

8. The use of off-road vehicles shall be prohibited in all shoreline areas.

9. The use of jet skis and similar recreational equipment shall be prohibited in the aquatic conservancy environment.

**C. Regulations – Design.**

1. The development shall maintain, enhance, or restore desirable shoreline features including unique and fragile areas, scenic views, and aesthetic values. To this end, the city may adjust and/or prescribe project dimensions, location of on-site project components, intensity of use, screening, parking requirements, and setbacks as deemed appropriate.

2. Recreational developments shall provide facilities for nonmotorized access to the shoreline such as bicycle and/or pedestrian paths.

3. Motorized vehicular access is prohibited on beaches and spits, except for boat launching activities. Recreational facility design and operation shall prohibit the use of all-terrain and off-road vehicles in the shoreline area.

4. The removal of on-site native vegetation shall be limited to the minimum necessary for the development of campsites, selected views, or other permitted structures or facilities. (See BIMC 16.12.060, Clearing and grading.)

5. No recreational buildings or structures shall be built over water, except as provided for in Part VI, Shoreline Modification Regulations.

6. Proposals for recreational development shall include adequate facilities for water supply and sewage and garbage disposal. Where sewage treatment facilities are not available, the appropriate reviewing authority shall limit the intensity of development to meet local and state on-site sewage disposal requirements. On-site sewage disposal systems shall be located landward of the development.

7. Recreational facilities shall minimize impacts on adjacent and nearby private property through use of screening, native vegetation zone strips, fences, and signs.

#### D. Regulations – Golf Courses.

1. Golf courses shall be a conditional use requiring both a conditional use permit and a substantial development permit in the conservancy, rural, semi-rural, and urban environments, and shall be prohibited in the natural, aquatic and aquatic conservancy environments.

2. Golf courses shall be designed with a 100-foot undisturbed native vegetation zone from the OHWM.

3. Golf course fairways shall not cross streams which are within shoreline jurisdiction. Courses which are proposed to occupy both sides of such streams should be designed to avoid bridge crossings.

4. Degraded shorelines shall be revegetated with native species (trees, grasses, ferns, and other woody species) representative of undisturbed riparian communities in the immediate area, or those in the same or similar ecological zones. This revegetation shall occur in, but not be limited to, the 100-foot native vegetation zone area.

5. Snags and living trees (i.e., large cedar, fir, alder, maple, etc.) shall not be removed from the 100-foot native vegetation zone area unless they are deemed extreme hazards by a professional arborist and the area biologist of the Washington Department of Fish and Wildlife.

6. Golf cart routing shall be set back 200 feet from OHWM, unless combined with a public access trail system. If combined with a public access trail, it shall be located at least 100 feet from OHWM.

7. Wildlife resting or feeding on golf courses located within jurisdiction of the Shoreline Management Act shall not be harassed.

8. A chemical management plan designed to eliminate the possibility of damage to riparian vegetation, wildlife, and surface and groundwater quality shall be prepared and implemented for golf courses located in shoreline jurisdiction.

9. Broadleaf and broad-spectrum (capable of killing all vegetation) herbicides shall be used only for spot application with wicking, or small spray equipment on noxious weeds on the applicable USDA Soil Conservation Service list of noxious weeds, within the 200-foot native vegetation zone. Hand and mechanical control of noxious weeds shall be encouraged in the chemical management plan. All other applicable local, state and federal regulations and label requirements shall be adhered to in the use of such chemicals.

10. Public access for passive recreation shall be provided within shoreline jurisdiction. (Ord. 96-38, 1996)

#### 16.12.260 Residential development.

A. Applicability. All development in the shoreline jurisdiction must comply with the Shoreline Management Act (Chapter 90.58 RCW or its successor) and the master program. While an individual owner-occupied, single-family residence and its "normal appurtenances" are exempt from the requirement that a substantial development permit (SSDP) be obtained from the local government (WAC 173-14-040 or its successor), they must comply with this section and other provisions of the master program. Subdivisions and short plats must also comply with all applicable provisions.

In some circumstances a conditional use permit is required for developments which are exempt from the SSDP. In other situations a variance may be needed because of inability to conform to master program standards.

Residential development is subject to Part III, General Regulations, which contains provisions for a native vegetation zone adjacent to and landward of the ordinary high water mark

(OHWM), clearing and grading restrictions, public access requirements, environmentally sensitive areas provisions, on-site utilities, and others. Part IV, Environment Designations, also applies to residential development. Shoreline modifications (e.g., bulkheads and revetments, piers and docks) are provided for in Part VI, Shoreline Modification Regulations. Residential development is also subject to the Chapter 16.20 BIMC, Critical Areas.

**B. Regulations – General.**

1. Residential development shall be permitted in the rural, semi-rural, and urban environments, shall be conditional uses in the conservancy environment, and shall be prohibited in the natural, aquatic, and aquatic conservancy environments.

2. Land division shall be permitted in the rural, semi-rural, and urban environments and shall be allowed as a conditional use in the natural and conservancy environments. Properties in water environments, aquatic and aquatic conservancy, shall be regulated the same as the adjacent upland.

3. The total area of the native vegetation zone shall consist of an area equivalent to the length of the property along the shoreline times the depth required for the environment in which the property is located. (See BIMC 16.12.090, Native vegetation zone.)

4. In conformity with BIMC 16.12.090.C.9, Native vegetation zone, the configuration of the native vegetation zone may be altered by as much as 25 percent to allow flexibility in using the property for certain specific purposes. However, the native vegetation zone shall never be less than 25 feet. The purposes for which the 25 percent flexibility may be used shall include, and be limited to, the following:

- a. Replacing native vegetation with exotic vegetation;
- b. Siting permitted accessory structures (see subsection B.9 of this section); and/or
- c. Siting the primary residence closer to the water.

5. Except as otherwise provided below, the required depth of the native vegetation zone for residential uses shall be as

follows: 25 feet in the urban environment, 50 feet in the rural and semi-rural environments, and 100 feet in the conservancy environment. (Also shown in Table 4-2, Use-Related Development Standards Matrix.)

6. In the semi-rural environment where an existing residential use has been legally constructed with a setback of 25 feet or less, 25 feet may be used as the setback when the director makes a finding that:

- a. The proposed construction will not further obstruct the view from the most waterward indoor portion of a primary residence on an abutting property on either side; and
- b. The property is not upland of an aquatic conservancy environment.

7. In the semi-rural environment where there are adjacent primary residences within 25 feet of the side property line on both sides of the property and both are less than 50 feet from the OHWM, the average setback of the adjacent properties may be used as the required depth of the native vegetation zone, provided that:

- a. The property is not upland of an aquatic conservancy environment; and
- b. The setback from OHWM may not be less than 25 feet.

8. Side yards within 200 feet of OHWM, except in the urban environment, shall total at least 30 percent of the lot width and shall remain free of above-ground structures and impervious surfaces except that fences up to four feet high shall be allowed.

9. No accessory structures shall be located within the required native vegetation zone, except a stairway to the beach, a tram, a pier or dock, a boat house, permeable decks less than 30 inches in height above grade, and fences; provided, that they conform to all other city and state requirements, including provisions of the master program.

10. Single-family dwellings shall not be permitted where flood control, shoreline protection measures, or bulkheading is required to create a buildable site. All structures shall be located and designed to avoid the need for structural shore defense.

11. Design and location of accessory structures shall protect existing views from adjacent principal buildings on adjacent properties and minimize adverse impacts to the environment.

12. Accessory dwelling units are conditional uses on lots abutting the shoreline.

13. In the rural, semi-rural, and urban environments, a boat house or boat storage deck in no case shall exceed 200 square feet in size and 12 feet in height above existing grade and shall be in accordance with subsections B.5 and B.10 of this section. It shall also be considered a normal appurtenance to residential development not requiring a shoreline substantial development permit (SSDP); provided, that the location is not upland of an aquatic conservancy environment.

14. In the rural, semi-rural, and urban environments, permeable (slatted) decks of 120 square feet or less that do not exceed 30 inches in height above grade shall be permitted in connection with subsection B.5 of this section, provided the location is not upland of an aquatic conservancy environment. It shall also be considered a normal appurtenance to residential development not requiring a shoreline substantial development permit (SSDP); provided, that the location is not upland of an aquatic conservancy environment.

15. In the rural, semi-rural and urban environments, hand-installed steps to the beach, or as part of a trail system, shall be permitted in the native vegetation zone.

16. Stairways to the beach of less than 120 square feet shall be permitted in the rural, semi-rural, and urban environments. It shall also be considered a normal appurtenance to residential development not requiring a shoreline substantial development permit (SSDP); provided, that the location is not upland of an aquatic conservancy environment. Stairways exceeding 120 square feet in footprint and all stairways in the natural and conservancy environments shall require a conditional use permit.

17. All stairways to the beach shall require a building permit and conform to standards as defined by the building official.

18.a. Floating homes compliant with all the requirements of BIMC 12.40.080 and occupying the same location since November 25, 1996, shall be considered legally nonconforming.

b. Live-aboard vessels, houseboats, and legally nonconforming floating homes shall be allowed only at marinas or in an open water moorage and anchorage area in Eagle Harbor.

c. Existing live-aboard vessels, houseboats, and legally nonconforming floating homes not located within a marina shall be required to relocate to a marina or open water moorage and anchorage area within Eagle Harbor within six months after the establishment of such an open water moorage and anchorage area. Individuals who wish to moor in the open water moorage and anchorage area must register their vessel with the police and sign a live-aboard agreement with the city.

d. Live-aboard vessels, houseboats, and floating homes must comply with all marine regulations, policies and procedures of the Coast Guard, federal and state governments which pertain to health, safety and/or environmental protection. Proof of seaworthiness of the vessel and the adequacy of the mooring arrangement must be provided and laws governing all the citizens of Bainbridge Island must be obeyed. The city may charge fees to cover administrative costs and reserves the right to terminate the live-aboard agreement and expel any noncompliant vessel from the harbor.

19. All residential development shall comply with Chapter 16.20 BIMC, Critical Areas.

20. All residential development shall meet setback and height standards in Table 4-2. (Ord. 2007-16 § 11, 2007; Ord. 96-38, 1996)

**16.12.270 Transportation facilities.**

A. Applicability. Transportation facilities are also subject to Part III, General Regulations, Part IV, Environment Designations, and Part VI, Shoreline Modification Regulations. As provided in Part III, shoreline development

is subject to Chapter 16.20 BIMC, Critical Areas.

**B. Regulations – General.**

1. Trails shall be permitted in all upland environments.

2. Publicly-owned ferry terminals and services, except over-water facilities, are allowed as a permitted use in the urban environment and in the adjacent aquatic environment. New over-water facilities in conjunction with a permitted ferry terminal may be allowed as a conditional use in the urban environment and in the adjacent aquatic environment and are prohibited in all other environments. Normal repair and maintenance of existing facilities do not require a conditional use permit, but may require an SSDP.

This page left intentionally blank.

3. Float plane facilities and services are a conditional use in the urban environment and in the adjacent aquatic environment and are prohibited in all other environments.

4. New highways, arterials, secondary roads, railroad facilities, and heliports shall be prohibited in all environments.

5. No new bridges to Bainbridge Island shall be allowed.

6. New access roads shall be allowed only where required because of one of the following:

- a. Other means of access are either infeasible or environmentally unacceptable; or
- b. The road is needed for ferry service.

7. All transportation facilities shall be prohibited in the aquatic conservancy environment.

8. Transportation facilities and services shall utilize existing transportation corridors whenever possible; provided, that facility additions and modifications will not adversely impact shoreline resources and are otherwise consistent with this program. If expansion of the existing corridor will result in significant adverse impacts, then a less disruptive alternative shall be utilized.

9. Transportation and primary utility facilities shall be required to make joint use of rights-of-way and to consolidate crossings of water bodies where doing so minimizes adverse impacts to the shoreline.

10. Transportation facilities are prohibited in hazardous areas such as steep slopes or (unstable) soils, or in front of feeder bluffs, over driftways or on accretion shoreforms. See also Chapter 16.20 BIMC, Critical Areas.

11. Landfills for transportation facility development are prohibited in water bodies, wetlands, marshes, bogs, swamps and on accretion beaches; provided, that when all structural and upland alternatives have been proven infeasible and the transportation facilities are necessary to support uses consistent with this program they may be allowed as conditional uses. Transportation facilities must comply with Chapter 16.20 BIMC, Critical Areas.

12. Shoreline road ends may not be vacated except in compliance with RCW 35.79.035 or its successor.

13. All transportation facilities shall meet the height and setback standards in Table 4-2 and are subject to applicable landfill and dredging provisions in BIMC 16.12.320 and 16.12.330 of this shoreline master program.

C. Regulations – Construction and Maintenance.

1. Overburden, debris, and other waste materials from both construction and maintenance activities, including drainage ditch clearance, shall not be deposited into or cast on the side of roads with a shoreline, water body, wetland, estuary, tideland, accretion beach, and other unique natural area. Such materials shall be deposited in stable locations where re-entry and erosion into such areas is prevented.

2. All shoreline areas disturbed by facility construction and maintenance shall be replanted and stabilized with approved vegetation by seeding, mulching, or other effective means immediately upon completion of the construction or maintenance activity. Such vegetation shall be maintained by the agency or developer constructing or maintaining the road until established.

3. The city shall give preference to mechanical means rather than the use of herbicides for roadside brush control on city roads in shoreline jurisdiction.

4. No machinery shall be operated within or along a stream bed, marine shoreline, lake, wetland or pond except in compliance with a hydraulics permit issued by the Washington State Department of Fish and Wildlife.

5. Existing roads which are parallel to shoreline areas shall be adequately maintained with compatible, self-sustaining vegetation. Shoreline scenic drives and viewpoints may provide breaks periodically in the vegetative buffer to allow open views of the water. (Ord. 96-38, 1996)

#### **16.12.280 Utilities (primary and accessory).**

A. Applicability. This section applies to utility systems. See Part III, General Regulations, for provisions about on-site accessory

use utility. Part IV, Environment Designations, and Part VI, Shoreline Modification Regulations, also apply. Utilities are subject to Chapter 16.20 BIMC, Critical Areas.

#### B. Regulations – General.

1. Primary use utilities may be allowed as a conditional use in the rural, semi-rural, urban, and aquatic environments. They are prohibited in natural, conservancy and aquatic conservancy environments.

2. The following uses shall be prohibited within shoreline jurisdiction:

- a. New solid waste disposal sites and facilities;
- b. Radio, cellular phone and microwave towers;
- c. Utilities requiring withdrawal of water from streams; and
- d. Power-generating facilities.

3. Applications for installation of utilities shall include the following:

- a. Description of the proposed facilities;
- b. Reason(s) why the utility requires a shoreline location;
- c. Alternative locations considered and reasons for their elimination. Special attention should be given to evaluation of locating the proposed facility at another existing utility site or within an existing utility right-of-way;
- d. Location of other utilities in the vicinity of the proposed project and discussion of any support for shared use of the proposed site;
- e. Plans for restoration of disturbed areas both during construction and following decommissioning and/or completion of the primary utility's useful life;
- f. Plans for control of erosion and turbidity during construction and operation; and
- g. Plans for traffic and noise control during construction and operation.

4. Where utilities own rights-of-way in fee title, utility development shall, through coordination with local government agencies, provide for compatible, multiple use of sites and rights-of-way, provided such uses will not unduly interfere with utility operations, endan-

ger public health and safety, or create a significant and disproportionate liability for the owner. Such uses include shoreline access points, trail systems, and other forms of recreation and transportation.

5. Utility lines shall utilize existing rights-of-way, corridor and/or bridge crossings whenever possible, and shall avoid duplication and construction of new or parallel corridors in all shoreline areas. Proposals for new corridors or water crossings must fully substantiate the infeasibility of existing routes.

#### C. Regulations – Location and Design.

1. Whenever possible, new distribution lines, including electricity, communication, and fuel lines, shall be located underground. Existing, above-ground lines shall be moved underground during normal replacement processes.

2. Transmission and distribution facilities shall cross areas of shoreline jurisdiction by the shortest, most direct route feasible, unless such route would cause significant environmental damage.

3. Utilities shall be located and designed so as to avoid the use of any structural or artificial shore defense or flood protection works.

4. Where major facilities must be placed in a shoreline area, the location and design shall be chosen so as not to destroy or obstruct scenic views.

5. Utility development shall comply with required setbacks (see Environment Designations in Part IV) to provide screening of facilities from water bodies and adjacent properties. Type of screening required shall be determined by the city on a case-by-case basis.

6. Underground (or water) utility lines shall be completely buried under the stream bed in all stream crossings except where such lines may be affixed to a bridge structure and except for appropriate water or sewage treatment plant intake pipes or outfalls.

7. All underwater pipelines transporting liquids intrinsically harmful to aquatic life or potentially injurious to water quality are prohibited, unless no other alternative exists. In those limited instances when permitted by conditional use, automatic shut-off valves

shall be provided on both sides of the water body.

8. Construction of utilities under water or in adjacent wetlands shall be timed to avoid fish migratory and spawning periods and shall be consistent with Washington State Department of Fish and Wildlife requirements.

9. Landfilling in shoreline jurisdiction for utility or utility line development purposes is prohibited. Permitted crossings shall utilize pier or open pile techniques.

10. Clearing of native vegetation for the installation or maintenance of utilities shall be kept to a minimum. Upon project completion, disturbed native vegetation areas shall be restored as nearly as possible to preproject conditions. Other disturbed areas shall be replanted with native or other approved species. Replanted areas shall be regularly maintained until established.

11. All utilities shall meet the height and setback standards in Table 4-2. (Ord. 96-38, 1996)

## Part VI. Shoreline Modification Regulations

### 16.12.290 General shoreline modification provisions.

A. Applicability. These provisions pertain to all shoreline modification activities associated with or in support of a specific shoreline use. They also apply to projects whose chief intent is to protect the shoreline of a particular property for which the permit applies.

Flood control projects and flood control programs must also conform to the provisions in BIMC 16.12.210, Flood hazard and storm water management.

#### B. Regulations.

1. All shoreline modification activities must be in support of an allowable shoreline use that is in conformance with the provisions of the master program. All shoreline modification activities not in support of a conforming shoreline use are prohibited.

Exception: Shoreline stabilization may be allowed as a shoreline use provided it can be demonstrated that such activities are necessary for the maintenance of shoreline stability

and habitat, and complies with all other provisions of the shoreline master program.

2. All applicable federal and state permits shall be obtained and complied with in the construction and operation of shoreline stabilization and flood protection works.

3. All new development activities shall be located and designed to prevent or minimize the need for shoreline stabilization.

4. The city shall require and/or utilize the following information during its review of shoreline stabilization, modification, and flood protection proposals:

a. Project purpose;  
b. Environment of the project including:

i. Existing shoreline stabilization and flood protection devices within 300 feet on each side of proposed project;

ii. Physical, geological, and/or soil characteristics of the area;

iii. Net direction of littoral drift and tidal currents, if any;

iv. Profile rendition of beach and uplands; and

v. Physical or geologic stability of uplands (beach type, slope and materials; uplands type, slope and material; soil types (Soil Conservation Service));

c. Design, construction materials, and methods (to include annotated drawings):

i. Materials used, dimensions, design;

ii. Slope angle; and

iii. Location of project relative to toe and crest of uplands and upland structures;

d. Potential impact upon area shore and hydraulic processes, upland stability, adjacent properties, and shoreline and water uses; and

e. Alternative measures, including nonstructural, which will achieve the same purpose.

5. The city shall require and utilize the following information in its review of all shoreline modification proposals:

a. Shoreline stabilization measures shall not be designed and constructed in

such a manner as to result in channelization of normal stream flows;

b. Stream channel direction modification, realignment and straightening are prohibited unless they are essential to uses that are consistent with this program;

c. Shoreline stabilization shall not be designed in a manner that will cause scouring of the beach at the toe of protective devices nor erosion on the level of the seaward beach or impact adjacent properties; and

d. Upon project completion, all disturbed shoreline areas shall be restored to as near preproject configuration as possible and replanted with native vegetation or other species approved by the city.

6. Publicly financed or subsidized works should provide public, pedestrian, shoreline access for low-intensity recreation.

C. Prohibited.

1. Shoreline stabilization and flood protection works are prohibited in wetlands and on point and channel bars. They are also prohibited in salmon and trout spawning areas, except for fish or wildlife habitat enhancement.

2. Beach enhancement is prohibited if it interferes with the normal public use of the navigable waters of the state. (Ord. 96-38, 1996)

16.12.300 Beach enhancement.

A. Applicability. Beach enhancement concerns the upgrading 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. The materials used are dependent on the intended use and shoreline dynamics such as grade, drift, etc. For recreation purposes, various grades of clean sand or pea gravel are often used to create, restore or enhance a beach. To restore or recreate a shore feature or an underwater aquatic environment, such as a reef, may require a rock matrix and/or combination of other materials appropriate for the intended environment.

B. Prohibited.

1. Beach enhancement is prohibited within spawning, nesting, or breeding habitat and also where littoral drift of the enhancement materials adversely affects adjacent spawning grounds or other areas of biological significance.

2. Dikes, levees, jetties, groins (except drift sills for beach enhancement), gabions and breakwaters are prohibited. (Ord. 96-38, 1996)

16.12.310 Shoreline armoring (revetments and bulkheads).

A. Applicability. The Shoreline Management Act exempts from the substantial development permit (SSDP) process the construction or repair of a normal, protective revetment or bulkhead when it is necessary to protect an existing single-family residence. Even when exempt, however, these structures must comply with all applicable master program regulations. A statement of exemption for an individual, single-family residence must be obtained from the city before commencing construction of any bulkhead or revetment.

B. Regulations – General.

1. Revetments and bulkheads are permitted uses in the rural, semi-rural, and urban environments where there are either bulkheads or revetments within approximately 100 feet on either side of the property. If there are no revetments or bulkheads within 100 feet on either side of the property, new revetments and bulkheads shall be conditional uses. Bulkheads and revetments shall be prohibited in the natural, conservancy, and aquatic conservancy environments. Bulkheads and revetments may be permitted in the aquatic environment only if they are permitted in the adjacent upland environment and are located at or near ordinary high water. In addition, where permitted or conditional uses, bulkheads or revetments to protect a platted lot where no structure presently exists will require an SSDP.

a. Statement of exemption shall be obtained from the city prior to construction of any bulkhead or revetment in front of a single-family residence. The statement of exemption shall meet all requirements of this master program.

2. All forms of protective structures shall be designed, constructed, and maintained in a manner that does not degrade water quality and/or fisheries habitat, and conforms to state agency policies and regulations, including Washington State Department of Fish and Wildlife criteria and permit requirements.

3. Evidence of professional design of proposed protective structures is required if it is determined there are uncertainties, such as:

a. Inadequate data on local geophysical conditions;

b. Potential effect on adjacent property; or

c. Potential adverse effects on beach seaward of structure.

4. Natural materials and processes such as protective berms, drift logs, brush, beach feeding, or vegetative stabilization shall be utilized to the maximum extent possible.

5. Revetments and bulkheads may be allowed only when evidence is presented which conclusively demonstrates that the following conditions exist:

a. Serious wave erosion threatens an existing development or land;

b. Bulkheads or revetments may be approved for the operations and location of water-dependent and water-related activities consistent with the master program; provided, that all alternatives have proven infeasible (i.e., use relocation, use redesign, nonstructural shore stabilization options). Such bulkheads or revetments must meet other policies and regulations of this chapter; and

c. That use of natural materials and processes and nonstructural solutions to bank stabilization are unworkable in protecting existing development.

6. Revetments should be constructed to provide no steeper than a 45-degree slope (one horizontal to one vertical).

#### C. Prohibited.

1. Gabions (wire mesh filled with concrete or rocks) are prohibited in bulkhead construction.

2. Revetments and bulkheads shall be prohibited for any purpose if they will cause significant erosion or beach starvation.

3. Construction of a bulkhead, revetment, or other armoring structure for the purpose of retaining a landfill or creating dry land is prohibited, unless it is proposed in conjunction with a water-dependent or public use.

4. Shoreline hardening (i.e., revetments, bulkheads, seawalls) shall not be located on shores where valuable geohydraulic or biological processes are sensitive to interference and critical to shoreline conservation such as feeder bluffs, marshes, wetlands, or accretion shoreforms such as spits, hooks, bars, or barrier beaches.

#### D. Regulations – Location.

1. Shoreline armoring shall not be approved in any known or suspected midden site without the written permission of the Director of the State Office of Archaeology and Historic Preservation (the State Historic Preservation Officer). (RCW 27.53.060 or its successor.)

2. Shoreline hardening (revetments and bulkheads) shall be permitted only where local physical conditions such as foundation-bearing material and surface and subsurface drainage are suitable for such alterations.

3. On all shorelines, armoring structures shall be located landward of the OHWM, landward of protective berms (artificial or natural), and generally parallel to the natural shoreline except as allowed below:

a. On marine accretion beaches, bulkheads shall be set back a minimum of 25 feet landward of the OHWM and shall parallel the natural shoreline. However, for sloping or bluff/cliff shores, armoring structures shall be placed as far landward of the OHWM as is feasible.

b. On bluff or bank shorelines where no other armoring structures are adjacent, such structures shall be as close to the bank as possible. However, a revetment footing shall extend waterward sufficiently to permit adequate run-up to dissipate wave energy.

c. Revetments and bulkheads shall tie in flush with existing bulkheads on adjoining properties, except where the adjoining bulkheads extend waterward of the OHWM or the toe of the bank or permitted landfill, in

which case the location requirements of the above shall apply.

4. Bulkheads and revetments to protect a platted lot where no structure presently exists shall be permitted with an SSDP where property is threatened as demonstrated in a geotechnical report and provided it complies with all other provisions in subsection B of this section, Regulations – General.

**E. Regulations – Design.**

1. If an armored revetment is employed, the following design criteria shall be met:

a. The size and quantity of the material shall be limited to only that necessary to withstand the estimated energy intensity of the hydraulic system;

b. Filter cloth or adequate smaller filter rock shall be used to aid drainage and help prevent settling; and

c. The toe reinforcement or protection must be adequate to prevent a collapse of the system from wave action.

2. Revetments shall be sited and designed consistent with appropriate engineering principles. Professional, geologic, site studies or design may be required for any proposed revetment or bulkhead if the city determines sufficient uncertainties or potential for damage to other shoreline properties and features exist.

3. When a revetment is required at a public access site, provision for safe access to the water shall be incorporated into its design.

4. Stairs or other permitted structures may be built into a revetment, but shall not extend waterward of it.

5. Revetments shall be designed to permit the passage of surface or groundwater without causing pounding or saturation of retained soil/materials.

6. Adequate toe protection shall be provided to ensure revetment stability without relying on additional riprap.

7. Materials used in revetment construction shall utilize stable, nonerosion-prone, homogeneous materials such as concrete, wood, rock riprap, or other suitable materials which will accomplish the desired

end with the maximum preservation of natural shoreline characteristics. (Ord. 96-38, 1996)

**16.12.320 Dredging and dredge material disposal.**

A. Applicability. Dredged material disposal on land is also subject to the landfill policies and regulations of this program. Pursuant to WAC 173-14-040 or its successor, certain activities, such as those associated with normal maintenance and repair, are exempt from the requirements for a shoreline substantial development permit (SSDP), but may still require a shoreline conditional use permit or variance.

Actions exempt from substantial development permits are required to comply with the Shoreline Management Act and all provisions of the master program. Ecology/Army Corps of Engineers notifications of dredging proposals will be reviewed by the city to determine whether the activity is exempt from the requirement for a substantial development permit and to ensure compliance with regulations of the Act and the master program.

**B. Regulations – General.**

1. Dredging shall be permitted as a conditional use in the aquatic environment and shall be for the restoration, enhancement, or maintenance of natural resources and navigational channels or for publicly-owned ferry terminals. Dredging shall be prohibited in the aquatic conservancy environment.

2. Applications for shoreline dredging and dredged material disposal shall include a copy of all information, data, and analyses submitted in accordance with the PSDDA evaluation procedures for managing the in-water disposal of dredged material and the Corps of Engineers process for Section 10 (Rivers and Harbors Act), and Section 404 (Clean Water Act) permits. This shall include a copy of the PSDDA-approved sampling analysis plan, the PSDDA data report and quality assurance/quality and control (QA/QC) report, and the suitability decision issued by the PSDDA agencies.

3. In evaluating permit applications for any dredging project, the adverse effects of the initial dredging, subsequent maintenance dredging, and necessary dredged material dis-

posal shall be considered. Dredging and dredged material disposal shall be permitted only where it is demonstrated that the proposed actions will not:

a. Result in significant and/or ongoing damage to water quality, fish, shellfish, and other essential marine biological elements; and

b. Adversely alter natural drainage and circulation patterns, currents, and tidal flows, or significantly reduce flood water capacities.

4. Dredging and dredged material disposal shall be carefully scheduled to protect biological productivity and to minimize interference with fishing activities. Dredging activities shall not occur in areas used for commercial fishing (e.g., gill net, crabbing, etc.) during a fishing season, unless specifically addressed and mitigated for in the permit.

5. Dredging and dredged material disposal shall be prohibited on or in archaeological sites which are on or eligible to be listed on the Washington State Register of Historic Places until such time that they have been released by the State Archaeologist.

#### C. Regulations – Dredging.

1. Dredging below the ordinary high water mark shall be permitted as a conditional use only:

a. For navigation or navigational access;

b. In conjunction with a water-dependent use of water bodies or adjacent shorelands;

c. As part of an approved habitat improvement or environmental remediation project; or

d. In conjunction with a navigational structure, wastewater treatment facility, or some other public facility for which there is a documented public need and where other feasible sites or routes do not exist.

2. When dredging is permitted, the dredging shall be the minimum necessary to accommodate the proposed use.

3. Dredging shall utilize techniques that cause minimum dispersal and broadcast of bottom material.

#### D. Prohibited Dredging.

1. New dredging activity is prohibited in the following locations:

a. In environmentally sensitive habitats (e.g., stream mouth estuaries, wetlands) except by shoreline conditional use permit.

b. Along net-positive drift sectors and where geohydraulic processes are active and accretion shoreforms would be damaged, altered, or irretrievably lost.

c. In shoreline areas with bottom materials that are prone to significant sloughing and refilling due to currents or tidal activity, thus resulting in the need for continual maintenance dredging.

d. In habitats identified as critical to the life cycle of officially designated or protected fish, shellfish, or wildlife.

e. In areas where concentrations of environmental pollutants or toxic chemicals are present in the bottom sediments and would be released in dredging operations; except as part of a permitted environmental enhancement or remediation program.

2. Dredging for the primary purpose of obtaining material for landfill is prohibited.

#### E. Regulations – Dredge Material Disposal.

1. Unconfined disposal of dredged material in marine waters, other than for approved environmental enhancement or remediation projects under a shoreline conditional use permit, shall only be allowed at sites identified through the process defined in the PSSDDA report and incorporated in Department of Natural Resources, WAC 332-30-166 or its successor (Open-Water Disposal Sites).

2. Yearly status reports shall be prepared and submitted by the dredge disposal permittee to the director as requested. The reports shall state the quantity of material dumped, characterize the quality of the material, and review any factors necessary to verify continued compliance with the shoreline permit.

3. In-water disposal shall utilize techniques that cause the least dispersal and broadcast of materials, unless specifically designed and approved as a dispersal site.

4. Use of dredged materials for beach enhancement shall be conducted to comply with BIMC 16.12.300, Beach enhancement, so that:

a. Dredged materials deposited on land shall constitute landfill and, when deposited within the jurisdiction on this master program, shall comply with the landfill regulations.

b. Near-shore or upland disposal of dredged materials not used for beach enhancement shall not be located upon, adversely affect, or diminish environmentally sensitive areas, recognized wildlife habitat, public access, water quality, or drainage.

c. Revegetation of land disposal sites with native species and other approved plants shall be required. (Ord. 96-38, 1996)

#### 16.12.330 Landfill.

A. Applicability. Landfill is the placement of soil, sand, rock, gravel, existing sediment or other material (excluding solid waste) to create new land, tideland or bottom land area along the shoreline below the OHWM, or on wetland or upland areas in order to raise the elevation. Any landfill activity conducted within shoreline jurisdiction must comply with the following policies and regulations. Beach enhancement as defined in the shoreline master program shall not be considered landfill.

##### B. Regulations – General.

1. Landfill shall be permitted as a conditional use in the rural, semi-rural, and urban environments.

2. Landfill shall be permitted as a conditional use in the conservancy and natural environments only for the restoration, enhancement, or maintenance of natural resources.

3. In the aquatic environment, landfill over water may be permitted as a conditional use for water-dependent or public uses, or as part of a permitted environmental enhancement or remediation project.

4. Landfill shall be prohibited in the aquatic conservancy environments.

5. Applications for landfill permits shall include the following:

a. Proposed use of the landfill area;

b. Source of the landfill material and physical, chemical, and biological characteristics of the fill material as required by the director;

c. Method of placement and compaction;

d. Location of landfill relative to natural and/or existing drainage patterns;

e. Location of the landfill perimeter relative to the OHWM;

f. Perimeter erosion control or stabilization means; and

g. Type of surfacing and runoff control devices.

6. Pile or pier supports shall be utilized whenever feasible in preference to landfills. Landfills for approved road development in floodways or wetlands shall be permitted only if pile or pier supports are proven infeasible.

7. Landfills shall be permitted only where it is demonstrated that the proposed action will not:

a. Result in significant damage to water quality, fish, shellfish and/or wildlife habitat; or

b. Adversely alter natural drainage and circulation patterns, currents, river and tidal flows, or significantly reduce flood water capacities.

8. Landfills shall be the minimum necessary to provide for the proposed use and shall be permitted only when tied to a proposal that is permitted by the master program. Speculative landfill activity is prohibited.

##### C. Regulations – Design and Construction.

1. Where landfills are permitted, the landfill shall be the minimum necessary to accommodate the proposed use.

2. Where landfills reduce public access, compensatory public access shall be provided as part of the development project.

3. Landfills shall be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area. Perimeters of permitted landfill projects shall

be designed and constructed with silt curtains, vegetation, retaining walls, or other mechanisms, and appropriately sloped to prevent erosion and sedimentation both during initial landfill activities and afterwards. Such containment practices shall occur during the first growing season following completion of the landfill.

4. Fill materials shall be sand, gravel, soil, rock, or similar material. Use of contaminated dredge material is prohibited. (See BIMC 16.12.230, Industry, and Part III.)

5. The timing of landfill construction shall be regulated to minimize damage to water quality and aquatic life within the time restraints recommended by the Washington State Department of Fish and Wildlife. (Ord. 96-38, 1996)

#### **16.12.340 Piers, docks, recreational floats, and mooring buoys.**

A. Applicability. Uses which may employ a pier or dock (for example, industry) are subject to the provisions herein as well as to the provisions contained in Part V, Specific Shoreline Use Regulations. Community or joint use docks which provide moorage for six or more vessels also must comply with the provisions of BIMC 16.12.180, Boating facilities.

Pursuant to RCW 90.58.030(3)(e)(vii) or its successor and WAC 173-14-040(h) or its successor, certain activities are exempt from obtaining a shoreline substantial development permit (SSDP). For the benefit of the lot owner, surrounding properties, and water body users, the city will review all proposals for piers and docks to determine whether:

1. The proposal is or is not exempt from the requirements for a shoreline permit;

2. The proposal is suitably located and designed and that all potential impacts have been recognized and mitigated; and

3. The proposal is consistent with the intent, policies, and regulations of the Act (RCW 90.58.140(1) or its successor) and this program.

Exempt activities are subject to the provisions of the master program.

B. Policies.

1. Multiple use and expansion of existing conforming piers, docks, and floats should be encouraged over the addition and/or proliferation of new facilities. Joint use facilities are preferred over new, single use piers, docks, and floats.

2. The use of mooring buoys should be encouraged in preference to either piers or docks.

3. Piers, docks, and floats should be designed to cause minimum interference with navigable waters, the public's use of the shoreline, and views from adjoining properties.

4. Piers, floats, and docks should be sited and designed to minimize possible adverse environmental impacts, including potential impacts on littoral drift, sand movement, water circulation and quality, and fish and wildlife habitat.

5. Proponents of commercial pier, float, and dock projects are encouraged to provide for public docking, launching, and recreational access.

6. Local programs and coordinated efforts among private and/or public agencies should be initiated to remove or repair failing, hazardous, or nonfunctioning piers and docks and restore such facilities and/or shore resources to a natural and/or safe condition.

7. Use of natural, nonreflective materials in pier and dock construction should be encouraged. When plastics and other nonbiodegradable materials are used, precautions should be taken to ensure their containment.

8. The proposed size of the structure and intensity of use or uses of any dock, pier, and/or float should be compatible with the surrounding environment and land and water uses.

9. The development of new docks and piers shall be prohibited within Blakely Harbor between Restoration Point and the most eastern point along the north shore of Blakely Harbor (sometimes referred to as "Pigott Pt." or "Jasmine Pt."), except that:

a. A total of two community docks should be allowed with no more than one along each of the north and south shores, respectively; provided, that all residents along each shore shall have a nonextinguishable option to

access the community dock located along their respective shore; and

b. One small public dock and/or pier for the mooring of dinghies and loading or unloading of vessels should be allowed for daytime use.

C. Regulations – General.

1. Piers and docks shall be a permitted use in the rural, semi-rural, urban and aquatic environments, shall be a conditional use in the conservancy environment, and shall be prohibited in the natural and aquatic conservancy environments. The development of new docks and piers shall also be prohibited within all shoreline designations within Blakely Harbor between Restoration Point and the most eastern point along the north shore of Blakely Harbor (sometimes referred to as “Pigott Pt.” or “Jasmine Pt.”), except that:

a. A total of two community docks shall be a conditional use within the urban, semi-rural, rural, and aquatic environments with no more than one along each of the north and south shores, respectively; provided, that all residents along each shore shall have a non-extinguishable option to access the community dock located along their respective shore;

b. One public dock and/or pier for the mooring of dinghies and loading or unloading of vessels shall be a conditional use within the urban, semi-rural, rural, and aquatic environments for daytime use; and

c. Such community and public docks shall comply with this master program and other applicable laws; shall be the minimum size necessary; and shall be sited and designed to mitigate adverse impacts to navigation, views, scenic character, and natural resources as much as possible. Such community and public docks shall also be reasonably passable to swimmers, beach walkers, and human-powered watercraft.

2. Proposals for piers or docks shall include, at a minimum, the following information:

a. Description of the proposed structure, including its location, dimensions, materials, design, and any shoreline stabilization or other modification required by the project;

b. Ownership of uplands, tidelands, and shorelands within 300 feet of the property boundaries;

c. Proposed location of piers, floats, or docks relative to property lines, OHWM, the line of navigation, the construction limit line, and the contour of the extreme low tide, as applicable;

d. Location, width, height, and length of piers or docks on adjacent properties; and

e. Agreements, if any, for cooperative use.

3. In areas identified by the city, the Washington State Department of Fish and Wildlife, or the Department of Natural Resources as having a high environmental value for shellfish, fish life, or wildlife, piers and docks shall be prohibited, except:

a. Where functionally necessary to the propagation, harvesting, testing, or experimentation of said marine fisheries or wildlife; or

b. Unless approved as a conditional use if it can be demonstrated that the dock or pier will not be detrimental to the natural habitat or species of concern.

4. Piers, floats, buoys, and docks shall not interfere with use of navigable waters.

5. Piers and docks may be limited in length or prohibited, where necessary, to protect navigation, public use, or habitat values.

D. Regulations – General Design and Construction Standards.

1. Pilings must be structurally sound prior to placement in the water. The minimum number of pilings shall be used, favoring large spans on fewer pilings over smaller spans on more pilings.

2. Piles, floats, or other members in direct contact with water shall not be treated or coated with biocides such as paint or pentachlorophenol. Use of arsenate compounds or creosote-treated members is discouraged. In saltwater areas characterized by significant shellfish populations or in shallow embayments with poor flushing characteristics, untreated wood, used pilings, precast concrete, or other nontoxic alternatives shall be used.

In all cases where toxic-treated products are allowed, products, methods of treatment, and installations shall be limited to those that are demonstrated as likely to result in the least possible damage to the environment based on current information. Used creosote pilings are preferable to new ones.

3. No over-water field applications of paint, preservative treatment, or other chemical compounds shall be permitted, except in accordance with best management practices set forth in the marina section of the master program.

4. Pilings employed in piers or any other structure shall have a minimum vertical clearance of one foot above extreme high water.

5. All docks shall include stops which serve to keep the floats off the bottom of tide-lands at low tide.

6. If a bulkhead-like base is proposed for a fixed pier or dock where there is net-positive littoral drift (accretion beach), the base shall be built landward of the ordinary high water mark or protective berms.

7. When plastics or other nonbiodegradable materials are used in float, pier, or dock construction, precautions shall be taken to ensure their containment.

8. Overhead wiring or plumbing is not permitted on piers or docks.

9. New boat houses and new covered moorage shall not be permitted on piers or docks. Other structures on piers and docks shall be strictly limited in size and height to avoid impacting shoreline views.

10. A pier or dock shall not extend offshore farther than the most shoreward of the following:

- a. The average length of the piers on the two adjoining properties;
- b. In Eagle Harbor, the construction limit line; or
- c. Elsewhere, the distance necessary to obtain a depth of four feet of water as measured at extreme low tide at the landward limit of the moorage slip.

11. Piers and docks shall require a building permit and shall meet standards set by the building official.

12. Lighting shall be the minimum necessary, or as required by the Coast Guard, to locate the dock at night, and should minimize glare.

E. Regulations – Joint Use Community Piers and Docks.

1. Any hotel, motel, and/or multifamily residential development proposing to provide moorage facilities shall be required to construct a single, joint use moorage facility. The city may authorize more than one joint use moorage facility if a single facility would be inappropriate or undesirable, given the specific conditions of the site.

2. Proposals for joint use community piers and docks shall demonstrate, by proof of recording of a covenant binding current and future parties, that adequate maintenance of the structure and the associated upland area will be provided by identified responsible parties. The proposed covenant shall be filed as part of the permit application and recorded after final approval.

F. Regulations – Commercial/Industrial Facilities. These standards apply to piers and docks intended for any commercial or industrial use other than commercial moorage of boats in marinas. (See also Part V, Specific Shoreline Use Regulations, for boating facilities, commercial development, and industry.)

1. Substantial development permits for docks or piers serving single commercial or industrial enterprises shall not be granted until the access needs of adjacent commercial and/or industrial enterprises have been determined.

2. Facilities and procedures for receiving, storing, dispensing, and disposing of oil and other toxic products shall be designed to ensure that such oil and other toxic products are not introduced into the water body.

3. Bulk storage for gasoline, oil and other petroleum products for any use or purpose is prohibited on piers and docks. Bulk storage means nonportable storage in fixed tanks.

4. Spill clean-up facilities shall be available for prompt response and application at all piers and docks involved in oil and hazardous products transfer.

### G. Regulations – Residential.

1. If any docks are proposed, new subdivisions and short subdivisions with shoreline frontage shall be required to provide community docks rather than individual, private docks.

2. Docks shall be preferred over piers, where feasible.

#### 3. Size.

a. Maximum length and width of a pier or dock shall be the minimum necessary to accomplish moorage for the intended boating use. (See Regulations – General Design and Construction Standards, subsection D of this section, for additional restrictions.)

b. The length shall not extend beyond the average length of the two nearest adjacent docks or the distance necessary to obtain a depth of four feet of water as measured at extreme low tide at the landward limit of the moorage slip, or the line of navigation, whichever is more shoreward.

4. Side Yard Setbacks. Docks, piers and floats shall be set back a minimum of 10 feet from side property lines, except that community piers, docks, and floats may be located adjacent to or upon a side property line when mutually agreed to by covenant with the owners of the adjacent property. A copy of the covenant must be recorded with the county auditor and filed with the application for permit.

5. Community docks and piers shall include no more than one moorage space per dwelling unit or lot.

6. Development of a dock or pier on single-family residential property shall require a shoreline substantial development permit or a statement of exemption issued by the city.

### H. Regulations – Mooring Buoys and Recreational Floats.

1. Mooring buoys and recreational floats shall be prohibited in the aquatic conservancy environment. Mooring buoys and floats for recreational use shall be permitted in the aquatic environment offshore from conservancy, rural, semi-rural, and urban environments and shall be prohibited offshore from the natural environment. Mooring buoys for commercial use shall be permitted only as

conditional uses offshore from the urban environment. Mooring buoys for open water moorage and anchorage areas shall be permitted in the aquatic environment offshore of all upland environments.

2. Buoys shall not interfere with navigation, shall be visible in daylight 100 yards away, and shall have reflectors for night visibility.

3. If a buoy is located offshore of the extreme low tide line, the owner shall obtain a lease for the bed of navigable waters from Department of Natural Resources. (WAC 332-30-122(1)(ii) or its successor.)

4. Buoys shall lie between the waterfront property side lot lines extended beyond the shoreline, except those on Department of Natural Resources tidelands. Vessels moored to the buoys shall not swing across the extended side lot lines. Where the configuration of the waterfront lot precludes these requirements, a mooring buoy owner shall file with the city a written statement from the affected, adjacent, waterfront property owners agreeing to the buoy placement. This provision shall not apply to buoys for open water moorage and anchorage areas.

5. Mooring buoys shall be installed at least 20 yards from other permitted piers, docks, floats, or buoys so as not to interfere with or obstruct existing piers, docks, floats, or buoys.

6. Owners of waterfront property are permitted to install one mooring buoy per waterfront lot, except that where the waterfront lot is owned in community, the city may permit upon the owners' application, additional mooring buoys with the total not more than one per owner in the community. (WAC 332-30-122(1)(ii) or its successor.)

7. Buoys shall be located offshore no farther than the construction limit line in Eagle Harbor, and elsewhere not more than 200 feet beyond extreme low tide, the -3 fathom depth contour (-18 feet at mean low water), or the line of navigation, whichever is closest to shore. (WAC 332-30-148(2) or its successor.) Buoys for open water moorage and anchorage areas shall be allowed waterward of the construction limit line in Eagle Harbor.

8. The owners or lessees of waterfront property zoned for commercial or industrial use may install mooring buoys for commercial vessels, subject to obtaining a shoreline conditional use permit from the city for each mooring buoy.

9. A contractor doing waterfront work involving floating equipment may place a temporary mooring buoy convenient to the work site, provided it is the responsibility of the contractor to ensure that all necessary permits are obtained from all agencies with jurisdiction.

10. Recreational floats shall be located as close to shore as possible. They shall be located no farther than the following limits:

a. In Eagle Harbor, the construction limit line.

b. Elsewhere, the distance necessary to obtain a depth of four feet of water as measured at extreme low tide at the landward end of the float, or the line of navigation, whichever is closer to shore.

11. Recreational floats must be built so that the deck surface is one foot above the water's surface and shall have reflectors for night visibility.

12. Single-property-owner recreational floats shall not exceed eight feet by eight feet.

13. All recreational floats shall include stops which serve to keep the floats off the bottom of tidelands at low tide. (Ord. 2007-16 § 12, 2007; Ord. 2003-30 § 2, 2003; Ord. 96-38, 1996)

## Part VII. Administration

### 16.12.350 General.

The administrative system is designed to assign responsibilities for implementation of the master program and shoreline permit review, to prescribe an orderly process by which to review proposals and permit applications, and to ensure that all persons affected by the master program are treated in a fair and equitable manner. Figure 7-1 illustrates the shoreline substantial development permit (SSDP) process and Figure 7-2 illustrates the shoreline variance and conditional use process.

#### A. Director.

1. The city of Bainbridge Island director of planning and community development or his/her designee, hereinafter known as the director, is vested with the following:

a. Overall administrative responsibility for the master program;

b. Authority to grant statements of exemption from shoreline permits;

c. Authority to approve, approve with conditions, or deny shoreline substantial development permits and permit revisions in accordance with the policies and regulations of the master program; provided, that the decision may be appealed in accordance with BIMC 16.12.370;

d. Authority to decide whether a shoreline variance permit application is minor, qualifying it for administrative decision; if the shoreline variance is not minor, it will be processed following the procedures in BIMC 16.12.380.C.4;

e. Authority to approve, approve with conditions, or deny shoreline variance permit applications determined to be minor; provided, that the decision may be appealed in accordance with BIMC 16.12.370;

f. Authority to refer any application for a shoreline substantial development permit, or a shoreline variance or conditional use to the planning commission for a recommendation; and

g. Authority to determine compliance with Chapter 43.21C RCW, State Environmental Policy Act, or its successor.

2. The duties and responsibilities of the director shall include:

a. Specifying the required application forms and submittal requirements including the type, details, and number of copies for substantial development, conditional use, and shoreline variance permits. At a minimum, the application shall include the information required in WAC 173-14-110 or its successor.

b. Advising interested citizens and applicants of the goals, policies, regulations, and procedures of this program.

c. Making administrative decisions and interpretations of the policies and

regulations of this program and the Shoreline Management Act.

d. Determining whether a shoreline substantial development permit, shoreline conditional use permit, or shoreline variance permit is required.

e. Collecting applicable fees.

f. Determining that all applications and necessary related information are provided.

g. Making field inspections.

h. Conducting a thorough review and analysis of permit applications and related materials, and making written findings and conclusions.

i. Making decisions pursuant to subsection A.1 of this section.

j. Referring applications to the planning commission for recommendations when requested by the applicant or when the director deems appropriate.

k. Submitting applications and all relevant information and materials along with written findings and recommendations to the hearing examiner pursuant to subsection A.1 of this section.

l. Providing technical and administrative assistance to the council, as needed, for effective and equitable implementation of this program and the Act.

m. Providing a summary report of shoreline management permits issued during the past calendar year to the council in February of each year. The report should include findings and conclusions on significant administrative determinations and appeals, identification of problem areas, and recommendations on how the master program can be improved.

n. Proposing amendments to this program as deemed necessary to more effectively and equitably achieve its goals and policies.

o. Seeking remedies for alleged violations of this program, the provisions of the Act, or of conditions of any approved shoreline permit.

p. Coordinating information with affected agencies.

q. Forwarding shoreline permits to Ecology for filing or appropriate action.

r. Deciding whether to require any applicant granted a shoreline permit to post a bond or other acceptable security to assure that the applicant and/or the applicant's successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bonds or securities shall have a face value of at least 100 percent of the estimated development cost, including attached conditions. Such bonds or securities shall be approved as to form by the city attorney.

B. Hearing Examiner.

1. The city of Bainbridge Island hearing examiner is vested with authority to:

a. Approve, approve with conditions, or deny shoreline variance and shoreline conditional use permit applications after a public hearing and after considering the findings and recommendations of the director, which shall be given substantial weight; provided, that decisions may be appealed in accordance with BIMC 16.12.370.B.

b. Affirm, affirm with modifications, or reverse decisions on shoreline substantial development permit applications, minor shoreline variance applications, and shoreline exemptions on appeal.

2. Further duties and responsibilities of the hearing examiner shall include:

a. Ensuring that proper notice is given to appropriate persons and the public for all hearings before the hearing examiner.

b. Referring applications to the planning commission for recommendations, when appropriate.

c. Considering recommendations of the planning commission when requested by the applicant or the director.

d. Basing all decisions on shoreline permits and administrative appeals on the criteria established in the Act and the master program.

e. Deciding whether to require any applicant granted a shoreline permit to post a bond or other acceptable security to assure that the applicant and/or the applicant's successors in interest shall adhere to the approved plans and all conditions attached to the shoreline permit. Such bond or securities shall have a face value of at least 100 percent of the esti-

mated development cost, including attached conditions. Such bonds or securities shall be approved as to form by the city attorney.

C. City Council.

1. The city council is vested with authority to review and act upon any recommendations of the director for amendments or revisions of the master program. To become effective any amendments to the program must be reviewed and approved by the Department of Ecology, pursuant to RCW 90.58.190 or its successor and Chapter 173-19 WAC or its successor. (Ord. 2003-25 § 7, 2003: Ord. 96-38, 1996)

**16.12.360 Permit or exemption required before undertaking development or activity.**

A. Permits Required.

1. A development, use, or activity shall not be undertaken within the jurisdiction of the Shoreline Management Act (Chapter 90.58 RCW or its successor) and the shoreline master program, unless it is consistent with the policy and procedures of the Shoreline Management Act, applicable state regulations and the shoreline master program.

2. A substantial development shall not be undertaken within the jurisdiction of the Shoreline Management Act (Chapter 90.58 RCW or its successor) and the shoreline master program, unless an appropriate shoreline permit has been obtained, the appeal period has been completed, any appeals have been resolved, and/or the applicant has been given permission by the proper authority to proceed.

3. Any person wishing to undertake substantial development or exempt development on shorelines shall apply to the director for an appropriate shoreline permit or a statement of exemption.

4. If a development, use or activity is listed as a conditional use by the shoreline master program, such development, use, or activity shall not be undertaken within the jurisdiction of the Shoreline Management Act (Chapter 90.58 RCW or its successor) and the master program, unless a shoreline conditional use permit has been obtained, the appeal period has been completed, any appeals have

been resolved, and/or the applicant given permission to proceed by the proper authority.

5. If a development, use, or activity cannot comply with the regulations of the master program, a shoreline variance must be obtained before commencement of development or construction, or beginning the use or activity.

6. If a project includes uses or activities that include both permitted and conditional uses, or a regular (major rather than minor) shoreline variance is required, the permit shall be heard and decided by the hearing examiner using the procedures, requirements, and criteria for a conditional use and/or shoreline variance.

7. See WAC 173-14-050 or its successor for a description of how the permit requirements apply to developments undertaken prior to the passage of the Shoreline Management Act of 1971.

8. See WAC 173-14-062 or its successor for a description of how the permit requirements apply to federal agency projects.

B. Statement of Exemption.

1. No exempt development, use or activity shall be undertaken within the jurisdiction of the Shoreline Management Act (Chapter 90.58 RCW or its successor) and the master program, unless a statement of exemption has been obtained from the director.

2. The request for the statement of exemption shall be in writing, on forms required by the director, and shall include the information required by the director. In the case of an emergency, the director may waive

This page left intentionally blank.

this requirement and authorize the use or activity orally or in writing. If authorized orally, it shall be put in writing as soon as possible.

3. The director shall decide requests for a statement of exemption based on WAC 173-14-040 or its successor and the provisions of the Shoreline Management Act and the master program.

4. Before determining that a proposal is exempt, the director may conduct a site inspection to ensure that the proposal meets the exemption criteria.

5. Exempt developments and activities shall comply with the Shoreline Management Act and the master program. The director shall condition statements of exemption to ensure the exempt development or activity complies with the Shoreline Management Act and the master program.

6. In the case of development subject to the policies and regulations of the master program, but exempt from the substantial development, permit process, shoreline management requirements may be made conditions of the building permits and/or other permits and approvals. For example, the approval of a building permit for a single-family residence can be conditioned with provisions from the master program.

7. Whenever a development falls within the exemptions stated in WAC 173-14-040 or its successor, but is still subject to those permits listed in WAC 173-14-115 (as amended), a letter exempting the development from the substantial development permit requirements of Chapter 90.58 RCW or its successor shall be given to the applicant and Department of Ecology.

C. Fees. A filing fee in an amount established by the city council by resolution shall be paid at the time of application. After the fact permit fees will be triple the normal amount.

D. Permit Application. The director shall provide the necessary application forms for substantial development, conditional use, and shoreline variance permits. The application shall provide, at a minimum, the information required by WAC 173-14-110 or its successor along with the information required on the permit application.

E. Shoreline Substantial Development Permit Process.

1. Shoreline Substantial Development Permit Review Procedure.

a. The applicant shall submit a complete application in accordance with the provisions of BIMC 2.16.055, a site plan, the required fees, and a SEPA checklist to the director.

b. The director shall review the application and determine within 28 days whether it is complete. The application shall not be deemed filed until the director determines the application is complete and all required fees are paid. If the application is not complete, the director shall contact the applicant and request the needed information or fee.

2. Notice.

a. The director shall give notice of the shoreline application by at least one of the following methods:

i. Mailing of the notice by first class mail, postage prepaid, to the applicant, the property owner and each person identified by the real property records of the Kitsap County auditor as the owner within 300 feet of any boundary of the subject property, and of any contiguous property owned by the owner of the land on which the proposal will be sited. The notices shall include the information required by WAC 173-14-070 or its successor.

ii. Posting notice in a conspicuous manner on the property upon which the project is to be constructed.

iii. Any other means deemed appropriate to accomplish the objectives of reasonable notice to adjacent landowners and the public.

b. Failure to receive a properly mailed notice shall not affect the validity of any testimony received at the hearing or of any action taken.

c. An affidavit(s) attesting that the notice has been properly published and/or properly mailed shall be completed and included in the application file.

d. Costs of notification shall be the responsibility of the applicant.

3. Public Comment. The city shall not make a decision on the permit until after the end of the comment period.

a. A 30-day public comment period shall be given for shoreline permits.

b. The public comment period shall be 20 days for substantial development permits for a limited utility extension or for erosion control measures to protect a single-family residence and its appurtenant structures. (See BIMC 16.12.030 for definition of "limited utility extension.")

c. SEPA review shall be conducted as provided by Chapter 16.04 BIMC, Environmental Policy, or its successor. The required SEPA notices should be included with the shoreline notices when possible. The SEPA documents should be circulated with permit documents where possible.

4. Decision. After the 30-day comment period has ended, the director shall issue a decision on the application.

a. The director may approve, approve with modifications, or deny any substantial development permit.

b. In making the decision, the director shall consider the applicable provisions of the Shoreline Management Act of 1971, as amended, Chapter 173-14 WAC or its successor, the master program, all other applicable law, and any related documents and approvals. The director shall also consider whether the cumulative impact of additional past and future requests that reasonably may be made in accordance with the comprehensive plan, or similar planning document, for like actions in the area will result in substantial adverse effects on the shoreline environment and shoreline resources.

c. The applicant(s) shall have the burden of proving that a proposed development is consistent with the approval criteria and master program policies and regulations. (RCW 90.58.140(7) or its successor.)

d. The director may require additional information if necessary.

e. The director shall issue a written decision which contains the following:

i. A statement indicating the application is approved, approved with modifications, or denied;

ii. A statement of any conditions included as part of an approval or approval with modifications;

iii. A statement of facts upon which the decision, including any conditions, is based, and the conclusions derived from those facts; and

iv. A statement of the right of any person to appeal the decision of the director pursuant to BIMC 16.12.370.

f. The director may refer the application to the planning commission for review and recommendations prior to deciding the application. The application shall also be referred to the planning commission for a recommendation at the request of the applicant. The planning commission makes its recommendation following its review of the proposal, the environmental checklist, and the tentative threshold determination.

g. The permit, whether approved or denied, shall be in the form required by WAC 173-14-120 or its successor.

5. Distribution/Notification of Administrative Decision.

a. The director shall mail the applicant the original of the completed permit form and the findings and conclusions.

b. All persons who submitted comments on the application during the comment period (see subsection E.3 of this section) and anyone else requesting notification in writing, shall be notified in a timely manner of the decision and shall be mailed a copy of the decision. (Ord. 96-38, 1996)

### 16.12.370 Appeals.

#### A. Local Appeals.

1. The decision of the director may be appealed to the hearing examiner within 21 calendar days following the issuance of a written decision by the director.

2. Appeals shall be initiated by filing with the city clerk a notice of appeal setting forth the action being appealed and the principal points upon which the appeal is based

together with a filing fee as prescribed by resolution of the council.

3. If an appeal is filed, the case shall be reviewed as an open record hearing by the hearing examiner, who shall follow the procedures established in BIMC 2.16.130 or its successor.

4. The hearing examiner shall consider the criteria in BIMC 16.12.360.E.4 and may refer the application to the planning commission for a recommendation. The decision of the hearing examiner shall be the final city action.

5. Within eight days of final action by the city, including completion of appeals or expiration of appeal periods, the director shall file copies of the action with the Department of Ecology and the Attorney General pursuant to WAC 173-14-090 or its successor.

**B. Washington State Department of Ecology Appeal Period.**

1. On the day the permit and other information required by WAC 173-14-090 or its successor are received by Ecology and the Attorney General, the 21-day appeal period begins. (Ecology generally sends a letter to the director and the applicant informing them of the date the application was received.)

2. During the 21-day appeal period, the city decision on the permit may be appealed to the Washington State Shorelines Hearings Board as provided by RCW 90.58.180 or its successor and Chapter 461-08 WAC or its successor.

3. Development pursuant to a shoreline permit shall not begin and is not authorized until 21 days from the date of filing, as defined in RCW 90.58.140(5)(b) and (c) or its successor and WAC 173-14-090 or its successor or until all review proceedings initiated within 21 days from the date of such filing have been terminated, except as provided in Chapter 90.58 RCW or its successor.

**C. Revisions to Permits.**

1. When an applicant wishes to revise a permit, the applicant must submit detailed plans and text describing the proposed changes. If the director determines that the revisions proposed are within the scope and intent of the original permit, consistent with

WAC 173-14-064 or its successor, the director may approve the revision.

2. "Within the scope and intent of the original permit" means all of the following:

a. No additional over-water construction is involved, except that pier, dock, or float construction may be increased by 500 square feet or 10 percent, whichever is less;

b. Ground area coverage and height of each building is not increased more than 10 percent;

c. Additional structures do not exceed a total of 250 square feet;

d. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the city of Bainbridge Island shoreline master program;

e. Additional landscaping is consistent with conditions, if any, attached to the original permit and with the applicable master program;

f. The use authorized pursuant to the original permit is not changed; and

g. No substantial, adverse, environmental impact will be caused by the project revision. (WAC 173-14-064(2)(a) through (g) as amended.)

3. If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new shoreline permit must be submitted. If the revision involves a conditional use or shoreline variance which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by Ecology. (WAC 173-14-064 or its successor.)

4. A city or Ecology decision on revision to the permit may be appealed within 21 days of such decision, in accordance with RCW 90.58.180 or its successor and WAC 173-14-064 or its successor.

5. Construction allowed by the revised permit that is not authorized under the original permit is undertaken at the applicant's risk until the expiration of the appeals deadline.

**D. Duration of Permits.**

1. Substantial Progress.

a. Substantial progress towards completion of a permitted activity shall be

undertaken within two years after approval of the permit. See BIMC 16.12.030 for definition of "substantial progress."

b. The director may, with prior notice to parties of record and to Ecology, grant one extension of the two-year time period for substantial progress for up to one year based on reasonable factors which would justify the extension, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction. The request for the extension must be filed with the director before the end of the time limit.

2. Five-Year Permit Authorization.

a. The authorization granted by an approved permit to construct any structure or conduct any use or activity shall terminate five years after the date the permit is approved by the city, except that the permit may be authorized for a lesser period of fixed duration.

b. Where an approved permit authorizes construction, the use and maintenance of the structure or facility may continue after the five-year period, provided the structure was completed during the five-year time limit or any approved extension.

c. Where an approved permit authorizes a use or activity which does not require a structure, such as mining or maintenance dredging, the use or activity shall cease at the end of the five-year limit or any extension as granted in subsection D.2.d of this section.

d. The director may, with prior notice to parties of record and to Ecology, grant one time extension of up to one year based on reasonable factors which would justify the extension. The request for the extension must be filed with the director before the end of the time limit.

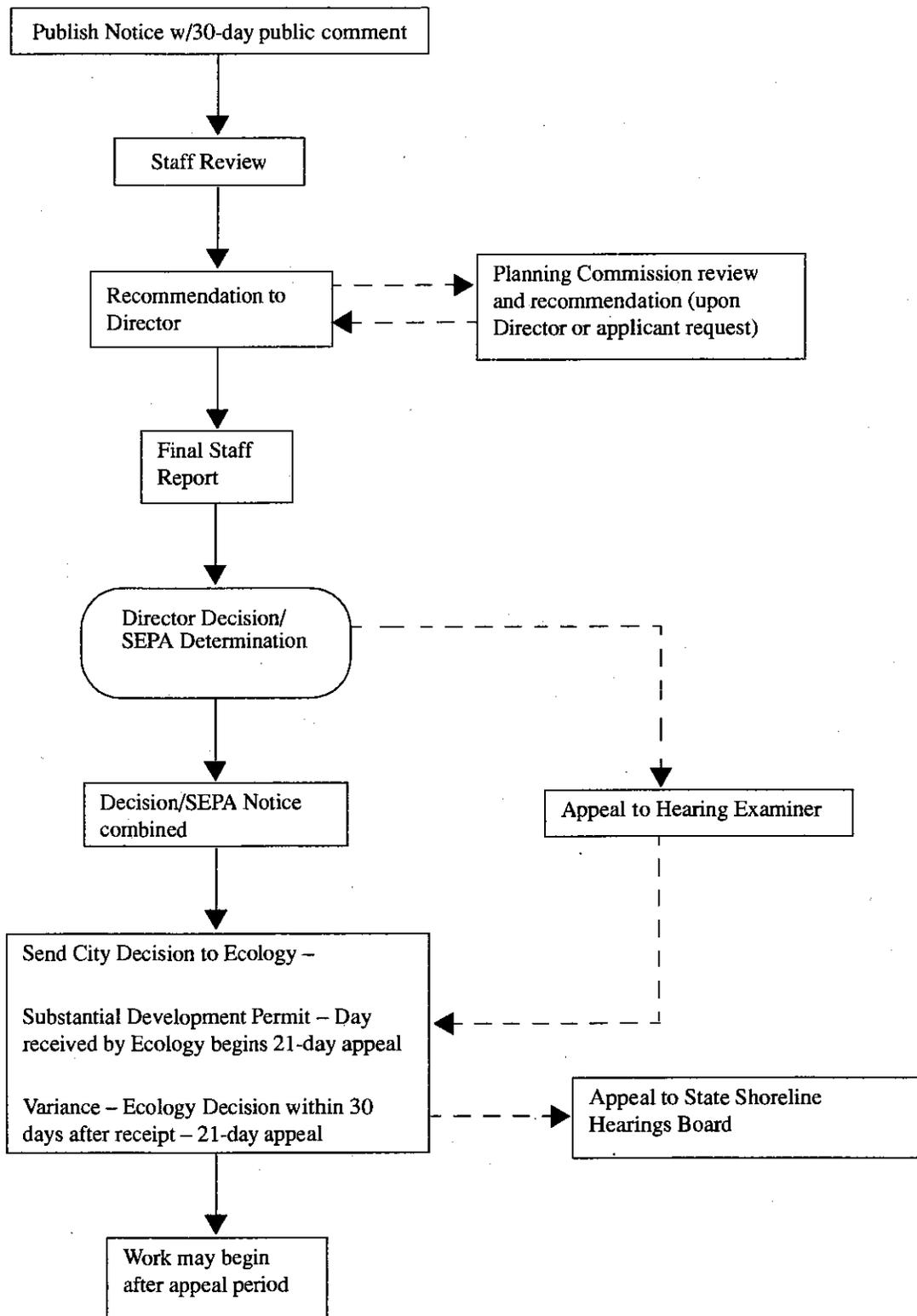
3. The running of the time periods shall not include the time during which an activity was not actually pursued due to the pendency of reasonably related administrative appeals or litigation.

4. When a permit is conditioned, the conditions shall be satisfied prior to occupancy or use of a structure, or prior to commencement of a nonstructural activity, provided an

alternative compliance limit may be specified in the permit.

5. Revisions to permits may be authorized after the original permit has expired under subsection D.2 of this section; provided this procedure shall not be used to extend the original permit time requirements. (WAC 173-14-060 or its successor.)

**Shoreline Substantial Development Permit and Minor Variance**



**Figure 7-1**

(Ord. 96-38, 1996)

### 16.12.380 Shoreline variance and shoreline conditional use permits.

A. Applicability. This section applies to all applications for shoreline variances and shoreline conditional use permits. Where a development includes several uses or activities and one or more uses or activities require a shoreline conditional use permit, all uses and activities shall be processed and decided following the shoreline conditional use procedures.

B. Shoreline Variance. The purpose of a shoreline variance permit is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the master program, where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the Shoreline Management Act policies as stated in RCW 90.58.020 or its successor.

1. Application. An application for a shoreline variance shall be submitted on a form provided by the city. The application should be accompanied by maps, a completed environmental checklist, applicable fees, and any other information specified in the master program or requested by the director.

2. Criteria for Granting Shoreline Variances. Shoreline variance permits for development that will be located landward of the ordinary high water mark (OHWM), except within wetlands (marshes, bogs, or swamps) may be authorized provided the applicant can demonstrate all of the following:

a. The strict requirements of the bulk, dimensional, or performance standards set forth in the master program preclude or significantly interfere with a reasonable economic use of the property not otherwise prohibited by the master program.

b. The hardship described above is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, natural features, and the application of the master program, and is not, for example, from deed restrictions or the applicant's own actions.

c. The design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.

d. The shoreline variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief.

e. The public interest will suffer no substantial detrimental effect. (WAC 173-14-150(2) or its successor.)

3. Applications for shoreline variance permits where the development authorized by the shoreline variance will be located either waterward of the ordinary high water mark (OHWM) or within marshes, bogs or swamps may be approved or approved with conditions or modifications subject to approval by Ecology, if the decision maker finds the applicant has demonstrated compliance with all of the following criteria as well as those stated in subsections B.2 and B.4 of this section:

a. The strict application of the bulk, dimensional, or performance standards set forth in the master program precludes a reasonable economic use of the property not otherwise prohibited by the master program.

b. The public rights of navigation and use of the shorelines will not be adversely affected.

4. In the granting of all shoreline variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if shoreline variances were granted to other developments in the area where similar circumstances exist, the total of the shoreline variances should also remain consistent with the policies of Chapter 90.58 RCW or its successor and should not produce substantial adverse effects to the shoreline environment.

C. Conditional Uses. The purpose of a shoreline conditional use permit is to allow greater flexibility in applying the use regulations of the master program in a manner consistent with the policies of RCW 90.58.020, or its successor; provided, that shoreline conditional use permits should also be granted in a

circumstance where denial of the permit would result in a thwarting of state policy enumerated in RCW 90.58.020 or its successor. In authorizing a conditional use, special conditions may be attached to the permit by the city or the State Department of Ecology to prevent undesirable effects of the proposed use. Uses which are specifically prohibited by the master program may not be authorized with approval of a shoreline conditional use permit.

1. Uses classified as conditional uses may be authorized; provided, that the applicant can demonstrate all of the following:

a. The proposed use will be consistent with the policies of RCW 90.58.020 or its successor and the policies of the master program.

b. The proposed use will not interfere with the normal public use of the public shorelines.

c. The proposed use of the site and design of the project will be compatible with other permitted uses within the area.

d. The proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is located.

e. The public interest suffers no substantial detrimental effect. (WAC 173-14-140(1) or its successor.)

f. The proposed use is consistent with the provisions of the zoning ordinance (BIMC Title 18) and the comprehensive plan (Ordinance No. 94-21).

2. Other uses which are not listed in the master program as permitted or conditional uses and are also not prohibited may be authorized as conditional uses provided the applicant can demonstrate, in addition to the criteria set forth in subsection C.1 of this section, that extraordinary circumstances preclude reasonable economic use of the property in a manner consistent with the policies of RCW 90.58.020, or its successor, that the proposed use would not produce significant adverse effects on the shoreline environment.

3. If the director decides that a shoreline variance permit application is minor in its potential impacts, the director shall decide the application following the procedures in BIMC 16.12.360.E.1, Shoreline substantial develop-

ment permit process. Usually a shoreline variance shall be considered minor if it meets the following criteria:

a. Protects of relatively small scale;

b. Projects involving only one property; or

c. Projects which have not generated significant public input.

4. Applications for shoreline variances not determined by the director to be minor and all shoreline conditional use permits shall be decided by the hearing examiner following the procedures in BIMC 2.16.100, or its successor, supplemented by the following provisions:

a. The director shall prepare a staff report identifying the approval criteria, providing available information on the application, analyzing the proposal, making a recommendation on the proposal, making recommended findings of fact and conclusions of law, and including any other information or recommendations which the director believes are appropriate. The director shall send a copy of the staff report to the applicant and the hearing examiner.

b. The director may refer the application to the planning commission for a recommendation.

c. In making the decision, the hearing examiner shall consider the applicable criteria in subsections B and C of this section. The applicant has the burden of proof to show that the proposal complies with the decision criteria and all applicable requirements. (RCW 90.58.140(7) or its successor.)

d. The hearing examiner may refer the application to the planning commission for a recommendation.

e. The decision of the hearing examiner shall be the final city decision, and may be appealed in accordance with subsections C.5 through C.8 of this section.

5. The director shall mail the final city decision to the applicant, the State Department of Ecology, and the State Attorney General. The permit must be received by Ecology within eight days of the date of the decision. Within eight days of the date of the decision,

## 16.12.380

the director shall also mail the decision to any person who requested notice of the decision.

6. The State Department of Ecology shall approve, approve with conditions, or deny all shoreline variance and shoreline conditional use permits approved by the city. Ecology's decision must be made within 30 days of the date the permit and other information required by Chapter 173-190 WAC or its successor are received by Ecology and the Washington State Attorney General. Ecology will send a letter to the applicant and the city informing them of the decision. Upon receipt of the Ecology decision, the director shall notify those interested persons who requested notification.

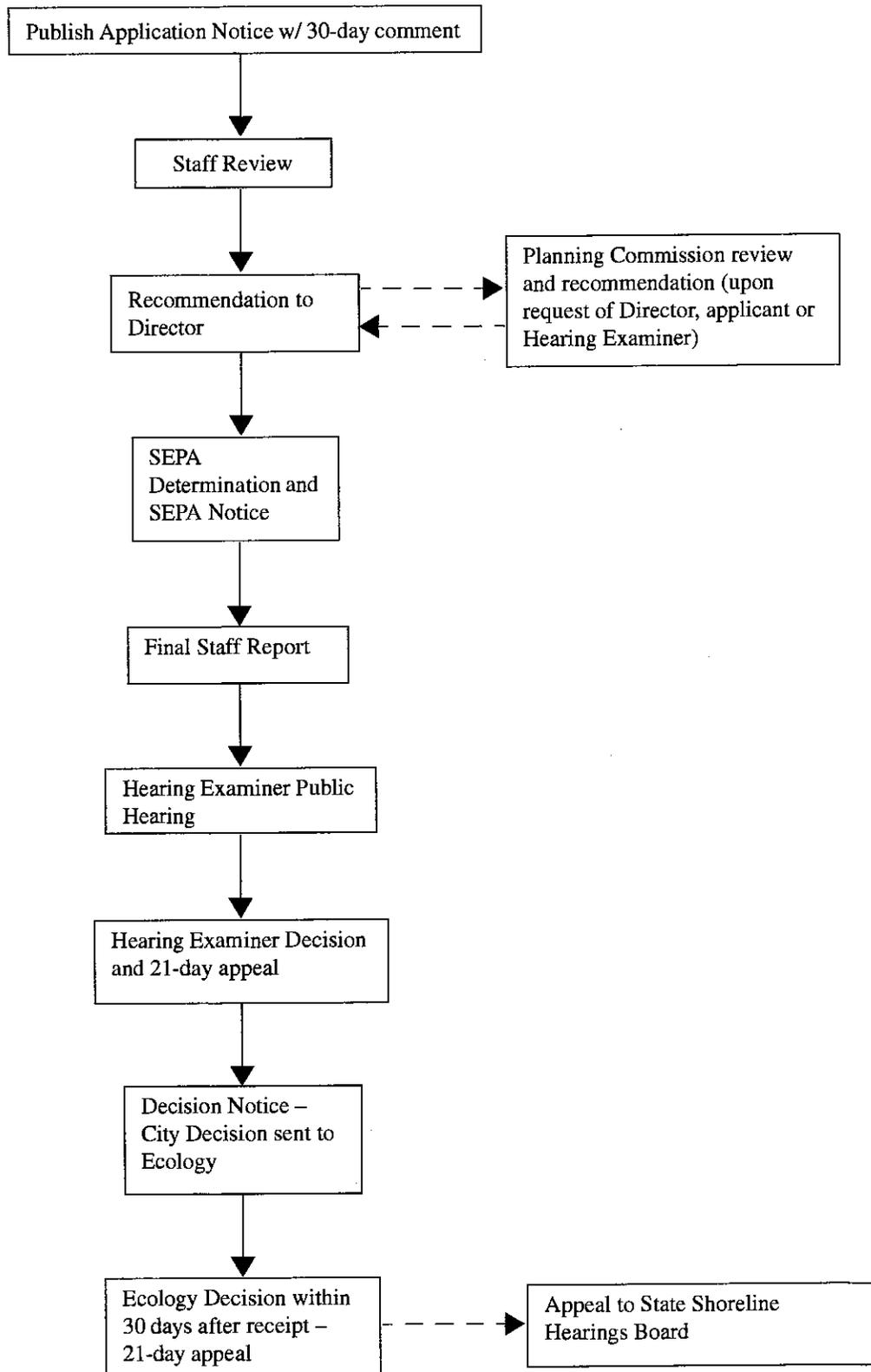
### 7. Twenty-One-Day Appeal Period.

a. If the permit or shoreline variance was denied by the city, the 21-day appeal period begins on the day the denied permit or shoreline variance and other information required by WAC 173-14-090 or its successor are received by Ecology and the Attorney General. Ecology usually sends a letter to the director and the applicant informing them of the date the application was received.

b. If the permit or shoreline variance was approved by the local government, the 21-day appeal period begins on the day the permit or shoreline variance was approved or denied by Ecology.

8. During the appeal period, the local government and/or Ecology decision on the permit may be appealed to the Washington State Shorelines Hearings Board as provided by RCW 90.58.180 or its successor. The applicant or any other party authorized to conduct activities or uses by the decision shall not begin construction, development, or any authorized use or activity until after the 21-day appeal period. Construction or use may occur during the time a court appeal is underway provided (a) the permit was approved by the local government and the State Shorelines Hearings Board, and (b) permission is granted for the construction, use or activity under RCW 90.58.140 or its successor.

**Shoreline Variance/Conditional Use Permit**



**Figure 7-2**

(Ord. 2003-25 §§ 9, 10, 2003; Ord. 96-38, 1996)

**16.12.390 Nonconforming development.**

A. Applicability. This section applies to shoreline uses or structures which were lawfully constructed or established prior to the effective date of the master program, but which do not conform to present regulations or standards of the master program or the policies of the Shoreline Management Act.

Nonconforming uses and development may be continued; provided, that they shall meet the following provisions:

## 1. Nonconforming Uses.

a. Nonconforming uses shall not be altered or expanded in any way that increases the nonconformity.

b. If a nonconforming use is discontinued for 12 consecutive months, any subsequent use shall be conforming.

c. A nonconforming use cannot be changed to another nonconforming use.

## 2. Nonconforming Structures.

a. Expansion which increases the nonconformity shall not be allowed without a shoreline variance. Repair, reconstruction, and expansion of nonconforming structures which does not increase the nonconformity shall be permitted.

b. Permitted expansion of a nonconforming structure shall not obstruct the existing views of the water from primary waterfront residences or public rights-of-way to any greater degree than a fully conforming structure.

c. If a nonconforming structure is damaged or destroyed, it may be reconstructed to the configuration existing immediately prior to the time the structure was damaged or destroyed unless a shoreline variance is granted. Pursuant to subsection A.2.a of this section, any repair or reconstruction under this subsection shall be allowed to include expansion which does not increase the nonconformity. Reconstruction under this section must be commenced within two years of the date of damage and completed within one year of the commencement of reconstruction; provided, that a written request, submitted no later than 21 days prior to either deadline for an extension of six months, may be granted; provided,

that the owner is not responsible for the delay. (Ord. 96-38, 1996)

**16.12.400 Amendments to master program.**

The provisions of the master program may be amended as provided for in RCW 90.58.120, 90.58.200 or its successor and Chapter 173-19 WAC or its successor. Any person, including the city, may submit an application for an amendment to the director together with any required fee. Any amendment to the master program must satisfy the requirements of the State Environmental Policy Act (Chapter 43.21C RCW or its successor) and Chapter 197-11 WAC or its successor.

The city council shall approve, modify, or deny an application for an amendment after conducting at least one public hearing to consider the proposal. Prior to conducting the hearing, the city shall publish notice of the hearing a minimum of once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:

A. Reference to the authority under which the action is proposed;

B. A statement or summary of the proposed changes to the master program;

C. The date, time, and location of the hearing, and the manner in which interested persons may present their views; and

D. Reference to the availability of the proposal for public inspection at the local government office, or upon request.

As provided by state law, amendments and revisions to the master program are not effective unless approved by the Washington State Department of Ecology.

Proponents for shoreline environment redesignations (i.e., amendments to the shoreline maps and descriptions) have the burden of demonstrating consistency with shoreline environment designation criteria of the master program and WAC 173-16-040(4) or its successor.

The director shall send a copy of any locally approved amendment and the information required by WAC 173-19-062 or its suc-

cessor to Ecology within 14 days of the date of the city's decision. If Ecology denies or modifies the proposed amendment, the local government may appeal the decision to the Growth Management Hearings Board as provided in RCW 90.58.190. (Ord. 96-38, 1996)

#### **16.12.410 Severability.**

If any provisions of the master program, or its application to any person or legal entity or parcel of land or circumstances, is held invalid, the remainder of the master program, or the application of the provisions to other persons or legal entities or parcels of land or circumstances, shall not be affected. (Ord. 96-38, 1996)

#### **16.12.420 Inspections.**

Whenever it is necessary to make an inspection to enforce any of the provisions of this chapter or whenever the director has reasonable cause to believe that there exists in any building, or upon any premises, any condition which makes such a building or premises non-conforming, the director may enter such building or premises. If the building or premises is occupied, the director shall first present proper credentials and demand entry. If the building or premises is unoccupied, the director shall first make reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused, the director shall have recourse to every remedy provided by law to secure entry, including administrative search warrant. Enforcement of this chapter shall be in accordance with the provisions of Chapter 1.26 BIMC, Code Enforcement. (Ord. 96-38, 1996)

## **Chapter 16.16**

### **NOISE REGULATIONS**

#### **Sections:**

- 16.16.001 Declaration of policy.**
- 16.16.005 Definitions.**
- 16.16.010 Motor vehicle noise performance standards.**
- 16.16.020 Maximum environmental noise levels.**
- 16.16.025 Limitation on construction activities.**
- 16.16.030 Variance procedures.**
- 16.16.040 Designation of zoned areas.**
- 16.16.050 Violation – Penalty.**
- 16.16.060 Enforcement and authority – Civil infractions.**

#### **16.16.001 Declaration of policy.**

The city council finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Therefore, it is declared to be the policy of the city to minimize the exposure of citizens to the harmful, physiological and psychological effects of excessive noise. It is the express intent of the city to control the level of noise in a manner which promotes use, value and enjoyment of property, sleep and repose, and quality of the environment and commerce. (Ord. 2001-04 § 1, 2001)

#### **16.16.005 Definitions.**

“Self-help housing program” means an affordable housing program sponsored by a nonprofit housing organization, which requires that an owner perform a certain percentage of construction labor, earning a portion of equity in the home. These programs are also known as “sweat equity” programs. (Ord. 2001-04 § 2, 2001)

#### **16.16.010 Motor vehicle noise performance standards.**

WAC 173-62-020, 173-62-030 and 173-62-040 are adopted by reference. (Ord. 75-13 § 1, 1975)

## 16.16.020

### 16.16.020 Maximum environmental noise levels.

WAC 173-60-020, 173-60-040 and 173-60-090 are adopted by reference. WAC 173-60-050 is also adopted by reference, except as to WAC 173-60-050(3)(a). (Ord. 2001-04 § 3, 2001; Ord. 75-13 § 2, 1975)

### 16.16.025 Limitation on construction activities.

The following noise limitations apply to construction activities in residential zones (Class A EDNAs):

A. Construction activities within residential zones or within 100 feet of residential zones shall be prohibited between the hours of 7:00 p.m. and 7:00 a.m. on weekdays that do not constitute legal holidays.

B. Construction activities within residential zones or within 100 feet of residential zones shall be prohibited before 9:00 a.m. and after 6:00 p.m. on Saturdays that do not constitute legal holidays.

C. Construction activities within residential zones or within 100 feet of residential zones shall be prohibited on Sundays and all legal holidays except that work on the inside of an enclosed structure may occur between the hours of 10:00 a.m. and 4:00 p.m.

D. For purposes of this section, "construction activities" means any site preparation, assembly, construction, erection, demolition, substantial repair, alteration or similar action on property, buildings, structures or utilities. "Construction activities" shall not include activities involving projects by homeowners for home improvements, maintenance or repair of residential structures, grounds and appurtenances or homeowners building their house under a self-help housing program, which activities shall continue to be governed by BIMC 16.16.020. (Ord. 2001-04 § 4, 2001)

### 16.16.030 Variance procedures.

A variance from the provisions of BIMC 16.16.020 may be granted by the planning commission. For any such variance, application shall be made in writing and upon forms provided by the city and no variance shall be granted for longer than 30 days, except after a

public hearing has been held. The planning commission may, in its discretion, hold a public hearing on any application when substantial public interest is shown. Any person may appeal the granting or denial of a variance by the planning commission by filing an appeal with the Pollution Control Hearing Board pursuant to Chapter 43.21B RCW under the procedures of Chapter 371-08 WAC. (Ord. 2001-41 § 4, 2001; Ord. 75-13 § 3, 1975)

### 16.16.040 Designation of zoned areas.

The EDNA (Environmental Designation for Noise Abatement) is established as follows:

- A. Residential zones, Class A EDNA;
- B. Commercial zones, Class B EDNA;
- C. Industrial zones, Class C EDNA. (Ord. 75-13 § 4, 1975)

### 16.16.050 Violation – Penalty.

A. Violations – Unlawful. The violation or failure to comply with any provisions of this chapter is declared to be unlawful.

B. Civil Infraction. Any violation of any provision of this chapter is a civil infraction as provided in Chapter 1.26 BIMC for which a monetary penalty may be assessed. The monetary penalty shall be as follows:

1. If a person violates this chapter and has not committed a violation under this chapter at any location within the city in the two-year period preceding the most recent violation, a warning citation shall be issued but no monetary penalty shall be assessed.

2. If a person violates this chapter and has previously committed one or more violations under this chapter at any location in the city within the two-year period preceding the most recent violation, a citation shall be issued assessing a monetary penalty as established by city council resolution. (Ord. 2001-04 § 5, 2001; Ord. 75-13 § 5, 1975)

### 16.16.060 Enforcement and authority – Civil infractions.

The police department and the code enforcement officer shall be responsible for the enforcement of this chapter and are authorized to issue, serve and file notice of infraction in the manner set forth in Chapter 1.26